UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Residential Funding Company, LLC,

Plaintiff,

v.

Greenpoint Mortgage Funding, Inc., an affiliate of Capital One Bank,

Defendant.

Civil No. 13-3538 (DWF/SER)

MEMORANDUM OPINION AND ORDER

David Elsberg, Esq., Isaac Nesser, Esq., and Peter E. Calamari, Esq., Quinn Emanuel Urquhart & Sullivan LLP; Jeffrey A. Lipps, Esq., Carpenter Lipps & Leland LLP; and David K. Hashmall, Esq., Jessica J. Nelson, Esq., and Donald G. Heeman, Esq., Felhaber Larson, counsel for Plaintiff.

Cameron S. Matheson, Esq., and James A. Murphy, Esq., Murphy & McGonigle; and David T. Schultz, Esq., and Paul B. Civello, Esq., Maslon Edelman Borman & Brand, LLP, counsel for Defendant.

INTRODUCTION

This matter is before the Court on a Motion to Dismiss the First Amended Complaint brought by Defendant Greenpoint Mortgage Funding, Inc., an affiliate of Capital One Bank ("Defendant"). (Doc. No. 41.) For the reasons stated below, the Court grants the motion in part.

BACKGROUND

Plaintiff Residential Funding Company, LLC ("Plaintiff") was in the business of acquiring and securitizing residential mortgage loans prior to filing for bankruptcy. (Doc.

No. 36 ("Am. Compl.") ¶ 2.) Specifically, Plaintiff acquired and distributed loans by either pooling them together with similar mortgage loans to sell into residential mortgage-backed securitization ("RMBS") trusts, or selling them to whole loan purchasers. (*Id.* ¶ 3.)

In this action, Plaintiff alleges that it bought over 1,000 mortgage loans from Defendant, with an original principal balance of more than $88 million. (*Id.* ¶¶ 4, 17, 19 & Ex. C.) Many of the loans were pooled and sold into RMBS trusts. (*Id.* ¶ 21.) The pool of loans formed the collateral underlying the RMBS trusts, which were then sold to investors. (*Id.*) Defendant sold the loans to Plaintiff pursuant to a Seller Contract (the "Contract"). (*Id.* ¶ 17, Ex. A (the "Contract").) The Contract incorporated Plaintiff's Client Guide into its terms and conditions. (Am. Compl. ¶ 18.) Together, the Contract and Client Guide formed the parties' agreement (the "Agreement") and set the standards under which Defendant sold the loans to Plaintiff. (*Id.*) Plaintiff alleges that, pursuant to the Agreement, Defendant made a number of representations and warranties with respect to the loans that it sold to Plaintiff. (*Id.* ¶ 24.) Among other representations, Defendant represented that it had verified the accuracy of the information in the loan forms, ensured the proper completion and execution of the loan forms, complied with applicable laws, not sold any "high-risk" loans to Plaintiff, and confirmed the market value of the mortgaged property underlying the loans. (*Id.* ¶¶ 24, 42, 43.)

Pursuant to the Client Guide, Defendant's failure to comply with any requirement in the Client Guide or Defendant's breach of any of its representations and warranties constitutes an "Event of Default." (*Id.* ¶ 26.) In addition, any such failure to comply, or

failure to provide accurate information to Plaintiff, is an "Event of Default" regardless of whether Defendant knew of the misrepresentation or inaccurate information. (*Id*. ¶¶ 26-27.) The Client Guide specifies remedies in the case of an "Event of Default," including repurchase of a defective loan, substitution of another loan, or indemnification. (*Id*. ¶ 29.)

Plaintiff alleges, among other things, that Defendant sold it improperly underwritten loans that contained numerous defects. (*Id*. ¶¶ 7, 69.) Specifically, Plaintiff asserts that Defendant breached various representations and warranties, causing Plaintiff to suffer billions of dollars in losses and eventually leading Plaintiff to file for bankruptcy protection. (*See generally id*. ¶¶ 46-72.) In addition, Plaintiff asserts that it was sued by RMBS investors as a result of the problems with the underlying loans, which led to losses for which Defendant must now indemnify Plaintiff. (*Id*.)

In December 2013, the Bankruptcy Court for the Southern District of New York approved a settlement of Plaintiff's RMBS-related liabilities. (*Id*. ¶¶ 70, 71.) Shortly thereafter, Plaintiff brought numerous actions in the District of Minnesota. On December 16, 2013, Plaintiff filed the present action. (Doc. No. 1, "Compl.") On March 25, 2014, Plaintiff filed an Amended Complaint. (Am. Compl.) In its Amended Complaint, Plaintiff alleges two causes of action: (1) Breach of Contract; and (2) Indemnification. (*Id.* ¶¶ 81-92.) Defendant now moves to dismiss Plaintiff's Amended Complaint in its entirety. (Doc. No. 41.)

DISCUSSION

I. Legal Standard

In deciding a motion to dismiss pursuant to Rule 12(b)(6), a court assumes all facts in the complaint to be true and construes all reasonable inferences from those facts in the light most favorable to the complainant. *Morton v. Becker*, 793 F.2d 185, 187 (8th Cir. 1986). In doing so, however, a court need not accept as true wholly conclusory allegations, *Hanten v. Sch. Dist. of Riverview Gardens*, 183 F.3d 799, 805 (8th Cir. 1999), or legal conclusions drawn by the pleader from the facts alleged. *Westcott v. City of Omaha*, 901 F.2d 1486, 1488 (8th Cir. 1990). A court may consider the complaint, matters of public record, orders, materials embraced by the complaint, and exhibits attached to the complaint in deciding a motion to dismiss under Rule 12(b)(6). *Porous Media Corp. v. Pall Corp.*, 186 F.3d 1077, 1079 (8th Cir. 1999).

