

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
WESTERN DIVISION

IN RE:)	
)	CHAPTER 13 CASE No. 08-30064
Cheryl L. Provenzano)	
Steven M. Provenzano,)	
)	
Debtors)	
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Cheryl L. Provenzano,)	
Steven M. Provenzano)	
Plaintiffs)	
v.)	ADVERSARY PROCEEDING No.:
)	
Option One Mortgage Corporation,)	
American Home Mortgage)	
Servicing, Inc.,)	
H&R Block, Inc.,)	
Wells Fargo Bank, N.A.,)	
Defendants)	

COMPLAINT

PARTIES AND JURISDICTION

1. Plaintiffs, Steven M. Provenzano and Cheryl L. Provenzano (hereinafter referred to as the "Provenzanos") are debtors in the pending Chapter 13 Bankruptcy, Case No. 08-30064, are husband and wife and reside at 306 Mandalay Road, Chicopee, Hampden County, Massachusetts.
2. Upon information and belief, the Defendant, Option One Mortgage Corporation (hereinafter referred to as "Option One") is or was mortgage lender with a last known address located at 3 Ada Drive, Irvine, California 92618.
3. Upon information and belief, the Defendant, American Home Mortgage Servicing, Inc., (hereinafter referred to as "AHMSI") is a Delaware Corporation that was the transferee of the mortgage owned by Option One, with the last known address of P.O. Box 631730, Irving, Texas 75063.

4. Upon information and belief, the Defendant, H&R Block Inc./H&R Block Mortgage Corporation (hereinafter referred to as "H&R Block") is or was a mortgage lender, that is or was the parent corporation for Option One, with the last known address 4410 Main Street, Kansas City, Missouri 64111.
5. Upon information and belief, the Defendant, Wells Fargo Bank, N.A., (hereinafter referred to as "Wells Fargo") is or was a trustee for Option One Mortgage Loan Trust 2007-CP1 Asset Backed Certificates, Series 2007 CP1, with the last known address of 1404 E College Way Mount Vernon, WA 98273.
6. Venue of the Bankruptcy case underlying this case is in Massachusetts pursuant to 28 U.S.C. §1408, and venue of this action is proper pursuant to 28 U.S.C. §1409. The Court has jurisdiction to enter a final judgment and injunction herein.
7. The relief sought by this complaint generally affects the adjustment of the debtor-creditor relationship and therefore is a core proceeding within the meaning of 28 U.S.C. §157(b)(2), and to the extent this proceeding involves non-core matters, the Plaintiffs hereby consent to the entry of final orders by the Bankruptcy Judge.
8. An Adversary Proceeding is required by Fed. R. Bankr. P. 7001 because the Debtors are seeking, *inter alia*, to recover monetary damages.

FACTS

1. The Provenzanos acquired the property now known as 306 Mandalay Road, Chicopee, MA as joint tenants in 1995.
2. The Provenzanos obtained a first mortgage from Option One Mortgage Corporation on May 24, 2005. The amount on that mortgage was about \$153,000 at an initial interest rate of 7.99%.
3. In or around September 2006, the Provenzanos sought to refinance their mortgage.
4. The Provenzanos initiated contact with Option One, with one of their employees named Troy Marshall and were ultimately approved to receive a re-financed mortgage.
5. Troy Marshall of Option One instructed the Provenzanos not to make their last mortgage payment on the basis that it would alter the "closing numbers". The Provenzanos did as they were instructed by Troy Marshall and stopped paying their current mortgage.
6. On September 25, 2006 the attorney for Option One arrived with the closing documents. The Provenzanos were not represented by an attorney. Upon reviewing the closing documents, the Provenzanos noticed an additional \$38,000 in the loan amount. Upon

discovering this disparity, they phoned Troy Marshall of Option One who said that the documents would be corrected and sent overnight to the attorney.

7. The next day, the attorney returned to the closing and stated that she was in a big hurry due to another appointment that she had in an hour and that it was a 30 minute drive from the closing at the Provenzano's house.
8. The documents that the attorney brought to the second closing were the same documents from the previous day and they had not been corrected as Troy Marshall had stated they would be.
9. After viewing the same documents, the Provenzanos phoned Troy Marshall of Option One, and Troy told the Provenzanos that this was the last day for refinancing and that if they did not sign, they would not be able to refinance with Option One Mortgage Corporation. Troy Marshall also told the Provenzanos that they would not be able to refinance with another company due missing their last month's mortgage payment, even though it was at the direction of Troy Marshall that the Provenzano's missed that payment.
10. The Provenzanos reluctantly signed the loan documents due to the economic duress that Troy Marshall from Option One Mortgage Corp. had put them under, in order to pay off debts and presumably lower their monthly mortgage payment.
11. Being intimidated by the statements of the agent Troy Marshall and the attorney who was present, the Provenzanos believed that they had no choice but to sign the documents.
12. During the closing, the attorney for Option One never disclosed that there was a balloon payment. The attorney also never discussed that the rate adjustment was at 10.275% and would soon be adjusted upward.
13. At the closing, the Provenzano's were given unsigned copies of the loan documents and copies that had not been notarized, nor were they given copies of the documents that they had signed.
14. There was no notary present at the closing. Following the signing of the closing/loan documents, the attorney for Option One left with the documents and were subsequently taken to a notary where they were notarized out of the presence of the Provenzanos.
15. Following the signing of the documents, the Debtors received a rate adjustment in which their monthly payments increased.
16. In August 2007, the Debtor, Cheryl Provenzano, became ill with Spinal Meningitis and Encephalitis and was admitted to Baystate Medical Center Hospital in Springfield, Massachusetts. After becoming hospitalized, her husband, Steven Provenzano stopped working to care for his wife and several small children.

