

IN THE UNITED STATES DISTRICT COURT

FOR WESTERN DISTRICT OF TEXAS

UNITED STATES COURTHOUSE

501 WEST FIFTH STREET AUSTIN, TEXAS 78701

DAVID AND BARBARA MCCRAE, qui tam }

CONSUMER FINANCIAL PROTECTION BUREAU }

v. }

PHH MORTGAGE CORPORATION (dba BURNET }

MORTGAGE SERVICES; }

CENTURY 21 MORTGAGE; COLDWELL BANKER }

MORTGAGE; DOMAIN DISTINCTIVE PROPERTY }

FINANCE; ERA MORTGAGE; INSTAMORTGAGE.COM }

MORTGAGE SERVICE CENTER; }

MORTGAGEQUESTIONS.COM; MORTGAGESAVE.COM }

PHH MORTGAGE SERVICES) }

And BARRETT BURKE DAFFIN }

FRAPPIER TURNER AND ENGEL, LLP, }

and VARIOUS ACTORS AND EMPLOYEES }

OF DEFENDANTS JOHN DOE 1-100 }

CIVIL ACTION NO.

1:14-733-LY-ML

§§§

JURY TRIAL DEMANDED

§§§

27.08.12

Motion for Discovery

As stated in our complaint, the plaintiffs are bringing this action on behalf of the United States of America, specifically the Consumer Financial Protection Bureau, who are charged since 2014 with all regulatory action in these matters. The United States of America Department of Justice has disclosed no ongoing investigation or current enforcement action regarding these defendants at this point.

The plaintiffs have visited the local FBI offices in Austin, representing the Department of Justice, and reported our concerns, as First Relator, on 26 December 2013, more than six months ago. The plaintiffs are in no fear of retaliation; we see no need to file our complaint under seal and have accordingly waived that privilege. The plaintiffs have not retained counsel at this date, and are continuing to seek competent and available counsel, at a reasonable cost. Until that event, the plaintiffs see no reason to delay this action and are proceeding pro se. If counsel becomes available at some point before trial, he can easily step in.

Our initial motion for production of all defendant business records for past four years relating to foreclosure actions and lender owned properties has been denied. We have accordingly examined the SEC filings of PHH Corporation for available information concerning their common practices. We are now asking for production of specific information detail supporting those public accounting disclosures. The PHH Corporation SEC 10Q filings report:

QTR	Foreclosures + REO/Value (mil)	Defaults	Complaints	Litigation	Resolutions	Comment
2Q14	22759/217	UNK	UNK	1+	1+	Philip Linza/\$16M
1Q14	24272/220	UNK	UNK	UNK	UNK	Ocwen, et al.
4Q13	24892/223	UNK	UNK	1+	1+	New Jersey
3Q13	25268/212	UNK	UNK	UNK	UNK	
2Q13	25978/226	UNK	UNK	UNK	UNK	
1Q13	17087/172	UNK	UNK	UNK	UNK	
4Q12	17329/176	UNK	UNK	UNK	UNK	

3Q12	17141/171	UNK	UNK	UNK	UNK	
2Q12	16467/149	UNK	UNK	UNK	UNK	
1Q12	16004/136	UNK	UNK	UNK	UNK	
4Q11	15689/131	UNK	UNK	UNK	UNK	
3Q11	15470/127	UNK	UNK	UNK	UNK	
2Q11	16913/135	UNK	UNK	UNK	UNK	
1Q11	18143/144	UNK	UNK	UNK	UNK	
4Q10	18554/145	UNK	UNK	UNK	UNK	
3Q10	18000/134	UNK	UNK	UNK	UNK	
x50%	108000 / 2450					Overlap
X50%	54000 / 1225					Defective

Without supporting detail, we are assuming that the number of foreclosure actions overlap by ~45 days of 90 in the quarter and are reducing total actions and value claimed by 50%.

Without supporting detail, we are assuming half of those foreclosures are defective in some aspect, in accord with Joseph A. Smith industry metrics.