To survive a motion to dismiss, a complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Although a complaint need not contain "detailed factual allegations," it must contain facts with enough specificity "to raise a right to relief above the speculative level." *Id*. at 555. As the United States Supreme Court reiterated, "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements," will not pass muster under *Twombly*. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 555). In sum, this standard "calls for enough fact[s] to raise a

reasonable expectation that discovery will reveal evidence of [the claim]." *Twombly*, 550 U.S. at 556.[1]

II. Motion to Dismiss

A. Assignment

Defendant argues that Plaintiff assigned the right and interest in the relevant loans, including any claims against Defendant concerning the representations, warranties, and indemnification benefits, to Residential Funding Mortgage Securities II, Inc. ("RFMSII"). Defendant contends that Plaintiff, therefore, lacks standing to sue Defendant. In support of its argument, Defendant relies on two Home Equity Loan Purchase Agreements ("Purchase Agreements") that were executed by Plaintiff in connection with the securitized trusts that were attached to the Declaration of Cameron S. Matheson. (Doc. No. 44 ("Matheson Decl.") ¶¶ 3, 4, Exs. A, B.)

Plaintiff denies that it assigned any of its rights against Defendant or any other loan originator under the Client Guide; instead, Plaintiff claims that it retained such rights. In addition, Plaintiff argues that even if it had assigned its claims against Defendant to RFMCII, this lawsuit is being prosecuted by ResCap Liquidating Trust, which Plaintiff claims has succeeded to all the rights of not only Plaintiff, but also those of the purported assignee, RFMSII. (Am. Compl. ¶ 13.)

[1] The Court excludes matters outside the pleadings that have been presented in connection with the Rule 12(b)(6) motion.

The Court concludes that the issues presented by Plaintiff's purported assignment of its claims against Defendant are premature. Defendant relies on Home Equity Purchase Agreements that are not properly before the Court at this stage of the litigation. *See, e.g., BJC Health Sys. v. Columbia Cas. Co.*, 348 F.3d 685, 687-88 (8th Cir. 2003). If the Court were to consider the attached Purchase Agreements, the motion would be converted to one for summary judgment, which would be premature. The parties can address issues involving the securitization of the loans at a later time, after discovery has been done on the issues.

B. Statute of Limitations

Defendant argues that Plaintiff's breach of contract (warranty) claim is barred by the statute of limitations. Under Minnesota law, a breach of contract claim must be "commenced within six years." Minn. Stat. § 541.05, subd. 1. The cause of action accrues at the time of the alleged breach, regardless of when the breach is discovered. *See Hempel v. Creek House Trust*, 743 N.W.2d 305, 311-12 (Minn. App. 2007); *Jacobson v. Bd. of Trustees of the Teachers Ret. Assn.*, 627 N.W.2d 106, 110 (Minn. Ct. App. 2001) ("A cause of action for breach of contract [generally] accrues at the time of the alleged breach . . . . This is true even when actual damages resulting from the breach do not occur until some time afterwards or when the aggrieved party was ignorant of the facts constituting the breach.") (citations omitted).

The Amended Complaint alleges that the breach of contract claim arises from Defendant's alleged breach of representations and warranties that were "material terms in [Plaintiff's] agreement to acquire the mortgage loans from [Defendant]."

(Am. Compl. ¶ 25.) The type of alleged defects in the loans, such as income misrepresentation, employment misrepresentation, and appraisal inaccuracies, all occurred at each loan's inception. Thus, the alleged breaches occurred at the time the loans were acquired. Defendant submits that the warranted loans were acquired by Plaintiff on or before October 26, 2005, and therefore the six-year statute of limitations for the loans expired by October 26, 2011.

Plaintiff's opposition focuses on its claim for indemnification, which Defendant does not argue is time-barred. Therefore, those arguments are not relevant. The only argument that Plaintiff makes with respect to the timeliness of its breach of contract claims is as follows:

> With respect to Count One of the First Amended Complaint for breach of representations and warranties, [Plaintiff] does not concede that loans sold prior to May 14, 2006 (six years prior to [Plaintiff's] bankruptcy filing) are time-barred. [Plaintiff's] claim for breach of representations and warranties as to such loans may still be timely depending on the facts and circumstances of each loan. The resolution of such factual issues is not appropriate at the pleading stage.

(Doc. No. 48 at 21 n.6.) Plaintiff may not concede that loans, which were all sold prior to May 14, 2006, are time-barred, but Plaintiff does not point to any alleged facts or circumstances that would demonstrate, or even suggest, that its breach of contract claim is timely.

Here, Plaintiff attached to its Amended Complaint a "preliminary list" of the loans sold by Defendant. (Am. Compl. ¶ 19, Ex. C.) This list indicates that all loans were "acquired" no later than October 26, 2005. (*Id.*) Thus, the six-year statute of limitations expired no later than October 26, 2011. Because Plaintiff did not file the present action

until December 16, 2013, Plaintiff's breach of contract claim as to the listed loans is time-barred.

ORDER

Based on the files, record, and proceedings herein, **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss the First Amended Complaint (Doc. No. [41]) is **GRANTED IN PART** and **DENIED IN PART** as follows: Plaintiff's breach of contract claim (Count I) as to the loans listed in Exhibit C to the Amended Complaint is **DISMISSED WITHOUT PREJUDICE**.

Dated: October 15, 2014

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge