Mortberg v. Litton Loan Servicing, L.P.

Decided Aug 30, 2011

CASE NO. 4:10-CV-668

08-30-2011

BERN A. MORTBERG v. LITTON LOAN SERVICING, L.P., BARRETT DAFFIN TURNER & ENGEL, LLP

AMOS L. MAZZANT UNITED STATES MAGISTRATE JUDGE

(Judge Schneider/Judge Mazzant) **REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is Defendant Litton Loan Servicing, L.P.'s Rule 12(b)(6) Motion to Dismiss and Brief in Support (Dkt. #22). Having considered all the relevant pleadings, the Court is of the opinion that the motion to dismiss should be granted.

BACKGROUND

On or about December 7, 2004, Plaintiff purchased his home with Aames Funding Corporation, d/b/a Aames Home Loan as the lender and holder of the note. PL.'S AMEND. COMPL. at ¶ 9. On or about December 9, 2004, an Endorsement and Assignment in blank was signed by Aames Home Loan, without notice to the Plaintiff. PL.'S AMEND. COMPL. at ¶ 10. On or about February 1, 2005, the mortgage loan was securitized, and placed in "Aames Mortgage Investment Trust 21005-1." PL.'S AMEND. COMPL. at ¶ 11. Plaintiff alleges that the parties to that agreement include the following: Wells Fargo Bank, N.A. as Trust Administrator and Master Servicer, Aames *2 Capital Corporation as Servicer, Aames Investment Corporation as the Seller, and Deutsche Bank National Trust Company, as the Indenture Trustee. *Id*. At some point, Plaintiff defaulted on his payments under the loan, and the property in question was posted for non-judicial foreclosure sale to be held on November 2, 2010. DEF.'S MOTION at 3. Defendant Litton Loan Servicing, L.P. ("Litton") acted as the Mortgage Servicer for Deutsche Bank National Trust Company, as Indenture Trustee, who is the alleged Mortgagee of the Note and Deed of Trust. Defendant Barrett Daffin Turner & Engel, LLP ("Barrett Daffin"), acted as the agent of Litton during the foreclosure process. On November 2, 2010, Plaintiff filed the instant lawsuit in Texas state court seeking an injunction to stop the scheduled foreclosure sale. *Id*.

On December 6, 2010, the case was removed to federal court (Dkt. #1). On May 13, 2011, Plaintiff filed his First Amended Complaint and Demand for Jury Trial (Dkt. #20). Litton filed this Motion to Dismiss on May 27, 2011 (Dkt. #22). On June 22, 2011, Plaintiff filed his Response to Defendant's Motion to Dismiss (Dkt. #27). Litton filed its Reply to Plaintiff's Response on July 12, 2011 (Dkt. #31).

Plaintiff alleges claims against Defendants for negligent processing of loan modifications and foreclosure, violations of the Fair Debt Collection Practices Act ("FDCPA"), and breach of contract. Plaintiff contends that Defendants lack standing to bring foreclosure of the property in question. In his Amended Complaint, Plaintiff argues that Defendants are not completely diverse, and this case should be remanded to state court. In its

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Motion to Dismiss, Litton argues Plaintiff's claims should be dismissed for failure to state a claim under Fed. R. Civ. Pro. 12(b)(6).

STANDARD

Defendants move for dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure, *3 which authorizes certain defenses to be presented via pretrial motions. A Rule 12(b)(6) motion to dismiss argues that, irrespective of jurisdiction, the complaint fails to assert facts that give rise to legal liability of the defendant. The Federal Rules of Civil Procedure require that each claim in a complaint include "a short and plain statement . . . showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The claims must include enough factual allegations "to raise a right to relief above the speculative level." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Thus, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009) (quoting *Twombly*, 550 U.S. at 570).