Attached Exhibit P-8a, The Metric System

PHH Corporation, on Form 10Q-20101103 reports

Industry Trends

Regulatory Trends

Focus on foreclosure practices

During the third quarter of 2010, several of our mortgage servicing competitors announced the suspension of foreclosure proceedings in various judicial foreclosure states due to concerns associated with the preparation and execution of affidavits used in connection with foreclosure proceedings in such states. In addition, at least one such competitor has announced the temporary suspension of foreclosure proceedings in all 50 states while it reviews its foreclosure procedures. Due in part to these announcements, we have received inquiries from regulators and attorneys general of certain states requesting information as to our foreclosure processes and procedures.

Additionally, various inquiries and investigations of, and legal proceedings against, certain of our competitors have been initiated by attorneys general of certain states and the U.S. Department of Justice, and certain title insurance companies have announced that they will suspend issuing title insurance policies on properties that have been foreclosed upon by such firms.

We have completed a comprehensive review of our foreclosure procedures and based on this review we have not halted foreclosures in any states and have no plans to initiate a foreclosure moratorium. Potential delays in completing foreclosures could negatively impact both our liquidity position and ultimate loss severities; however, these recent developments are dynamic and the ultimate outcome of these actions is uncertain. We continue to monitor and evaluate the potential impact that the additional regulatory focus on foreclosure practices may have on our business.

PHH Corporation, on Form 10Q-20111102 reports

During the first quarter of 2011, various federal regulators completed a review of 14 entities involved in the mortgage servicing process and noted weaknesses in foreclosure governance processes, foreclosure document preparation processes, and oversight and monitoring of third-party vendors, including foreclosure attorneys. These regulators took formal actions against each of the 14 entities subject to this review to address those weaknesses and risks. These actions require each entity, among other things, to conduct a more complete review of certain aspects of foreclosure actions that occurred between January 1, 2009, and December 31, 2010.

While we were not included in these reviews, we have received inquiries and requests for information from regulators and attorneys general of certain states as well as from the Committee on Oversight and Government Reform of the U.S. House of Representatives and the U.S. Senate Judiciary Committee, requesting information as to our foreclosure processes and procedures, among other things. While we have not been assessed any material penalties resulting from our foreclosure practices to date, we expect the higher level of focus on foreclosure practices will result in higher legal and servicing related costs as well as potential regulatory fines and penalties.

Since that time, 6 of those 14 entities (Ocwen, Chase, Citi, BOA, Wells, Greentree, have reached agreement with the Department of Justice and filed consent judgments in various Federal District Court venues, each judgment

endorsed by all fifty State Attorneys General of that time. We are assuming eight of those actions remain in process. Each of those consent judgments detail various fines, penalties and restitution, and establish an oversight administrator, Joseph A. Smith, to monitor compliance with existing law. These laws pertain to everyone in the industry in the United States. It appears that ~40% of the industry is now compliant with existing law and regulation.

PHH Mortgage Corporation may also be compliant. We need to review the business record detail covering the 29 metrics established by Joseph A. Smith. The review of these records is likely to determine the existence or non-existence, and define the size, of a class of plaintiffs, and supply basis for a request to certify such a class. The current pro se plaintiffs, at that future time, will very likely be represented by counsel. We believe this information has already been collected by PHH Corporation in the course of their normal contact with regulatory enforcement inquiry, and is readily available as electronically stored information. The plaintiffs are able to receive it in any format. We note that PHH Corporation has used agents, such as BBDFTE in Texas, to implement much of their foreclosure action. This motion for discovery must extend to any and all such identifiable agents. In our capacity as qui tam agents for the CFPB, we have also asked each State AG directly for such investigatory files as may be held by the Texas AG and all other state AG's.