17. At the end of August 2007, the debtors contacted Option One Mortgage about their arrearage owed on their mortgage. Option One made no adjustments given the Provenzanos circumstances. Option One stated that they simply had to pay the monthly amount.
18. Following that discussion with Option One, the Provenzanos sent their monthly payment of \$2,100.00 to Option One. Option One returned the check stating that they were two months behind and demanded a check in the amount of \$4,200.00.
19. By the time the Provenanogs had acquired the requisite amount to pay the two month arrearage, they owed three months of mortgage payments, totaling \$6,300.00 and Option One would no longer accept the amount of \$4,200.00 as they were told previously.
20. Option One Mortgage then initiated foreclosure proceedings against the Provenzanos.
21. After consulting an attorney, the Provenzanos filed the present Chapter 13 bankruptcy case.

COUNT I- NEGLIGENCE

22. Plaintiffs adopt and re-allege all paragraphs above as if fully restated herein.
23. The Defendants were negligent in the marketing, origination, processing, underwriting, closing and/or funding of Plaintiffs mortgage application and loan. Their conduct fell below the standard of care for mortgage lenders, brokers, attorneys and closing agents. As a direct and proximate result, Plaintiffs were damaged as set out below. To the extent that Defendants' conduct was reckless, wanton, or part of a pattern of misinforming and deceiving consumers, Plaintiffs seek punitive damages where applicable.
24. The Defendants, negligently performed quality control on loan files they originated, processed, underwrote, closed, funded, and/or purchased. Their conduct fell below the standard of care for mortgage lenders, brokers, attorneys and closing agents. As a direct and proximate result, Plaintiffs were damaged as set below. To the extent that Defendants conduct was reckless or wanton, Plaintiff seeks punitive damages where applicable.
25. The Defendants undertook to volunteer and provide oral and written pre-closing disclosures to Plaintiffs about the terms to their specific loan. They did so negligently by failing to timely, accurately, and completely inform Plaintiffs of the details and costs of the transaction. Their conduct fell below the standard of care for mortgage lenders, brokers, attorneys and closing agents. As a direct and proximate result, Plaintiffs were damaged as set out below. To the extent that Defendants conduct was reckless, wanton or part of a pattern and practice of misinforming and deceiving consumers, Plaintiff seeks punitive damages where applicable.

WHEREFORE, Plaintiffs demand judgment on this count against all Defendants for all their damages and interest, as found by this Court, attorneys fees and any other relief this Court deems appropriate.

COUNT II- PROMISSORY FRAUD

26. Plaintiff adopts and re-alleges all paragraphs above as if fully restated herein.
27. The Defendants fraudulently, recklessly, intentionally, or through mistake, concealed suppressed or misrepresented the terms of the Plaintiff's Loan. The facts, persons, events and circumstances that give rise to the claims in this court within this complaint include, but are not limited to the facts set forth within the factual Allegations above.
28. The Defendants are engaged in a pattern and practice of misinforming consumers, including Plaintiff, of the terms of their loans. The practice is consummated on unwary consumers by using grossly inaccurate verbal pre-closing disclosures, followed by little, if any, actual disclosures. The consumers, including Plaintiff, are baited with a deal these Defendants never intended to honor, then switched to another, more costly deal at closing.
29. Through the process of misinformation, including false and inaccurate pre-closing disclosures, the Defendants baited Plaintiff on the subject loans product by initially presenting Plaintiff with favorable loan terms, which the Defendants never intended to honor. Once the loan closing began, the terms were switched without the Plaintiff's knowledge and against the Plaintiffs objections and the Plaintiffs were unknowingly sold a different mortgage. As such, the Defendants engaged in promissory fraud in order to deceive the Plaintiffs.
30. The Defendants gained the trust and confidence of the Plaintiffs, then used trick and artifice to accomplish the aforementioned bait and switch.
31. The Defendants ratified the fraud and promissory fraud by funding the loan, selling the loan and/or continuing to collect payments on the loan from Plaintiffs.
32. The Plaintiffs reasonably and justifiably relied on the Defendants' misrepresentations, including those by concealment and promissory fraud, to their detriment. As a direct and proximate result, Plaintiff was injured as set forth below.