Rule 12(b)(6) provides that a party may move for dismissal of an action for failure to state a claim upon which relief can be granted. FED. R. CIV. P. 12(b)(6). The Court must accept as true all well-pleaded facts contained in the plaintiff's complaint and view them in the light most favorable to the plaintiff. *Baker v. Putnal*, 75 F.3d 190, 196 (5th Cir. 1996). In deciding a Rule 12(b)(6) motion, "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555; *Gonzalez v. Kay*, 577 F.3d 600, 603 (5th Cir. 2009). "The Supreme Court recently expounded upon the *Twombly* standard, explaining that '[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'" *Gonzalez*, 577 F.3d at 603 (quoting *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* "It follows, that 'where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged - but it has not 'shown' - 'that the pleader is *4 entitled to relief.'" *Id.*

In *Iqbal*, the Supreme Court established a two-step approach for assessing the sufficiency of a complaint in the context of a Rule 12(b)(6) motion. First, the Court identifies conclusory allegations and proceeds to disregard them, for they are "not entitled to the assumption of truth." *Iqbal*, 129 S.Ct. at 1951. Second, the Court "consider[s] the factual allegations in [the complaint] to determine if they plausibly suggest an entitlement to relief." *Id.* "This standard 'simply calls for enough facts to raise a reasonable expectation that discovery will reveal evidence of' the necessary claims or elements." *Morgan v. Hubert*, 335 F. App'x 466, 470 (5th Cir. 2009). This evaluation will "be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 129 S.Ct. at 1950.

In determining whether to grant a motion to dismiss, a district court may generally not "go outside the complaint." *Scanlan v. Tex. A&M Univ.*, 343 F.3d 533, 536 (5th Cir. 2003). When ruling on a motion to dismiss a *pro se* complaint, however, a district court is "required to look beyond the [plaintiff's] formal complaint and to consider as amendments to the complaint those materials subsequently filed." *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983); *Clark v. Huntleigh Corp.*, 119 F. App'x 666, 667 (5th Cir. 2005) (finding that because of plaintiff's *pro se* status, "precedent compels us to examine all of his complaint, including the attachments"); Fed. R. Civ. P. 8(e) ("Pleadings must be construed so as to do justice."). Furthermore, a district court may consider documents attached to a motion to

dismiss if they are referred to in the plaintiff's complaint and are central to the plaintiff's claim. *Scanlan*, 343 F.3d at 536.

In considering a motion to dismiss under Rule 12(b)(6), the Court must consider the allegations of a *pro se* plaintiff's complaint liberally. *Erickson* v. *Pardus*, 551 U.S. 89, 94 (2007). *5 However, "*pro se* status does not give plaintiff a perogative to file meritless claims." *Olstad v. Collier*, 205 F. App'x 308, 310 (5th Cir. 2006) (citing *Farguson v. Mbank Houston, N.A.*, 808 F.2d 358, 359 (5th Cir. 1986)). "In other words, *pro se* status does not offer the plaintiff an 'impenetrable shield, for one acting *pro se* has no license to harass others, clog the judicial machinery with meritless litigation, and abuse already overloaded court dockets.'" *Smith v. National City Mortg.*, No. A-09-CV-881, 2010 WL 3338537, at *2 (W.D. Tex. Aug. 23, 2010) (quoting *Farguson*, 808 F.2d at 359).

ANALYSIS

Diversity Jurisdiction

Plaintiff alleges that complete diversity does not exist between all Plaintiffs and all Defendants. PL.'S AMEND. COMPL. at ¶ 6. Plaintiff is a resident of Collin County, Texas. PL.'S AMEND. COMPL. at ¶ 3. Litton, a limited partnership, is a citizen of New York. NOTICE OF REMOVAL at ¶ 8. Barrett Daffin is a citizen of Texas, which Plaintiff argues destroys complete diversity between the parties. However, Litton argues that Barrett Daffin was improperly joined. *Id.*

To establish subject-matter jurisdiction based on diversity, complete diversity of citizenship must exist among the parties, and the amount in controversy must exceed $75,000. 28 U.S.C. § 1332. "A case may be removed despite a non-diverse defendant if that defendant was improperly joined." *Centaurus GF Cove, LLC v. Lexington Ins. Co.*, No. H-10-836, 2010 WL 2710390, at *1 (S.D. Tex. July 7, 2010) (citing *Hornbuckle v. State Farm Lloyds*, 385 F.3d 538, 542 (5th Cir. 2004)).