This detail information appears readily available. PHH Corporation, on most recent Form 10K-20140226 reports (p.6)-

We are subject to numerous federal, state and local laws and regulations and may be subject to various judicial and administrative decisions imposing various requirements and restrictions on our business. By agreement with our private label clients in our mortgage business, we are also required to comply with additional requirements that our clients may be subject to through their regulators. These laws, regulations and judicial and administrative decisions include those pertaining to the following areas:

- n real estate settlement procedures;
- n consumer credit provisions; fair lending, fair credit reporting and truth in lending;
- n the establishment of maximum interest rates, finance charges and other charges;
- n secured transactions;
- n [collections, foreclosure, repossession and claims-handling procedures;](#)
- n privacy regulations providing for the use and safeguarding of non-public personal financial information of borrowers and guidance on non-traditional mortgage loans issued by the federal financial regulatory agencies;

- n taxing and licensing of vehicles and environmental protection; and
- n insurance regulations and licensing requirements pertaining to standards of solvency that must be met and maintained; reserves and provisions for unearned premiums, losses and other obligations and deposits of securities for the benefit of policyholders.

There has been a heightened focus of regulators on the practices of the mortgage industry. Consistent with some of our peers, we have experienced inquiries and requests for information from regulators and attorneys general of certain states as well as various governmental agencies. We are working diligently in assessing and understanding the implications of the developments in the regulatory environment, and we are devoting substantial resources towards implementing all of the new rules and towards complying with requests, inquiries, examinations and proceedings while meeting the needs and expectations of our clients.

Further (p.8)–

On December 4, 2013, our subsidiary PHH Mortgage Corporation entered into a Consent Order with the New Jersey Attorney General and the New Jersey Division of Consumer Affairs, Office of Consumer Protection. The New Jersey Attorney General conducted a review of our servicing practices, specifically our compliance with the New Jersey Consumer Fraud Act in connection with customer service and other matters related to loss mitigation activities for certain borrowers. The Consent Order requires us to: (i) make a \$6 million cash payment to certain borrowers nationwide and to the State of New Jersey; (ii) implement certain servicing practices; and (iii) provide New Jersey quarterly reports for two years related to, among other things, loan modifications, foreclosure activities and the resolution of borrower calls to our loss mitigation department. We have completed the settlement payment and are complying with the other requirements of this Order.

During 2013, we received document subpoenas from the Office of Inspector General of the U.S. Department of Housing and Urban Development (“HUD”) and the U.S. Attorney’s Office for the Southern District of New York. The HUD subpoenas request production of certain documents related to, among other things, our origination and underwriting process for loans insured by the Federal Housing Administration (“FHA”). The U.S. Attorney’s Office subpoena requests production of certain documents related to, among other things, foreclosure expenses that we incurred in connection with the foreclosure of loans insured or guaranteed by FHA, Fannie Mae or Freddie Mac. We have also undergone a regulatory examination by a multistate coalition of certain mortgage banking regulators and such regulators have alleged various violations of federal and state laws related to our mortgage servicing practices prior to July 2011. We believe that we have meritorious defenses to these various allegations. However, there can be no assurance that claims or litigation will not arise from these inquiries or similar inquiries by other governmental authorities or that fines or penalties will not be assessed against us in connection with these matters.

In addition to the increased regulatory focus on origination and servicing practices described above, Fannie Mae and Freddie Mac have also had a continued focus on foreclosure practices. They have assessed compensatory fees against us for failing to meet certain foreclosure timelines specified in their respective servicing guides. Although such compensatory fees have not been material to date, there can be no assurance that the assessment of any such compensatory fees will not be material to our results of operations or cash flows in the future.

...

We expect that the higher level of legislative and regulatory focus on mortgage origination and servicing practices will result in higher legal, compliance and servicing related costs as well as potential regulatory fines and penalties. It is also reasonably possible that we could experience an increase in mortgage origination or servicing related litigation in the future. For more information, see “—Item 1A. Risk Factors—Risks Related to our Company — *Our Mortgage businesses are complex and heavily regulated, and the full impact of regulatory developments to our businesses remains uncertain. In addition, we are subject to litigation, regulatory investigations, inquiries and proceedings and we may incur fines, penalties, and increased costs that could negatively impact our future results of operations, liquidity and cash flows or damage our reputation.*” in this Form 10-K.

