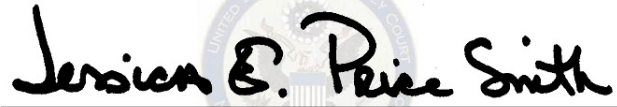


IT IS SO ORDERED.

Dated: 31 March, 2015 04:10 PM



Jessica E. Price Smith

JESSICA E. PRICE SMITH
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In Re:

IN PROCEEDINGS UNDER CHAPTER 13

BETH BLACKMARR

CASE No. 13-10872
Adv. Proc. No. 14-1095

Debtor.

JUDGE JESSICA E. PRICE SMITH

BETH BLACKMARR,
Plaintiff

vs.

MIDFIRST BANK, et. al,
Defendants

ORDER

The matter before the Court is the Motion to Dismiss filed by Defendants Midfirst Bank and Midland Mortgage Company (Doc. No. 8). Beth Blackmarr, the Plaintiff in this adversary proceeding and Debtor in the underlying Chapter 13 bankruptcy case, filed a pleading in opposition to the relief sought (Doc. No. 15). Defendants replied (Doc. No. 16). The Court issued a ruling from the bench permissively abstaining from hearing the claims brought in this adversary proceeding, with this written order to follow.

Defendants filed a foreclosure action in the Cuyahoga County Court of Common Pleas on October 27, 2011 and prosecuted that foreclosure to judgment on September 2, 2013. Debtor did

not appeal that judgment and the property was set for sale on November 18, 2013. Debtor filed her Chapter 13 bankruptcy petition on November 17, 2013. Debtor, hereinafter Plaintiff, filed her Complaint initiating this adversary proceeding on April 29, 2014. The ten count Complaint seeks, *inter alia*, damages for claims ranging from breach of contract to wrongful foreclosure. The Complaint also includes an objection to Defendants' proof of claim. On October 10, 2014, Plaintiff filed an independent objection to the proof of claim. (Doc. No. 50). That objection will be adjudicated by this Court. As stated on the record at the hearing on the Motion to Dismiss, this Court permissively abstains from hearing the other claims in this adversary proceeding.

Permissive abstention is provided for in 28 U.S.C. § 1334(c)(1):

. . . nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

Factors to consider in deciding whether to permissively abstain include: (1) the effect or lack of effect on the efficient administration of the estate if the court abstains; (2) the extent to which state law issues predominate over bankruptcy matters; (3) the difficulty or unsettled nature of the applicable state law; (4) the presence of a related proceeding commenced in state court or other non-bankruptcy court; (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334; (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case; (7) the substance rather than the form of an asserted "core" proceeding; (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court; (9) the burden of this court's docket; (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties; (11) the existence of a right to a jury trial; (12) the presence in the proceeding of nondebtor parties; and (13) any unusual or other significant factors. *In re Dayton*

Title Agency, 304 B.R. 323, 329-30 (Bankr. S.D. Ohio 2004).

As demonstrated below, the extent to which state law issues predominate over bankruptcy matters, the presence of a related proceeding commenced in state court, the substance rather than the form of an asserted “core” proceeding, and the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by the Debtor weigh in favor of permissive abstention. Count One of the Complaint is an objection to Defendants’ proof of claim, which is now before the Court in a separate pleading. Count Two alleges fraudulent misrepresentation for the failure to provide information to the Plaintiff about loss mitigation options that may have been available to her and alleges that as a result, she suffered mental anguish, deterioration to her health, anger, anxiety, stress, fear of losing her home and embarrassment. The relief requested includes punitive damages and non-economic damages. Count Three alleges breach of contract and the covenant of fair dealing and seeks general and consequential damages. Count Four alleges violation of the Fair Debt Collection Practices Act and requests non-economic damages and statutory damages. Count Five alleges invasion of privacy by intrusion upon seclusion which caused Plaintiff’s health to deteriorate. Count Six alleges negligent and or intentional infliction of emotional distress based on the way that the defendant does business, resulting in incidental and consequential damages, as well as hedonic damages in the loss of enjoyment of life. Count Seven alleges wrongful foreclosure contrary to HUD regulations with willfulness, malice, or gross negligence that rises to the level of an independent tort, and caused both economic and non-economic damages to the Plaintiff. Count Eight alleges a breach of fiduciary obligation and negligent loan servicing and asserts that the Defendants remain liable to the Plaintiff for any resulting harm because of their failure to exercise reasonable care. Count Nine alleges theft and embezzlement under O.R.C. §§ 2913 and

2307 and asserts damages that can be obtained by civil remedy even if criminal prosecution never issues. Finally, Count Ten seeks declaratory judgment that Defendants breached the trial mortgage modification contract with Plaintiff, and a finding that the modification is valid and reinstated, removing all late fees, interests and non bonafide charges, fees and costs that have been added to the loan. None of the nine remaining counts arise under or are related to Title 11 of the United States Code. Further the requested non-economic, consequential, punitive and statutory damages, among others, requested are not related to the administration of the Plaintiff's Chapter 13 estate.

The Cuyahoga County Court of Common Pleas issued a final order of foreclosure of the Plaintiff's property, pre-petition, on September 2, 2013. Plaintiff stated in her opposition to the Motion to Dismiss, that she has filed a motion to vacate the foreclosure judgment in state court. There is therefore, a related proceeding in state court where Plaintiff can raise the claims alleged in this adversary proceeding. It would be imprudent to allow her to make an end run around the state court's consideration of her motion to vacate, by prosecuting this adversary proceeding.

Accordingly, this Court, out of respect for the state court in which this matter is already pending, and in light of the fact that the majority of the claims alleged in the Complaint require the application of state law, permissively abstains from this adversary proceeding.

IT IS SO ORDERED.