

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

DANIELLE GEOFFRION and	§	
DARREN KASMIR	§	
	§	
v.	§	Case No. 4:14-CV-350
	§	Judge Mazzant
NATIONSTAR MORTGAGE LLC	§	
	§	

MEMORANDUM OPINION AND ORDER

Pending before the Court is Defendant’s Renewed Motion for Judgment as a Matter of Law, Motion to Alter or Amend Judgment, and Alternatively, Motion for New Trial (Dkt. #89). After considering the relevant pleadings and the relevant trial testimony and evidence, the Court finds that Defendant’s motion for judgment as a matter of law is denied.

PROCEDURAL BACKGROUND

In the parties’ Joint Final Pretrial Order, Plaintiffs Danielle Geoffrion (“Geoffrion”) and Darren Kasmir (“Kasmir”) (together, “Plaintiffs”) accuse Defendant Nationstar Mortgage LLC (“Defendant” or “Nationstar”) of violating the Real Estate Settlement Procedures Act 12 U.S.C. ¶ 2605(e) (“RESPA”) (Dkt. #64 at p. 2). Plaintiffs allege that they sent Defendant Qualified Written Requests (“QWRs”) for information regarding their Nationstar Mortgage Account (the “Account”) on at least six occasions (Dkt. #64 at p. 3 n. 3). Plaintiffs allege that Defendant “failed to provide information required by federal law.” (Dkt. #64 at p. 2). Plaintiffs “also sued in equity to receive [an] accounting from Defendant.” (Dkt. #64 at p. 2).¹

Defendant maintains that Plaintiffs’ letter to Defendant “did not trigger any obligation under the law[.]” (Dkt. #64 at p. 3). Defendant contends that “the communications Plaintiffs sent

¹ Plaintiffs also brought a breach of contract claim against Defendant (Dkt. #64 at p. 2). Defendant asserted that Plaintiffs breached their contract with Defendant, “prior to any alleged breach by Defendant” (Dkt. #64 at p. 3). However, Plaintiffs dropped this claim before trial (Dkt. #89 at p. 1).

do not meet the statutory definition of QWRs, were not sent to the address to which such requests must be sent to trigger an obligation to respond, and were overly broad, unduly burdensome, and sought ‘discovery type’ information regarding Plaintiffs’ account.” (Dkt. #64 at p. 3). Defendant also argues that “Plaintiffs have not been damaged in a fashion to entitle them to recover damages in this lawsuit[.]” (Dkt. #64 at p. 3). Defendant further alleges that “the accounting claim is not well-founded because there is no issue of sufficient complexity to justify relief per that claim.” (Dkt. #64 at p. 3).

The trial began on September 9, 2015. On September 10, 2015, Defendant moved for judgment as a matter of law as to the RESPA claim after Plaintiffs rested (Trial Tr. 9/10/15 at 92:6-94:10).

Defendant based the motion on its contention that the letters to which Defendant did not respond did not constitute QWRs and that Defendant adequately responded to the December 16, 2013 communication that Plaintiffs sent (Trial Tr. 9/10/15 at 92:7-93:3). Defendant also asserted that Plaintiffs failed to establish actual damages, and that mental anguish damages are not recoverable under RESPA (Trial Tr. 9/10/15 at 93:4-94:10). Plaintiffs asserted that there was adequate evidence for the jury to determine that the relevant communications constituted QWRs (Trial Tr. 9/10/15 at 94:12-95:2). Plaintiffs also maintained that there was sufficient evidence upon which a jury could base findings of actual damages and that RESPA provides for the recovery of mental anguish damages (Trial Tr. 9/10/15 at 95:3-96:16).

On September 10, 2015, the jury rendered a verdict finding that Plaintiffs submitted QWRs to Defendant on December 16, 2013 (the “December 16 Communication”), and on January 3, 2014 (the “January 3 Communication”) (Dkt. #76 at p. 1). The jury also found that Defendant failed to respond or provided an inadequate response to the January 3 Communication

(Dkt. #76 at p. 2). The jury found that Plaintiffs were entitled to recover damages caused by Defendant's failure to respond to Plaintiffs' written inquiry, in the amounts of \$23,500 for pecuniary loss and \$151,500 for mental anguish that Plaintiffs suffered in the past (Dkt. #76 at p. 3). The jury verdict also stated that Defendant engaged in a pattern or practice of noncompliance with the requirements of RESPA and that Plaintiffs were entitled to an accounting of the Account (Dkt. #76 at pp. 4-5).

On October 12, 2015, Defendant filed its Renewed Motion for Judgment as a Matter of Law, Motion to Alter or Amend Judgment, and Alternatively, Motion for New Trial (Dkt. #89). On October 26, 2015, Plaintiffs filed their response (Dkt. #91). On October 30, 2015, Defendant filed its reply (Dkt. #94).

