

Wells Fargo Says \$30M Foreclosure Suit Jumps The Gun

Wells Fargo & Co. asked a Georgia federal judge Wednesday to dismiss a \$30 million lawsuit alleging it has reneged on a mortgage forbearance agreement, arguing all damages were speculative and that bankruptcy proceedings would have prevented it from foreclosing regardless.

The bank told Judge Richard W. Story that the breach-of-contract and fraud lawsuit, which seeks declaratory judgment forcing Wells Fargo to adhere to a forbearance agreement barring it from foreclosing on the metro Atlanta property, is presumptive, as it was filed before the foreclosure was scheduled to happen.

The plaintiffs, who are Georgia property owners and borrowers or guarantors of the loan, allege Wells Fargo agreed in April on a forbearance that would hold off foreclosure until December, but after the plaintiffs handed over the specified collateral to Wells Fargo, the bank announced a May foreclosure date.

"Because Wells Fargo has not foreclosed, there has been no breach, there are no damages," the motion states.

The plaintiffs include Niloy Inc., Nilhan Developers and DCT Systems Group LLC. They are developing property adjacent to the planned Atlanta Braves' stadium, land they said will double in value once the development is complete.

On April 2, the parties agreed to enter a forbearance agreement by which the plaintiffs would pay Wells Fargo \$500,000, which would be held in a trust until the end of December, according to the complaint. In December, the plaintiffs would pay \$150,000 upon closing and get the \$500,000 back, assuming they keep up with their mortgage payments. If not, Wells Fargo would be able to foreclose and keep the \$500,000, the suit alleges.

After an initial \$350,000 payment to the bank in April, the plaintiffs were informed the bank would postpone the foreclosure only until May 5, according to the suit. After the other \$150,000 was paid, the bank placed a notice that the property would be foreclosed in May, the suit states.

The plaintiffs are asking for declaratory judgment enforcing the forbearance agreement, a preliminary injunction barring foreclosure and at least \$30 million for the decreased value of the property and profit loss as a result of the foreclosure. The total also covers other property investments the borrowers say they wouldn't have made if they knew of the foreclosure.

Wells Fargo refused to work with the plaintiffs to reach an agreement, the complaint states. The borrowers allege Wells Fargo never had the intention of executing a forbearance agreement.

“It became apparent that defendant's overall goal, contrary to its express assurances to plaintiffs, was to foreclose on plaintiffs' properties that are worth over \$10 million in excess of the loan balance, or to extort substantial additional cash payments from plaintiffs,” the complaint states. “This was intentionally deceptive, a violation of the deal reached between the parties, and a breach of the covenant of good faith and fair dealing.”

On May 4, the property owners filed for Chapter 11 bankruptcy, making the bank unable to foreclose on the property, according to Wells Fargo.

“Unless and until the bankruptcy automatic stay terminates or is modified by the Bankruptcy Court, Wells Fargo cannot foreclose upon property of the debtors,” the bank said. “Thus, the May 5 foreclosure sales would have been voidable under the Bankruptcy Code had they occurred, were in fact canceled.”

The plaintiffs’ attorney, **Richard L. Robbins of Robbins Alloy Belinfante Littlefield LLC**, said the bank’s reasoning was “a bit circular.”

“The bankruptcy was due to the bank's misconduct,” he said Thursday. “Our clients incurred substantial amounts in reliance on the banks' reneging on its commitments and its threats of foreclosure, including the costs and damages related to the bankruptcy.”

The plaintiffs are represented by Richard L. Robbins and **Jeremy U. Littlefield** of Robbins Alloy Belinfante Littlefield LLC.

Wells Fargo is represented by James S. Rankin Jr. and Joshua J. Lewis of Parker Hudson Rainer & Dobbs LLP.

The case is Niloy Inc. et al. v. Wells Fargo Bank NA, case number 1:15-cv-01495, in the U.S. District Court for the Northern District of Georgia.

-Editing by Richard McVay and Jeremy Barker.