

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Wells Fargo Bank, N.A.,

Plaintiff,

v.

Daniel L. Belfield; Mortgage Electronic  
Registration Systems, Inc., as nominee for  
Homecomings Financial Network, Inc. (MIN#  
100062604288914361); American Express  
Bank, F.S.B.;

Defendant(s).

(513263.05369 CSG)

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2014-CP-26-02623

**ORDER GRANTING PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT  
AND DENYING DEFENDANT DANIEL  
L. BELFIELD'S MOTION TO AMEND  
ANSWER**

*(Not disposing of case!)*

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This matter came before me at a hearing on October 12, 2015, on Plaintiff's Motion for Summary Judgment and Defendant Daniel L. Belfield's Motion to Amend his Answer. Nikole Haltiwanger, Esquire appeared on behalf of the Plaintiff, Wells Fargo Bank, N.A., and George W. Redman, III, Esquire appeared on behalf of Defendant Daniel L. Belfield. This court has jurisdiction to hear these motions by virtue of the Order of Reference filed in this action on July 23, 2015.

The court makes the following combined finding of fact and conclusions of law in granting Plaintiff's Motion for Summary Judgment and denying Defendant Belfield's Motion to Amend his Answer.

Defendant Belfield seeks to amend his answer to add affirmative defenses for Breach of Contract and Violation of the Unfair Debt Collection Practices Act. Defendant's position is that the Plaintiff failed to comply with the South Carolina Supreme Court Administrative Order 2011-05-02-01, as well as the loan servicing guidelines applicable to loans guaranteed by the Department of Veterans Affairs, as incorporated by the note and mortgage which are the subject of this Action. Defendant posits that section (B)(1)(d) of the Supreme Court's Administrative

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Order requires Plaintiff to certify that "Mortgagor does not qualify for loan modification or other means of loss mitigation, **in accordance with any standards, rules or guidelines applicable to the mortgage loan.**" *Id.* at (B)(1)(d) (*emphasis added*). More specifically, defendant asserts that 38 C.F.R. Section 36.4350 states that Plaintiff, as the holder of a VA loan, should have offered Defendant a face-to-face interview or a reasonable effort to arrange such a meeting. According to the Affidavit of Defendant Belfield, filed October 8, 2015, he was never offered a face-to-face interview.

The additional requirements suggested above would be a novel issue and should best be determined by the South Carolina Supreme Court. Additionally, it appears that any face-to-face meeting would be futile here, as Plaintiff had previously considered Mr. Belfield for a loan modification and determined that Mr. Belfield did not qualify for such in this matter.

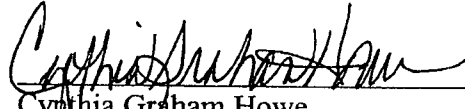
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"Summary judgment is appropriate where there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." *Johnson v. Alexander*, 413 S.C. 196, 201, 775 S.E.2d 697, 699 (2015) (citing Rule 56(c), SCRCP). "In determining whether any triable issues of fact exist, the Court views the evidence and all reasonable inferences that may be drawn in the light most favorable to the non-moving party." *Id.* "To withstand a summary judgment motion in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence." *Id.* It is true that a case involving a novel issue does not render summary judgment inappropriate. *Houck v. State Farm Fire & Cas. Ins.*, 366 S.C. 7, 11, 620 S.E.2d 326, 329 (2005). However, nothing in Justice Toal's administrative orders specifically have required a face-to-face meeting between the borrower and the lender when a VA loan is involved. This Court will not require it.

Here, no genuine issues of material facts are in dispute; therefore, the Plaintiff is entitled to summary judgment. Based on the discussion herein, it is ordered as follows:

1. Plaintiff's Motion for Summary Judgment filed on August 12, 2015 is granted;
2. Inasmuch as this Court has granted Plaintiff's Motion for Summary Judgment, Defendant Daniel L. Belfield's Motion to Amend Answer<sup>1</sup> filed on October 8, 2015 must be denied; and,
3. Plaintiff shall contact the Court to schedule a final foreclosure hearing to determine the amount due under the terms of the Note and Mortgage and to schedule a foreclosure sale date if the parties are unable to resolve the case through other means.

**AND IT IS SO ORDERED!**

  
Cynthia Graham Howe  
Master-in-Equity, Horry County

  
March 3, 2016

Conway, South Carolina

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<sup>1</sup> Even though Defendant's Motion to Amend was denied, Defendant's potential claim in his proposed amended answer (face-to-face meeting between borrower and lender before foreclosure) was considered by the Court in the summary judgment argument.