A district court is prohibited by statute from exercising jurisdiction over a suit in which any *6 party has been improperly joined. *Smallwood v. Illinois Cent. R. Co.*, 385 F.3d 568, 572 (5th Cir. 2004). "When improper joinder is the basis for removing a case to federal court, the court must first determine whether the removing party met its heavy burden of showing improper, or fraudulent, joinder of the in-state defendant." *Miller v. Chase Home Finance, LLC*, No. 3:09-CV1503-K, 2010 WL 70089, at *2 (N.D. Tex. Jan. 6, 2010) (citing *Smallwood*, 385 F.3d at 573). Defendants may establish improper joinder if they prove either: " (1) actual fraud in the pleading of jurisdictional facts, or (2) inability of the plaintiff to establish a cause of action against the non-diverse party in state court." *Smallwood*, 385 F.3d at 573. Under the second prong of the two-step improper joinder analysis, the Court will conduct a Rule 12(b)(6)-type analysis to determine whether a plaintiff may recover against an in-state defendant.[1] *Id.* The test is whether the defendant demonstrated that there is no possibility of recovery by the plaintiff against an in-state defendant. *Id.*

[1] Defendants do not allege actual fraud in the pleading of jurisdictional facts, therefore, the Court will consider only the second prong of the improper joinder test.

Plaintiff alleges various claims against Barrett Daffin; however, Barrett Daffin is mentioned only four (4) times in the Plaintiff's Amended Complaint. Plaintiff asserts Barrett Daffin is a debt collector under the FDCPA, and engaged in violations of the FDCPA in attempting to collect a debt. In addition, Plaintiff alleges breach of contract, and possibly wrongful foreclosure by Barrett Daffin.

All of Plaintiff's claims against Barrett Daffin are predicated on its role as trustee in connection with the prospective foreclosure sale. Plaintiff alleged no specific facts indicating conduct by Barrett Daffin that can be distinguished from actions taken by Litton. Barrett Daffin was not a party to the note and deed of trust, and was merely acting

as an agent for Litton in the foreclosure process. *See Schaeffer v. O'Brien*, 39 S.W.3d 719, 721 (Tex. App. -- Eastland 2001, pet. *7 denied) (holding that an agent cannot be held liable for breach of contract). Barrett Daffin cannot be liable for breach of contract, since it was not a party to the note and deed of trust. Further, Plaintiff alleged no specific facts that indicate conduct on the part of Barrett Daffin that violates the FDCPA, or that indicates negligence or wrongful foreclosure on the part of Barrett Daffin. Therefore, the Court concludes that Plaintiff did not include particularized facts and particularized allegations against Barrett Daffin sufficient to establish a reasonable possibility of recovery. *See Centaurus*, 2010 WL 2710390, at *3.

The Court finds Plaintiff's claims against Barrett Daffin should be dismissed, and that remand to state court is not appropriate.

Negligent Processing of Loan Modification and Foreclosure

Plaintiff asserts claims against Litton for negligence in processing the loan modification and in the foreclosure process. PL.'S AMEND. COMPL. at ¶¶ 21-27. Plaintiff alleges that Litton owed Plaintiff a duty of reasonable care, and breached this duty by failing to evaluate Plaintiff's loan modification requests. Litton moves to dismiss this claim because it is barred by the economic loss doctrine. Further, Litton asserts that the Home Affordable Modification Program ("HAMP") does not create a private right of action, and Plaintiff's pleadings are insufficient to state a claim for relief.

The acts of a party to a contract may breach duties in tort or contract alone, or breach duties of both. *Jim Walter Homes, Inc. v. Reed*, 711 S.W.2d 617, 618 (Tex. 1986). "Tort obligations are in general obligations that are imposed by law - apart and independent of promises made." *Sw. Bell Tel. Co. v. DeLanney*, 809 S.W.2d 493, 494 (Tex. 1991). Therefore, "if the defendant's conduct... would give rise to liability independent of the fact that a contract exists between the parties, the plaintiff's claims may also sound in tort." *Id.* "If, however, 'the defendant's conduct... would give *8 rise to liability only because it breaches the parties' agreement, the plaintiff's claim sounds only in contract.'" *Narvaez v. Wilshire Credit Corp.*, 757 F. Supp. 2d 621, 634 (N.D. Tex. 2010) (quoting *DeLanney*, 809 S.W.2d at 494).

