

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY

PNC BANK NATIONAL ASSOCIATION,
Plaintiffs,

Case No. 1116-CV16144

vs.

Division 13

MILLESIA C MCGLOTHEN,
DESHUAN M GAVIN,
OZARK FINANCIAL GROUP LLC,
Defendants,

JUDGMENT / ORDER

Now on this 24 day of February, 2012, the Court takes up Plaintiff's Motion to Dismiss Counterclaims of Defendants, Milleshia C. McGlothen and Deshuan M Gavin.

Plaintiff is a financial institution that claims in its petition that the defendants are in default on a note regarding a residence located at 8300 East 87th Street, Raytown, Missouri 64138. Further Plaintiff avers that Defendants executed a 'Notice of Adverse Claim and Entitlement Order by Affidavit Pursuant to the UCC, which was filed with the Jackson County, Missouri Recorder of Deeds. Plaintiff asserts that the purpose of the filing of the instrument was to cloud the title on the property.

Plaintiff's petition seeks a Declaratory Judgment to Quiet the Title, a permanent injunction to prohibit the Defendants from recording any additional or similar instruments and for Foreclosure on the subject property.

Defendants / Counterclaimants McGlothen and Gavin (hereinafter referred to as 'Defendants') are proceeding pro se in this litigation. They collectively filed a pleading titled Answer, Defenses and Counterclaims. Within that pleading, the Defendant answered by admitting to certain allegations in Plaintiff's petition, denying others and making additional assertions regarding Plaintiff's allegations and the legitimacy and legality of Plaintiff's ability to bring the lawsuit, as well as affirmative defenses. Defendants also assert counterclaims. Those counterclaims allege fraud, a violation of the Fair Debt Collection

Practices Act, and that Plaintiff has been found guilty of unsafe and unsound banking practices. Defendants claimed they had been damaged financially, socially, and emotionally. They also claimed damages of \$308,263.38, or the standard damage for fraud. Defendants' pleadings also pleaded for a "Remedy and Demand" and demanded that the Court subpoena certain documents from Plaintiff, and that if they were not produced, that the Court dismiss Plaintiff's petition, demanded that Plaintiff's claims be governed by particular Missouri Statutes and again prayed for \$308,263.38, or the standard damages for fraud.

Following the remedy and demand was a section wherein Defendants provided briefing on legal issues.

Defendants then filed a pleading entitled, "Motion for Leave to File Additional Evidence in Support of Defendant's Answers, Defenses and Counterclaims," which has already been denied in a separate order. The Court will address that issue with more particularity within this Judgment/Order.

Missouri Supreme Court Rule 55.05 sets forth Missouri's requirements regarding any pleading that asserts a claim for relief, including counterclaims. A party is required to state a short and plain statement of the facts showing that the pleader is entitled to relief. If a pleading contains any conclusions and does not contain the ultimate facts or any allegations from which to infer those facts, than a motion to dismiss can be granted. Westphal v. Lake Latowana Associates Inc., 95 S.W.3d 144 (Mo. Ct. App. 2003). A party cannot merely assert conclusions. In determining whether a pleading asserting a claim for relief states a cause of action, a court will disregard conclusions that are not supported by facts. Williams v. Barnes & Noble, Inc., 174 S.W.3d 556 (Mo. Ct. App. 2005).

Missouri Supreme Court Rule 55.15 relates specifically to claims for relief which pertain to fraud. A claimant must plead every essential element of fraud, and a failure to plead any element renders the claim defective and subject to dismissal. O'Neal v. Stifel, Nicolaus & Co., Inc. 966 SW2d 700 (Mo. App. 1999) "All averments of fraud are to be stated with particularity, except malice, intent, knowledge and any other condition of mind which can be averred generally." Id. at 703. A motion to dismiss for failure to state a cause of action is solely a test of the adequacy of the pleading which asserts a claim for relief. Leblanc v.

Research Belton Hospital, 278 S.W.3d 201 (Mo. Ct. App. 2008). A court must determine if the facts alleged meets the elements of a recognized cause of action or of a cause that might be adopted in that case. A court will treat the averments in the petition as true and liberally construe accompanying inferences in the party's favor. Id. at 204. In this case, the Court has reviewed the counterclaims asserted by Defendants. The Court has determined that the counterclaims fail to meet the burden imposed by Rule 55.05 or Rule 55.15, and are subject to dismissal.

However, Missouri Supreme Court Rule 67.06 provides that if an initial pleading (ie. the counterclaim in this instance) is deemed insufficient, the party filing the pleading should be afforded a reasonable time to file an amended pleading. See Costa v. Allen, 274 S.W.3d 461 (Mo. 2009). The Court will provide Defendants this opportunity.

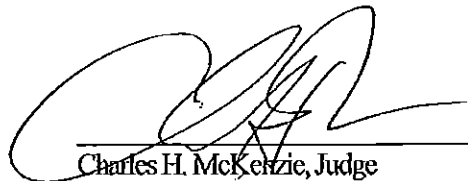
The Court has previously denied Defendant's Motion For Leave To File Additional Evidence In Support Of Defendants' Answers, Defenses, and Counterclaims, because it fails to comply with Missouri Supreme Court Rule 55.27. If the Defendants file an amended answer and counterclaim, any matters that Defendants are inclined to plead may be pled in that amended pleading.

The Court grants the Defendants until **February, 29, 2012** to file its amended answer and counterclaims.

Further as it relates to the "Remedy and Demand" that requested the Court subpoena certain document and information. The Parties are able to conduct discovery pursuant to Missouri Supreme Court Rules 56, 57, 58, 59 and 60. The Court will not take any action on the demands made by Defendants, but will leave it to the parties to conduct such discovery.

IT IS SO ORDERED.

2/8/12
DATE


Charles H. McKenzie, Judge

Copies faxed/emailed to:

JENNIFER MICHELLE DENNY, Attorney for Plaintiff, 612 SPIRIT DRIVE, ST LOUIS, MO 63005
(636) 537-0067, jdenny@msfirm.com

MICHAEL P STEENO, Attorney for Defendant - OZARK FINANCIAL GROUP LLC
MILLER & STEENO PC, 11970 BORMAN DRIVE, SUITE 250, SAINT LOUIS, MO 63146
(314) 726-1406, msteeno@millersteeno.com

MILLESIA C. MCGLOTHEN, Defendant Pro Se
8300 East 87th – Raytown, MO 64138

Deshuan M. Gavin, Defendant Pro Se
8300 East 87th – Raytown, MO 64138

Kelsey O'Donnell, Law Clerk Division 13