

08/21/2020

Bowen Greenwood
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Case Number: DA 20-0418

Montana's Second Judicial District
Silver-Bow CountyWADE AYALA,
Plaintiff,

v.

GAIL STAFFORD,
Defendant.GAIL STAFFORD,
Counter-Claimant,

v.

WADE AYALA,
Counter-Defendant.GAIL STAFFORD,
Third-Party Plaintiff,

v.

RECONTRUST COMPANY, N.A.;
BANK OF AMERICA, N.A.; EQUITY
PROCESS MANAGEMENT, INC.;
PAMELA PFAFF, personal representative
of the estate of JOSEPH NOWAKOWSKI;
BRANDY LOU AYALA; FEDERAL
NATIONAL MORTGAGE
ASSOCIATION; SADIE LYNN
BARRETT; and DOES 1-10,
Third-Party Defendants.

FILED

(by e-mail)

July 23, 2020

Tom Powers, Clerk

By: 

Clerk

Cause No.

DV-18-267

Hon. Ray J. Dayton

Order on Pending Matters

Three items, fully briefed, are pending before the Court: (1) Third-Party Defendant's Motion to Dismiss, (2) Plaintiff Ayala's Motion for Summary Judgment, and (3) Third-Party

Defendant, Equity Process Management, Motion for Summary Judgment. Third-Party Defendant's Motion to Dismiss is denied in part and granted in part. Plaintiff Ayala's Motion for Summary Judgment is granted. And, Third-Party Defendant, Equity Process Management's, Motion for Summary Judgment is granted in part and denied in part.

I. Third-Party Defendant, Recontrust, Bank of America, and Federal National Mortgage Association's Motion to Dismiss is denied in part and granted in part.

This Court reviews a third-party complaint for failure to state a claim in a light most favorable to the plaintiff. *Harris v. St. Vincent Healthcare*, 2013 MT 207, ¶ 14, 371 Mont. 133, 137, 305 P.3d 852.

Third-Party Defendants argue that Third-Party Plaintiff Stafford's claims are barred by the statute of limitations, that Third-Party Plaintiff lacks standing, that Third-Party Plaintiff failed to properly plead fraud, Third-Party Plaintiff cannot show a duty is owed, and Third-Party Plaintiff's claims fail as a matter of law. The Court believes Third-Party Plaintiff sufficiently argued the statute of limitations is equitably tolled, that the Third-Party Plaintiff has standing, and based on Montana's notice pleading the Defendant may have been owed a duty to the Third-Party Plaintiff Stafford. Third-Party Defendant's Motion to Dismiss is denied in all respects, except for Third-Party Plaintiff's fraud claims.

In regard to fraud, Third-Party Defendant argues Third-Party Plaintiff Stafford did not allege the Third-Party Defendants did not intend to keep their promise to sell the property to the highest bidder. This is a required pleading element of fraud. Third-Party Plaintiff did not sufficiently plead fraud with particularity. Third-Party Defendant's Motion to Dismiss in respect to fraud is granted and Third-Party Plaintiff Stafford's fraud claims are dismissed.

//

//

II. Plaintiff Ayala's Motion for Summary Judgment is granted.

Plaintiff Ayala argues Third-Party Plaintiff Stafford does not have a claim for breach of contract because no acceptance of the bid occurred. Third Party-Plaintiff Stafford argues she does have a claim for breach of contract because she was the highest bidder at the 2012 auction.

The general timeline is undisputed. An auction for property occurred, Third-Party Plaintiff Stafford made a bid, the bid was not accepted, and the property was sold to another party. Exhibit 13 details the parameters of the Trustee's Sale and gives great latitude to the trustee to make determinations regarding the bid. It states,

The trustee will not issue the trustee's deed to the successful bidder until the trustee has:

- A. Confirmed that no representations to the borrower were made by the lender or its agents before the trustee's sale that the trustee's sale would be postponed or discontinued for any reason;
- B. Confirmed that the subject loan was not satisfied or reinstated before the sale;
- C. Confirmed that no event, act or omission has occurred which might expose the trustee to liability or defense costs if the foreclosure sale is consummated and the trustee's deed is issued;
- D. Confirmed that no event has occurred which, in the trustee's sole opinion, might render the sale unlawful, invalid or contrary to the interest of the beneficiary, trustee and/or borrower.

In the event the trustee cannot confirm all matters set forth above, the submitted bid will be forthwith returned without interest and the bidder will have no right to purchase the property. Recovery of the bid amount without interest constitutes the limit of the bidder's recourse against the trustee and the beneficiary.

Exhibit 13.

Here, the trustee chose not to accept Third-Party Plaintiff Stafford's bid. By not accepting the bid, the trustee acted within the parameters set forth in the trustee sale, and thus a contract to purchase did not form and no right to purchase materialized. Plaintiff Ayala is entitled to

Summary Judgment on Third-Party Plaintiff Stafford's claims to ownership and possession of the property.

III. Third-Party Defendant Equity Management's Motion for Summary Judgment is granted in part and denied in respect to a negligent sale and a violation of Montana's Unfair Trade Practices.

Third-Party Defendant Equity Management argues that Third-Party Plaintiff Stafford did not form a contract, that the claims of actual fraud, negligent misrepresentation, and constructive fraud are all barred by statute of limitations, the statute of limitations bars a negligence claim for the trustee sale, and the claim for a violation of the Montana Unfair Trade Practices and Consumer Protection Act is barred by the statute of limitations.

Third-Party Defendant's Motion for Summary Judgment is granted in all respects except for the negligence claim and Montana's Unfair Trade Practices claim. While a contract did not form between Third-Party Defendant and Third-Party Plaintiff, the statute of limitations for the remaining claims of negligence and Montana Unfair Trade Practices, as previously mentioned, did toll. A dispute of fact exists regarding what occurred at the trustee sale, barring summary judgment on these two claims.

Summary Judgment for Equity Management is granted for breach of contract, actual fraud, negligent representation, and constructive fraud. Summary Judgment for Equity Management on Third-Party Plaintiff's claims of negligent sale and a violation of Montana's Unfair Trade Practices is denied.

//

//

//

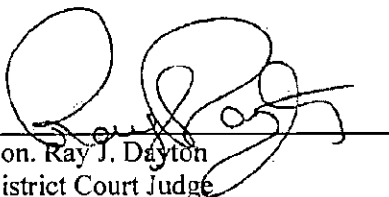
//

ORDER

THEREFORE, the Court hereby orders:

1. Third-Party Defendant, Recontrust, Bank of America, and Federal National Mortgage Association's Motion to Dismiss is denied for all claims except fraud, which is granted.
2. Plaintiff Ayala's Motion for Summary Judgment is granted.
3. Third-Party Defendant Equity Management's Motion for Summary Judgment is granted in part and denied in respect to negligent sale and a violation of Montana's Unfair Trade Practices.

SO ORDERED this Thursday, July 23, 2020.


Hon. Ray J. Dayton
District Court Judge