Courts must also examine the nature of the injury. *DeLanney*, 809 S.W.2d at 494. In Texas, the elements of a claim for negligence are: (a) a legal duty owed by one person to another; (b) breach of that duty; and (c) damages proximately caused by the breach. *Nabors Drilling, U.S.A., Inc. v. Escoto*, 288 S.W.3d 401, 404 (Tex. 2009). Therefore, duty is the threshold question, and "if there is no existence and violation of a legal duty, then there can be no legal liability for negligence." *In re Thrash*, 433 B.R. 585, 596 (Bankr. N.D. Tex. 2010). "Where there is a contract between the parties, the duty must arise independently of the fact that a contract exists between the parties (i.e. there must be an independent obligation/duty imposed by law)." *Id.* (citing *Am. Nat'l Ins. Co. v. IBM Corp.*, 933 S.W.2d 685, 686 (Tex. App.-San Antonio 1996, writ denied)).

Plaintiff alleges damages for economic harm and mental anguish. "To be entitled to damages for negligence, a party must plead and prove something more than mere economic harm." *Thrash*, 433 B.R. at 598 (citing *Blanche v. First Nationwide Mort. Corp.*, 74 S.W.3d 444, 453 (Tex. App.-Dallas 2002, no pet.)). Plaintiff may not recover for mental anguish unless there is: "(a) intent or malice on the part of the defendant; (b) serious bodily injury to the plaintiff; (c) a 'special relationship' between plaintiff and defendant; or (d) a case involving injuries of such a shocking and disturbing nature that mental anguish is a highly foreseeable result." *City of Tyler v. Likes*, 962 S.W.2d. 489, 496-98 (Tex. 1997). Plaintiff's Amended Complaint contains no allegations of intent, malice, serious bodily injury, a special

relationship, or shocking and disturbing injuries. Therefore, the Court finds the Plaintiff is not entitled to damages for mental anguish. *9

As stated above, when the damages are solely economic in nature, the negligence claim is barred by the economic loss doctrine. *Thrash*, 433 B.R. at 598. There is no duty independent of the contract between the parties that would subject Litton to liability for negligence. Therefore, the Court finds the Plaintiff's claim for negligent loan processing and foreclosure should be dismissed.

Litton also argues that Plaintiff's negligence claims should be dismissed because HAMP does not create a private right of action in a borrower. The Court agrees. The majority of courts that have addressed questions related to HAMP found that no private right of action for borrowers exist. *Cade v. BAC Home Loans Serv., LP*, No. H-10-4224, 2011 WL 2470733, at *2 (S.D. Tex. June 20, 2011).[2] In addition, Plaintiff's Amended Complaint fails to contain specific, factual allegations of negligence by Litton. "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged - but it has not 'shown' - 'that the pleader is entitled to relief.'" *Gonzalez*, 577 F.3d at 603. Therefore, the Court finds that Plaintiff's claims for negligence should be dismissed.

[2] *See also Zeller v. Aurora Loan Servs.*, LLC, Civil No. 3:10cv00044, 2010 WL 3219134, at *1 (W.D. Va. Aug. 10, 2010) (noting that HAMP does not create a private right of action for a borrower to recover for an alleged breach of a loan modification); *Wright v. Bank of Am.*, N.A., No. CV 10-01723 JF (HRL), 2010 WL 2889117, at *4 (N.D. Cal. July 22, 2010) ("It is... obvious that [HAMP] does not secure an enforceable right for [borrowers]. A loan modification is never guaranteed."); *Adams v. U.S. Bank*, No. 10-10567, 2010 WL 2670702, at *4 (E.D. Mich. July 1, 2010); *Hoffman v. Bank of Am., N.A.*, No. C 10-2171 SI, 2010 WL 2635773, at *5 (N.D. Cal. June 30, 2010) ("Lenders are not required to make loan modifications for borrowers that qualify under HAMP nor does the servicer's agreement confer an enforceable right on the borrower."); *Simon v. Bank of America, N.A.*, No. 10-cv-00300-GMN-LRL, 2010 WL 2609436, at *10 (D. Nev. June 23, 2010) ("Other courts have consistently held that the [HAMP] does not provide borrowers with a private cause of action against lenders."). --------

