

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS

NORTHEAST HOUSING COURT
CIVIL ACTION NO. 10CV34

ROBERT GREENWOOD, JR. AND
MARGUERITE GREENWOOD

Plaintiff,

v.

WELLS FARGO BANK, N.A.

Defendant.

HOUSING COURT DEPT.
NORTHEASTERN DIVISION
10 OCT -1 PM 2:19

DEFENDANT WELLS FARGO BANK, N.A.'S MOTION TO DISMISS FOR
LACK OF JURISDICTION

Now comes the Defendant, Wells Fargo Bank, N.A. ("Wells Fargo"), and hereby moves under Mass. R. Civ. P. 12 to dismiss Plaintiffs' action for lack of subject matter jurisdiction. This Court should dismiss Plaintiffs' action because the Housing Court lacks jurisdiction over this case.

For this reason, which is more fully set forth in Defendant's supporting memorandum of law, this Court should grant Defendant's motion to dismiss.

WHEREFORE, Defendant requests that this Court grant its motion to dismiss for lack of jurisdiction.

[Signature on Next Page]

Denial after hearing. Civil S. Kemp Assoc. Joinder 11/22/10.
Dept shall have 20 days to answer complaint as amended.

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ROBERT GREENWOOD, JR. AND)
MARGUERITE GREENWOOD)
)
Plaintiff,)
)
v.)
)
WELLS FARGO BANK, N.A.)
)
Defendant.)
)
_____)

**DEFENDANT WELLS FARGO BANK, N.A.'S MEMORANDUM IN SUPPORT
OF DEFENDANT'S MOTION TO DISMISS FOR LACK OF JURISDICTION**

Now comes the Defendant, Wells Fargo Bank, N.A. ("Wells Fargo"), and hereby submits this memorandum of law in support of Defendant's motion to dismiss for lack of subject matter jurisdiction.

INTRODUCTION

On or about February 9, 2010, Plaintiffs filed a verified complaint in this Court seeking relief under the Home Affordable Modification Program ("HAMP"). The parties worked towards and entered into a loan modification agreement on or about May 7, 2010. Notwithstanding Defendant's willingness to enter into a loan modification with Plaintiffs to keep them in their home, Plaintiffs now seek to proceed with their claims. To the extent Plaintiffs' have any claims remaining, this Court lacks jurisdiction over those claims.

Defendant requests that this Court dismiss Plaintiffs' Complaint for lack of subject matter jurisdiction or in the alternative transfer this action to the superior court.

ARGUMENT

The Housing Court Lacks Jurisdiction Over This Matter

This Court does not have jurisdiction to decide the pending action. All claims are based on the allegation that Defendant violated HAMP. Specifically, Plaintiffs states four counts in their verified complaint all stemming from alleged HAMP violations: (1) breach of contract; (2) breach of the covenant of good faith and fair dealing; (3) unfair and deceptive acts or practices; and (4) intentional infliction of emotional distress.

The Housing Court gets its jurisdiction from G.L. c. 185C, § 3. The relevant portions of the statute provide:

The division of the housing court department shall have common law and statutory jurisdiction concurrent with the divisions of the district court department and superior court department of all crimes and of all civil actions ... under [G.L. c. 40A, G.L. c. 218, § 21-25, G.L. c. 186, § 14 and 18, G.L. c. 111, §127A-F, G.L. c. 111, § 127H-L, G.L. c. 93A, G.L. c. 270, § 16, G.L. c. 143, G.L. c. 148, G.L. c. 239] jurisdiction under the provisions of common law and of equity and any other general or special law, ordinance, by-law, rule or regulation as is concerned directly or indirectly with the health, safety, or welfare, of any occupant of any place used, or intended for use, as a place of human habitation and the possession, condition, or use of any particular housing accommodations or household goods ... or the use of any real property and activities conducted there on as such use affects the health, welfare and safety of any resident, occupant, user or member of the general public and which is subject to regulation by local cities and towns under the state building code, state specialized codes, state sanitary code, and other applicable statutes and ordinances.

G.L c. 185C, §3. In general, the Housing Court only has jurisdiction over any real property as long as there is a connection to the health, safety or welfare of the occupants. See Commonwealth v. Lappas, 39 Mass.App.Ct. 285 (1995). A brief review of the cited statutory

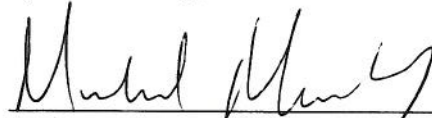
jurisdiction in section 3 reveals that the housing court has jurisdiction over matters involving permitting issues, tenant/occupancy matters, matters involving the state sanitary code, garbage laws, building inspections, fire prevention and summary process proceedings. The statute does not directly (or even indirectly) give the Housing Court jurisdiction over matters such as the one filed by the Plaintiffs challenging Defendant's compliance with a federal program.

By contrast, the Superior Court has general jurisdiction over all "civil actions for the foreclosure of mortgages, and of real and mixed actions, except those of which the land court or district courts have jurisdiction, of complaints for flowing lands, and of claims against the commonwealth. Except as otherwise provided by law, the court shall have original jurisdiction of civil actions for money damages." G.L. c. 212, § 3. As a result, the Superior Court, not the Housing Court, has jurisdiction over this case.

CONCLUSION

For the reasons set forth herein, this Court should grant Defendant's motion to dismiss without prejudice, enabling Plaintiffs to bring their action the Superior Court. In the alternative, Defendant requests that this Court ask the chief justice for administration and management to transfer this case to the Superior Court under G.L. c. 211B § 9.

Respectfully submitted,
Wells Fargo Bank, N.A.,
by its attorney,



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