WHEREFORE, Plaintiffs demand judgment on this count against all Defendants for all their damages and interest, as found by this Court, attorneys fees and any other relief this Court deems appropriate.

COUNT III- VIOLATIONS OF THE FEDERAL and/or STATE TRUTH IN LENDING ACTS and DECLARATORY JUDGMENT TO EXERCISE RIGHT OF RECISSION

33. Plaintiff adopts and re-alleges all paragraphs above as if fully restated herein.
34. The Defendants, directly or through their agents and employees, violated or failed to comply with the Federal Truth in Lending Act, 15 U.S.C. §1601 et. seq. and its implementing Regulation Z, 12 C.F.R. §226 and/or the Massachusetts Consumer Credit Cost Disclosure Act, Mass. Gen. Laws Ch. 140D and its enabling regulations, and/or applicable regulations of the Massachusetts Division of Banks codified at 209 C.M.R. part 32, by providing false information and by failing to provide complete, accurate, proper and timely disclosures under the statutes. While not meant to be exhaustive of all violations of the statutes, Plaintiffs allege Defendants violated the following:
- a. 12 C.F.R. §226.17(c)(1) Regulation Z: Defendants failed to provide pre-closing disclosures that reasonably reflected the legal obligations between parties;
 - b. 12 C.F.R. §226.17(c)(2)(i) Regulation Z: Defendants failed to make pre-closing disclosures based upon information reasonably available to it;
 - c. 12 C.F.R. §226.17(c)(2)(i)(I) Official Staff Commentary Regulation Z: Defendants failed to use Good Faith and exercise reasonable due diligence in providing pre-closing disclosures to Plaintiff;
 - d. 15 U.S.C § 1638(b)(2): Defendants failed to provide pre-closing disclosures to Plaintiffs within three (3) days of their initial application.

WHEREFORE, Plaintiffs demand judgment on this count against all Defendants for all their damages, actual and/or statutory pursuant to 15 U.S.C §1640 and Mass. Gen. L. Ch. 140D, interest, attorneys fees and adjudicate and declare the rights of the parties under 15 U.S.C. §1635 and Mass. Gen. L. Ch. 140D §10. including:

- i. Rescission of the mortgage pursuant to statute or the common law as may be appropriate in the circumstances;
- ii. Compensatory and actual damages in an amount to be awarded after trial;
- iii. Declaring the subject mortgage null and void and ordering defendants to take all necessary actions to terminate the security interest;
- iv. Ordering that defendants return to Plaintiffs all monies or other property given by them to anyone, including defendants, in connection with this transaction.
- v. Punitive damages in an amount to be awarded by a jury under each claim made by Plaintiffs whereby punitive damages are recoverable;
- vi. Actual damages under Plaintiffs' TILA claim, including, but not limited to, damages for mental anguish, emotional distress, humiliation, and embarrassment; trebled where allowed;
- vii. Maximum statutory damages under TILA;
- viii. Post-Judgment interest;
- ix. Costs of this proceeding;

- x. Reasonable Attorneys fees;
- xi. Such other relief as to the Court seems fair and just.

COUNT IV- UNFAIR AND DECEPTIVE ACTS AND PRACTICES

- 35. Plaintiff adopts and re-alleges all paragraphs above as if fully restated herein.
- 36. The Defendants is or was in the trade or business of extending credit and engaged in unfair and deceptive practices with the meaning of M.G.L. Chapter 93A and the Attorney General's Regulations published to enforce this consumer protection law.
- 37. The unfair or deceptive practices perpetrated against Debtors included but are not limited to:
 - a. The actions and/or omissions set out in this Complaint.
 - b. The Defendants' improper conduct in extending credit to the Debtors without regard to their payment ability, misrepresenting the terms and nature of the mortgage and failing to adequately disclose and inform the Debtors of the import and consequence of the adjustable nature of the note and mortgage.
 - c. Any violations of the Real Estate Settlement and Procedures Act, 12 U.S.C. §2601, et seq.
- 38. The Defendants' mortgage in default causing the Debtors to file a Chapter 13 petition for bankruptcy.
- 39. The Defendants', by its improper behavior, caused the Debtor's severe emotional upset and anxiety.
- 40. The Debtors have suffered damages as a result of the Defendants' infliction of emotional distress.
- 41. The Defendants' unfair and deceptive practices were willful or knowing within the meaning of M.G.L. Chapter 93A. Accordingly, the debtors are entitled to treble damages together with the award of reasonable attorney's fees, costs and expenses.
- 42. On account of the aforementioned acts and/or omissions, the Defendants' engaged in acts and practices, which were unfair and deceptive in violation of M.G.L. Chapter 93A.

WHEREFORE, Plaintiffs demand judgment on this count against all Defendants for all their damages, interest, double or treble damages, as found by this Court, attorneys fees and any other relief this Court deems appropriate.

Respectfully Submitted,
The Plaintiff's
Cheryl L. Provenzano
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By their attorney,

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