Attempted Wrongful Foreclosure

Although a claim for attempted wrongful foreclosure is not mentioned in Plaintiff's Amended Complaint, Plaintiff's Response to Defendant's Motion to Dismiss appears to assert a claim for wrongful foreclosure. However, Texas law does not recognize an action for attempted wrongful *10 foreclosure. *Smith*, 2010 WL 3338537, at *14 (quoting *Baker v. Countrywide Home Loans, Inc.*, No. 3:08-CV-0916-B, 2009 WL 1810336, at *4 (N.D. Tex. June 24, 2009)). "To recover for a wrongful foreclosure, the party seeking relief must prove the party suffered injury." *Baker*, 2009 WL 1810336, at *4 (citation omitted). "Because recovery is premised upon one's lack of possession of real property, individuals never losing possession of the property cannot recover on a theory of wrongful foreclosure." *Id.* It is undisputed that Plaintiff is still in possession of the property at issue. Therefore, no wrongful foreclosure occurred, and Texas does not recognize a claim for attempted wrongful foreclosure. Based on the foregoing, the Court finds to the extent Plaintiff asserted a claim for attempted wrongful foreclosure, it should be dismissed.

Violation of FDCPA

Plaintiff asserts that Litton engaged in a "pattern and practice of filing and mailing notices in connection with foreclosure proceedings in violation of 15 U.S.C. 1692(e)(10), which

prohibits the 'use of any false representation or deceptive means to collect or attempt to collect any debt.'" PL.'S AMEND. COMPL. at ¶ 32. Plaintiff also alleges that Litton engaged in unfair or unconscionable means to collect or attempt to collect the debt. PL.'S AMEND. COMPL. at ¶ 33.

Litton moves to dismiss Plaintiff's claims under the FDCPA, arguing that initiating a foreclosure under a deed of trust is not debt collection under the FDCPA. The Court agrees. "The activity of foreclosing on a property pursuant to a deed of trust is not the collection of debt within the meaning of the FDCPA." *Bittinger v. Wells Fargo Bank, N.A.*, 744 F. Supp. 2d 619, 626 (S.D. Tex. 2010) (quoting *Williams v. Countrywide Home Loans, Inc.*, 504 F. Supp. 2d 176, 190 (S.D. Tex. 2007)); *Anderson v. CitiMortgage*, No. 4:10-CV-398, 2011 WL 1113494, at *5 (E.D. Tex. March 24, 2011). *11

Litton further moves to dismiss these claims because Litton does not meet the definition of "debt collector" under the FDCPA. "A debt collector does not include the consumer's creditors, a mortgage servicing company, or an assignee of a debt, as long as the debt was not in default at the time it was assigned." *Perry v. Stewart Title Co.*, 756 F.2d 1197, 1208 (5th Cir. 1985), *modified on other grounds by* 761 F.2d 237. Litton is a loan servicer, and there are no specific, factual allegations that Litton obtained the debt when it was in default. Therefore, "'where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged - but it has not 'shown' - 'that the pleader is entitled to relief.'" *Gonzalez*, 577 F.3d at 603.

Based on the foregoing, the Court finds Plaintiff's claims under the FDCPA should be dismissed.

Breach of Contract

Plaintiff argues that Litton breached the contract by not complying with the requirements for foreclosure in the deed of trust and note.

To prove breach of contract, Plaintiff must show: " (1) the existence of a valid contract; (2) performance or tendered performance by the plaintiff; (3) breach of the contract by the defendant; and (4) damages to the plaintiff resulting from the breach." *Smith Int'l, Inc. v. Egle Group, LLC*, 490 F.3d 380, 387 (5th Cir. 2007); *Hovorka v. Community Health Systems, Inc.*, 262 S.W.3d 503, 508-09 (Tex. App.-El Paso 2008, no pet.). Litton argues that Plaintiff cannot prove that he tendered performance, fails to allege specific facts indicating Litton breached the contract, and cannot show that any breach caused him injury.

"It is a well established rule that 'a party to a contract who is himself in default cannot maintain a suit for its breach.'" *Dobbins v. Redden*, 785 S.W.2d 377, 378 (Tex. 1990). The failure *12 of a borrower to make payments on a mortgage loan is a breach of the mortgage contract, and the borrower is unable to bring a claim for breach of contract. *Smith*, 2010 WL 3338537, at *11-12. "It is a fundamental principle of contract law that when one party to a contract commits a material breach of that contract, the other party is discharged or excused from further performance." *Id.* (citation omitted).

Plaintiff does not allege that he performed under the contract. Included in Plaintiff's exhibits is a notice of default and acceleration. Further, during the pendency of the lawsuit, the Court ordered Plaintiff to make monthly mortgage payments into the registry of the court, after being notified of Plaintiff's failure to make his mortgage payments (Dkt. #23).