Further (p.12)-

We are currently subject to inquiries, requests for information, investigations, and proceedings as a result of our mortgage origination and servicing practices, including inquiries and requests for information from and investigations by regulators and attorneys general of certain states, the U.S. Department of Housing and Urban Development, the U.S. Attorney's Office for the Southern District of New York, the Committee on Oversight and Government Reform of the U.S. House of Representatives, and the U.S. Senate Judiciary Committee. The Bureau of Consumer Financial Protection (the "CFPB") has initiated an administrative proceeding alleging that our former reinsurance activities violated certain provisions of the Real Estate Settlement Procedures Act and other laws. We have received document subpoenas from the Office of Inspector General of the U.S. Department of Housing and Urban Development ("HUD") and the U.S. Attorney's Office for the Southern District of New York. The HUD subpoenas request production of certain documents related to, among other things, our origination and underwriting process for loans insured by the Federal Housing Administration ("FHA"). The U.S. Attorney's Office subpoena requests production of certain documents related to, among other things, foreclosure expenses that we incurred in connection with the foreclosure of loans insured or guaranteed by FHA, Fannie Mae or Freddie Mac. These matters are at varying procedural stages and the resolution of any of these matters may result in adverse judgments, fines, penalties, injunctions and other relief against us, payments made in settlement arrangements, as well as monetary payments or other agreements and obligations, any of which could have a material adverse effect on our business, financial position, results of operations, liquidity or cash flows.

There has been a heightened focus of regulators on the practices of the mortgage industry, including investigations of lending practices, foreclosure practices, and loss mitigation practices, among other matters. Our mortgage origination and servicing competitors have been subject to actions from, and settlements with, the U.S. Department of Justice under the False Claims Act and other statutes, alleging, among other things, reckless mortgage lending practices and improper or inadequate certification to the government in connection with the Federal Housing Administration's Direct Endorsement Lending Program. We have incurred increased expenses associated with these matters, and there can be no assurance that we will not incur fines, penalties, further settlement payments or increased legal costs in connection with existing inquiries, requests for information and investigations, or that future regulatory investigations may not arise. The heightened focus of regulators on the practices of the mortgage industry have resulted and could continue to result in new legislation and regulations that could materially and adversely affect the manner in which we conduct our mortgage business and have resulted in increased origination and servicing costs and potential litigation associated with our mortgage businesses.

We are monitoring a number of recent and pending changes to laws and regulations and other financial reform legislation that are expected to impact our Mortgage segments. These developments include but are not limited to: (i) regulations from the Dodd-Frank Act, including the risk-retention requirements and definition of "qualified mortgages"; (ii) proposed changes to the infrastructures of Fannie Mae and Freddie Mac; and (iii) current rules proposed and adopted by the CFPB, including uniform standards for the mortgage servicing industry. Certain provisions of the Dodd-Frank Act and of pending legislation in the U.S. Congress may impact the operation and practices of Fannie Mae and Freddie Mac, and could reduce or eliminate the GSE's ability to issue mortgage-backed securities, which would materially and adversely affect our businesses and could require us to fundamentally change our business model since we sell substantially all of our loans pursuant to GSE-sponsored programs. These developments could also result in heightened federal regulation and oversight of our business activities and increase costs and potential litigation associated with our business activities. The full impact these developments may have on our mortgage origination, servicing and securitization or structured finance transactions remains unclear.

Regrettably, opposing counsel has been unable to meet conveniently in our required Rule 26 meeting and discuss these matters. The court has before it a motion for Alternate Dispute Resolution, also opposed by counsel for PHH. Counsel for BPDFTE has now appeared. We have faith that we will all meet at some point. This motion covers core information, and must be available to all parties. No doubt we will all have other concerns after review of core information, and be better able to come to grips with the issues.

For Truth, Justice, and America,

Date: 19 September 2014

Signature: /s/ David McCrae, Pro se

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Case Number: 1:14-cv-00733

[PROPOSED] ORDER GRANTING

Motion for Discovery

DATE:

TIME:

COURTROOM:

JUDGE: Lee Yeakel / Mark Lane

The Court has considered the Motion for Discovery

Finding that good cause exists, the Motion is GRANTED / DENIED.

MAKE IT SO.

DATED:

United States District/Magistrate Judge

SERVICE

I have served this Motion for Discovery

To

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Sworn to on 09/19/2014

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