

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

STEVEN PSAROS,

Plaintiff,

v.

GREEN TREE SERVICING, LLC, STERN
LAVINTHAL & FRANKENBERG LLC, and
JOHN DOES I-X,

Defendants.

Civil Action No.: 15-4277 (JLL) (JAD)

OPINION

LINARES, District Judge.

This matter comes before the Court by way of Defendant Stern Lavinthal & Frankenberg LLC (“Stern Lavinthal”)’s Motion for Judgment on the Pleadings. (ECF No. 15.) The Court has considered the parties’ submissions and decides this matter without oral argument pursuant to Rule 78 of the Federal Rules of Civil Procedure. For the reasons set forth below, the Court denies Stern Lavinthal’s motion.

FACTUAL BACKGROUND¹

Plaintiff Steven Psaros purchased the property at 81 Arlington Ave, Hawthorne, NJ in 1999 and has resided there since that time. (ECF No. 1 (“Compl.”) ¶ 6.) In January 2008 Plaintiff entered into a refinance loan whereby Plaintiff executed a promissory note payable to Mortgage Line Financial Corp, and also executed a mortgage to secure the loan. (*Id.* ¶¶ 7, 8.) Plaintiff

¹ This background is derived from Plaintiff’s Complaint, and other documents that are integral to and/or explicitly relied upon in the Complaint, which the Court must accept as true at this stage of the proceedings. See *Alston v. Countrywide Fin. Corp.*, 585 F.3d 753, 758 (3d Cir. 2009).

alleges that he specifically negotiated the 2008 loan so that property insurance and real estate taxes would be paid directly by Plaintiff, rather than through an escrow account managed by the lender. (*Id.* ¶ 9; *see also id.* Ex. 1 (“Escrow Waiver”).)

On September 22, 2010 BAC Home Loans Servicing, L.P. by way of its counsel Stern Lavinthal filed a debt collection foreclosure action under New Jersey docket F-46572-10. (*Id.* ¶ 11.) Stern Lavinthal was not retained to pursue debt collection activities until after the loan was in default. (*Id.* ¶ 12.)

In June 2013 Plaintiff received a letter from Green Tree advising that effective June 1, 2013, servicing was transferred to Green Tree. (*Id.* ¶ 13; *id.* Ex. 2.) By way of letters dated June 17, 2013 and July 18, 2013, Green Tree requested that Plaintiff send proof of property insurance to a designated Fax number. (*Id.* ¶¶ 14, 16; *id.* Exs. 3, 5.) On July 30, 2013 Plaintiff’s insurance agent sent proof of property insurance to the designated fax number provided by Green Tree. (*Id.* ¶ 17; *id.* Ex. 6.) By way of letter dated August 4, 2013, Green Tree advised Plaintiff that force-placed insurance was obtained by Green Tree, and the policy (effective June 1, 2013) had an annual premium of \$3,661.00. (*Id.* ¶ 19; *id.* Ex. 8.) After receiving the August 4, 2013 letter, Plaintiff again sent proof of insurance to Green Tree. (*Id.* ¶ 20; *id.* Ex. 9.)

In March 2014, a motion was granted in the foreclosure debt collection lawsuit substituting Green Tree as foreclosing plaintiff. (*Id.* ¶ 22.)

On April 24, 2015, Stern Lavinthal, on behalf of Green Tree, filed a motion for entry of judgment in the foreclosure action. (*See id.* Ex. 11 at 1-2 (“State Court Notice of Motion”).) As part of the State Court Notice of Motion, Stern Lavinthal stated that it “shall file the attached Certification of Proof of Amount Due required by law which will establish that there is due upon

Plaintiff's obligation and mortgage the sum of \$377,287.24 as of April 9, 2015, together with interest thereon." (*Id.* at 2.) In an attached document captioned "Proof of Amount Due Affidavit and Schedule" and dated April 23, 2015, Green Tree employee Danielle Froelich executed a certification of amount due, which included the sum of \$10,974.37 for "Home Owners Insurance Premiums" due as of April 9, 2015 within the \$377,287.24 total amount due. (Compl ¶ 23; *id.* Ex. 11 at 4-7 ("State Court Proof of Amount Due").) Additionally, Stern Lavinthal attorney Donna M. Miller submitted a "Certification of Diligent Inquiry" which states in relevant part as follows:

2. On April 7, 2015 and again on April 24, 2015, I communicated by client interface and overnight delivery with the following named employee(s) of plaintiff/plaintiffs servicer, who informed me that he/she has personally reviewed the documents submitted to the Court, affidavit of amount due and the original or a true copy of the note, mortgage, and recorded assignments, if any, and that he/she confirmed the accuracy of all documents:

Name of employee(s) of Servicer for Plaintiff/Plaintiff: DANIELLE FROELICH

Title of employee(s) of Servicer for Plaintiff/Plaintiff: FORECLOSURE REPRESENTATIVE

Responsibilities of employee(s) of Servicer for Plaintiff/Plaintiff: REVIEWS AND CONFIRMS THE ACCURACY OF THE FORECLOSURE AFFIDAVIT.

3. Based on my communication with the above-named employee(s) of Plaintiff, as well as my own inspection of the documents filed with the court and other diligent inquiry, I execute this certification to comply with the requirements of Rule 4:64-2(d) and Rule 1:4-8(a).

(Compl. Ex. 11 at 8-9 ("State Court Cert. of Diligent Inquiry").)

Plaintiff alleges that all times pursuant to the 2008 Mortgage Loan contract, Plaintiff has maintained an insurance policy on the property, has sent all insurance premiums to the insurance

carrier to pay for the hazard insurance policy, and has provided copies of same to the loan servicer upon request. (*Id.* ¶¶ 24, 26.) Accordingly, Plaintiff avers that Green Tree has not incurred costs of \$10,974.37 for payment of insurance premiums. (*Id.* ¶ 25.)

PROCEDURAL HISTORY

Plaintiff commenced this action on June 24, 2015, two months after the alleged false representation occurred, by filing a two count Complaint. (Compl.) With respect to Stern Lavinthal, Plaintiff alleges that it violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (“FDCPA”) by demanding payment of insurance premiums that were not actually owed under Plaintiff’s loan agreement. (*Id.* at 6-8.)²

On August 17, 2015, Stern Lavinthal filed an Answer to the Complaint, which includes a cross-claim against its client Green Tree. (ECF No. 11.) On October 9, 2015: Stern Lavinthal filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b) (ECF No. 13); withdrew the Motion to Dismiss so that it could be re-filed as a Motion for Judgment on the Pleadings (ECF No. 14); and filed the instant Motion for Judgment on the Pleadings (ECF No. 15; *see* ECF No. 15-2 (“Mov. Br.”)). On October 26, 2015, Green Tree filed an Answer to Stern Lavinthal’s cross-claim and filed a cross-claim against Stern Lavinthal. (ECF No. 21.) On October 28, 2015, Stern Lavinthal filed an Answer to Green Tree’s cross-claim. (ECF No. 23.) On November 23, 2015, Plaintiff filed opposition to the instant motion (ECF No. 25 (“Opp. Br.”)), and on November 30, 2015, Stern Lavinthal filed a reply (ECF No. 26 (“Reply Br.”)).

² The second count of the Complaint alleges violation of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601, *et seq.* against Green Tree only, and is thus not pertinent to the instant Motion. (*See* Compl. at 9-10.)

LEGAL STANDARDS

A. Motion for Judgment on the Pleadings

Under Federal Rule of Civil Procedure 12(c), “[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings.” Fed. R. Civ. P. 12(c). “The pleadings are considered to be ‘closed’ after the complaint and answer have been filed, along with any reply to additional claims asserted in the answer.” *Liberty Int’l Underwriters Canada v. Scottsdale Ins. Co.*, 955 F. Supp. 2d 317, 323 (D.N.J. 2013) (citation omitted). When a party makes a motion for judgment on the pleadings based on the defense of failure to state a claim upon which relief can be granted, the Court “appl[ies] the same standards as under Rule 12(b)(6).” *Turbe v. Gov’t of Virgin Islands*, 938 F.2d 427, 428 (3d Cir.1991); see *Caprio v. Healthcare Revenue Recovery Grp., LLC*, 709 F.3d 142, 146 (3d Cir. 2013).

To withstand a motion to dismiss for failure to state a claim, “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*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “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.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556). “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.*

To determine the sufficiency of a complaint under *Twombly* and *Iqbal* in the Third Circuit, the court must take three steps: first, the court must take note of the elements a plaintiff must plead to state a claim; second, the court should identify allegations that, because they are no more than

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