Plaintiff also failed to allege what provision of the contract Litton allegedly breached. When a plaintiff merely makes conclusory allegations that a defendant breached the contract without providing the Court with anything more specific to support the claims, a plaintiff has "failed to allege sufficient facts to withstand a right to relief for breach of contract 'above the speculative level.'" *Smith*, 2010 WL 3338537, at *12.

Additionally, Plaintiff failed to plead that he suffered an injury. Plaintiff's claims are based on a scheduled foreclosure that was later rescinded, and a foreclosure sale that could occur sometime in the future. As of yet, Plaintiff has suffered no injury as a result of the breach because he is still in possession of the property, and the property was never sold at a foreclosure sale. Based on the foregoing, the Court finds that Plaintiff's claims for breach of contract should be dismissed.

Litton's Standing to Conduct a Foreclosure Sale

Plaintiff argues that Litton lacks standing to sell the property at foreclosure because Litton failed to prove that it had the authority to foreclose on the
13 note. In addition, Plaintiff argues that the *13 note and deed of trust may have been split.

Litton argues that it initiated a non-judicial foreclosure, which is not a suit to collect on a note. *Aguero v. Ramirez*, 70 S.W.3d 372, 375 (Tex. App. - Corpus Christi 2002, pet. denied). There is no requirement that a party prove it is the owner or holder of the note prior to instituting non-judicial
14 foreclosure. *Broyles v. Chase Home Fin.*, No. 3:10-CV-2256-G, 2011 WL 1428904, at *3 (N.D. Tex. Apr. 13, 2011); *Athey v. Mortgage Elec. Registration Sys., Inc.*, 314 S.W.3d 161, 165-67 (Tex. App.- Eastland 2010, pet. denied). Therefore, Plaintiff's argument that Litton lacks standing because it did not produce the original loan documents prior to foreclosure is without merit.

Further, the fact that the note and deed of trust may have been split is immaterial to the ability to conduct foreclosure proceedings in Texas. The Texas Property Code does not require the foreclosing entity to prove that it is in fact the holder of the note before conducting non-judicial foreclosure sale. Tex. Prop. Code § 51.002. Additionally, a mortgage servicer may administer a foreclosure without the note. Tex. Prop. Code § 51.0025; *Griffin v. BAC Home Loans Servicing LP*, No. H-09-03842, 2011 WL 675285, at *2 (S.D. Tex. Feb. 16, 2011). The Texas Property Code provides:

> A mortgage servicer may administer the foreclosure of property under Section 51.002 on behalf of a mortgagee if:
>
> (1) the mortgage servicer and the mortgagee have entered into an agreement granting the current mortgage servicer authority to service the mortgage; and
>
> (2) the current notices required under Section 51.002(b) disclose that the mortgage servicer is representing the mortgagee under a servicing agreement with the mortgagee and the name of the mortgagee and:
>
> (A) the address of the mortgagee; or
> (B) the address of the mortgage servicer, if there is an agreement granting a mortgage servicer the authority to service the mortgage.

*14 Tex. Prop. Code § 51.0025. It is clear from the documents attached to Plaintiff's Complaint that Litton meets the statutory requirements to conduct a foreclosure sale on behalf of the mortgagee, and Plaintiff makes no argument to the contrary.

Based on the foregoing, the Court finds that Plaintiff's claims against Litton for lack of standing should be dismissed.

RECOMMENDATION

Based upon the foregoing, the Court recommends Defendant Litton Loan Servicing, L.P.'s Rule 12(b)(6) Motion to Dismiss and Brief in Support (Dkt. #22) be **GRANTED** and this case **DISMISSED** with prejudice.

Within fourteen (14) days after service of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C. § 636(b)(1)(C).

Failure to file written objections to the proposed findings and recommendations contained in this report within fourteen days after service shall bar an aggrieved party from *de novo* review by the district court of the proposed findings and recommendations and from appellate review of factual findings accepted or adopted by the district court except on grounds of plain error or manifest injustice. *Thomas v. Arn*, 474 U.S. 140, 148 (1985); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988).

SIGNED this 30th day of August, 2011.

/s/_____

AMOS L. MAZZANT

UNITED STATES MAGISTRATE JUDGE