

Based on the evidence before the Court, Wells Fargo is entitled to summary judgment as to Defendants' counterclaims because they are barred by the applicable statutes of limitations as set forth below. Summary judgment in favor of Wells Fargo as to certain of Defendants' counterclaims is also appropriate for the additional reason discussed below.

STANDARD

In evaluating a motion for summary judgment, the Court must view "the evidence and all reasonable inferences . . . in the light most favorable to the non-moving party." Hansson v. Scalise Builders of S.C. 374 S.C. 352, 355, 650 S.E.2d 68, 70 (2007). Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP.

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). A party's response to a motion for summary judgment "must set forth specific facts, admissible in evidence, showing there is a genuine issue for trial If he does not so respond, summary judgment should be entered against him." Moody v. McLellan, 295 S.C. 157, 163, 367 S.E.2d 449, 453 (1988) (citations omitted).

DISCUSSION

I. South Carolina Unfair Trade Practices Act – First and Second Counterclaims

As to Defendants' First and Second Counterclaims (both styled by Defendants as a "Seventh Defense By Way of Counterclaim"), alleging violation of the South Carolina Unfair Trade Practices Act (SCUTPA), Wells Fargo is a bank regulated by the Federal Reserve System and is therefore exempt from the application of the South Carolina Unfair Trade Practices Act.

II. South Carolina Consumer Protection Code – Third, Fifth and Sixth Counterclaims

As to Defendants' Third Counterclaim (styled as an "Eighth Defense By Way of Counterclaim") alleging violations of the South Carolina Consumer Protection Code, in that Wells Fargo failed to ascertain Defendants' Attorney or insurance preference at closing, Defendants' counterclaim is barred by the applicable three year statute of limitations provided in S.C. Code Ann. § 37-10-105(a) which applies to this particular cause of action. The alleged events giving rise to this cause of action undisputedly occurred on or around the loan closing on November 3, 1998, as evidenced by the subject Note and Mortgage. Defendants failed to raise this cause of action until July 31, 2013, the filing date of their Answer and Counterclaim, which is well beyond the applicable period of limitations.

Additionally, there is no genuine issue of fact as to whether Wells Fargo ascertained Defendants' attorney preference pursuant to § 37-10-102 because Defendants, upon closing on the subject loan on November 3, 1998, executed a "Borrower's Right to Counsel Notice." Moreover, a letter dated November 29, 2012, was admitted into evidence at the hearing stating that the Defendants were given an opportunity to hire another closing attorney but instead chose to use the one hired by Beaufort Mortgage.

As to Defendants' Fifth Counterclaim (styled as a "Tenth Defense By Way of Counterclaim") alleging violation of the South Carolina Consumer Protection Code, S.C. Code Ann. § 37-5-203, et seq., Defendants' claim is barred by operation of the one year statute of limitations provided in § 37-5-203(5). The alleged events giving rise to this cause of action undisputedly occurred on or around the loan closing on November 3, 1998. Defendants failed to raise this cause of action until July 31, 2013, the filing date of their Answer and Counterclaim, which is well beyond the applicable period of limitations.

III. Mortgage Loan Broker's Act

As to Defendants' Fourth Counterclaim (styled as a "Ninth Defense By Way of Counterclaims") alleging violation of the Mortgage Loan Broker's Act (the "Act"), and to the extent this cause of action is directed at Wells Fargo, Wells Fargo is entitled to judgment as a matter of law because the Act did not go into effect until January 1, 2010, whereas the events giving rise to this cause of action occurred on or around the subject loan closing on November 3, 1998, well before the effective date of the Act. See S.C. Code Ann. § 40-58-10, et seq.; 2009 S.C. Acts 673. The language of the Act does not provide for retroactive application, and therefore it cannot apply to Wells Fargo in this action. See Bartley v. Bartley Logging Co., 293 S.C. 88, 90, 359 S.E.2d 55, 56 (1987) ("The general rule is that statutes are to be construed prospectively rather than retroactively absent a specific provision or a clear legislative intent to the contrary unless the statute is remedial or procedural in nature."). To the extent Defendants also allege a violation of the South Carolina Unfair Trade Practices Act within this cause of action, summary judgment in favor of Wells Fargo is appropriate for the reasons set forth in Part I of this Order, above.

IV. Real Estate Settlement Procedures Act – Seventh and Eighth Counterclaims

As to Defendants' Seventh Counterclaim (styled as a "Twelfth Defense By Way of Counterclaim") alleging violation of the Real Estate Settlement Procedures Act ("RESPA"), specifically 12 U.S.C. § 2607(d), Defendants' claim is barred by the operation of the applicable one year statute of limitations provided in 12 U.S.C. § 2614. The alleged events giving rise to this cause of action occurred on or around the loan closing on November 3, 1998, as seen above. Defendants failed to raise this cause of action until July 31, 2013, the filing date of their Answer and Counterclaim, which is well beyond the one-year limitation period. It should be noted that

CONCLUSION

For the reasons set forth above, Wells Fargo is entitled to summary judgment pursuant to Rule 56, SCRPC as to each of the Defendants' nine counterclaims asserted in this action.

IT IS SO ORDERED.



Carmen T. Mullen
Fourteenth Judicial Circuit

June 17, 2014
Beaufort, South Carolina

STATE OF SOUTH CAROLINA,)
)
 COUNTY OF Colleton)
)
 Christopher T. Noskowiak; Sonja B.)
 Noskowiak a/k/a Sonja Bennett; South)
 Carolina Department of Motor Vehicles;)
 South Carolina Department of Revenue,)
 Plaintiff)
)
 vs.)
)
 Wells Fargo Bank, N.A.,)
 Defendant.)
)
 vs.)
)
 Frampton Harper, Esquire; Investors Title)
 Insurance Company, Atlantis Title)
 Insurance Company, Harper Law Firm)
 LLC, Wells Fargo Bank, N. A. as)
 servicer and Beaufort Mortgage.)
)
 _____)
 Third Party Defendant's.)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT


**MOTION AND AFFIDAVIT TO
 PROCEED IN FORMA PAUPERIS**

FILE NO. 2013-CP-15-430

RECEIVED
 JUL 24 2014
 SC Court of Appeals

I/We Christopher T. Noskowiak and Sonja B. Noskowiak, being duly sworn, state that I am the Plaintiff and that due to being disabled and drawing disability only, I do not have the funds available to pay the costs of filing and service in the present matter. I hereby request that the complaint be filed and service made without costs.

Sworn to and Subscribed before me)
 this 18th day of July, 2014.)
)
)
 Notary Public for South Carolina)
)
 My Commission expires)



 Signature of Plaintiff or
 Person Filing Complaint on Behalf of
 Plaintiff

ORDER

- Leave is *granted* to proceed in forma pauperis without payment of the filing fee.
- Leave is granted to proceed in forma pauperis without payment of the service cost.
- Leave is *denied* to proceed in forma pauperis.

Dated: _____, 2 _____
JUDGE/CLERK OF COURT
_____, South Carolina

NOTICE TO PLAINTIFF: The Court may assess costs against either party at hearing.