FACTUAL BACKGROUND

At trial, Kasmir testified that he and Geoffrion moved to Los Angeles to pursue his career in film (Trial Tr. 9/9/15 at 17:16-18:21). After about five years in the area, Plaintiffs began looking to buy a home (Trial Tr. 9/9/15 at 18:22-19:3). Plaintiffs bought a house through a conservatorship sale and then spent a considerable amount of time updating the home (Trial Tr. 9/9/15 at 19:7-22:24). In 2004, Plaintiffs refinanced the house because the property value had increased and they wanted to put more finances into home improvements (Trial Tr. 9/9/15 at 22:25-23:8). In 2012, Plaintiffs moved to Houston because their niece was seriously ill (Trial Tr. 9/9/15 at 25:4-27:12, 82:22-84:1). The mortgage was assigned to a variety of companies over several years, but it was eventually assigned from Bank of America to Defendant on July 1, 2013 (Trial Tr. 9/9/15 at 23:9-19).

Plaintiffs continued to make automatic payments to Bank of America until payments were returned to them in October 2013 (Trial Tr. 9/9/15 at 28:22-29:22, 100:3-101:3). Plaintiffs

then tried to send payments to Defendant but the payments were sent back (Trial Tr. 9/9/15 at 29:23-30:16). In late October or early November 2013, Plaintiffs called Defendant and began speaking with and sending faxes to a couple of different individuals within the company. Over the next several weeks Plaintiffs spoke to different individuals within Nationstar on several different occasions. *See* Trial Tr. 9/9/15 at 30:21-32:22 (Kasmir testified that he spoke with someone named Carla who told him to contact her through her direct phone line and fax number); Trial Tr. 9/9/15 at 39:7-17 (Kasmir testifying that when he tried calling Carla on the direct phone line he was given, he instead spoke to someone named Adrian); Trial Tr. 9/9/15 at 43:15-44:12 (Kasmir stating that he spoke to someone named Garrett). Plaintiffs were told to send documentation of their payments, which they did repeatedly because they were told that their previous communications had not been received. *See* Trial Tr. 9/9/15 at 33:6-36:2 (Kasmir explaining that he sent Carla an authorization for him to speak with Defendant's employees about the loan, bank records, and a request for clarification); Trial Tr. 9/9/15 at 36:3-38:2 (Kasmir stating that he never heard back from Carla and sent her another communication on November 14, 2013); Trial Tr. 9/9/15 at 39:18-22 (Kasmir testifying that Adrian said that he saw no records of any faxes being received, so he faxed Adrian on November 19, 2013).

Plaintiffs were assured that research was being done and that they would hear from Defendant about the matter, only to hear nothing (Trial Tr. 9/9/15 at 33:6-36:2). Plaintiffs were also told, by different people within Nationstar, that they were behind on their payments by vastly different amounts. *See* Trial Tr. 9/9/15 at 44:13-45:4 (Kasmir stating that they were initially told by Carla or Adrian that they were approximately \$40,000 behind on payments); Trial Tr. 9/9/15 at 43:15-44:12 (Kasmir explaining that Garrett told him that Plaintiffs were \$76,000 behind on their mortgage); Trial Tr. 9/9/15 at 44:10-13 (Kasmir testifying that Plaintiffs

received a demand letter that stated that they owed \$44,000). At one point Kasmir was informed that an escrow account was attached to Plaintiffs' mortgage because of property taxes, but Plaintiffs were not given details about the escrow account (Trial Tr. 9/9/15 at 47:25- 50:19).

Kasmir stated that Plaintiffs hired an attorney, Sara Fendia ("Fendia"), to help them get an answer about the amount that they owed on the mortgage, and why (Trial Tr. 9/9/15 at 52:23-53:10). Fendia sent the December 16 Communication to Defendant, requesting an accounting of the mortgage (Trial Tr. 9/9/15 at 53:17-55:19). Fendia then got a response in the form of a packet of information (Trial Tr. 9/9/15 at 55:20-25).

Kasmir testified that the packet did not explain why Plaintiffs owed between \$40,000 and \$75,0000, and it did not explain what happened with the escrow account and taxes (Trial Tr. 9/9/15 at 58:1-59:6). In fact, Kasmir stated that "this package led to more questions than it answered." (Trial Tr. 9/9/15 at 59:7-9). Even after meeting with Fendia, and going through the packet with her, Plaintiffs still did not understand the contents of it (Trial Tr. 9/9/15 at 62:13-21). Therefore, Fendia sent the January 3 Communication to Defendant (Trial Tr. 9/9/15 at 62:22-64:19). Fendia continued to try to communicate with Defendant, but Defendant only responded by sending Fendia refinance applications (Trial Tr. 9/9/15 at 65:23-70:11).

Plaintiffs testified that they would have leased the house while they were staying in Houston to be with their niece, but that they were unable to because of the dispute over the mortgage payment (Trial Tr. 9/9/15 87:8-90:14; 115:2-116:3). Kasmir also testified that Plaintiffs still owned the house, that they had lived there for four months last year, and that they had lived in the house for a few months the previous year (Trial Tr. 9/9/15 at 94:13-95:2). Kasmir stated that they had not made a payment on the loan since 2013 and that Plaintiffs had not paid taxes against the property for at least the last three years (Trial Tr. 9/9/15 at 95:11-17).

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