UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:	)	Case No. 06-14339
BERNICE SPRAGLIN,	)	Chapter 13
Debtor.	)	Chief Judge Pat E. Morgenstern-Clarren
BERNICE SPRAGLIN,	)	Adversary Proceeding No. 11-1190
Plaintiff,	)	
v.	)	
WELLS FARGO HOME MORTGAGE, INC.,	)	**MEMORANDUM OF OPINION**[1]
Defendant.	)	

Defendant Wells Fargo Home Mortgage, Inc. (Wells Fargo) moves to dismiss the complaint.[2] The plaintiff-debtor Bernice Spraglin opposes the motion.[3] For the reasons stated below, the motion to dismiss is granted.[4]

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[1] This opinion is not intended for commercial publication, either in print or electronically.

[2] Docket 21, 24.

[3] Docket 23.

[4] Jurisdiction exists under 28 U.S.C. § 1334 and General Order No. 84 entered by the United States District Court for the Northern District of Ohio. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (L), and (O), and it is within the court's constitutional authority as analyzed by the United States Supreme Court in *Stern v. Marshall*, 131 S.Ct. 2594 (2011).

DISCUSSION

Post-petition, Bernice Spraglin and Wells Fargo entered into a forbearance agreement and then a loan modification with respect to property located in Lorain, Ohio. The debtor seeks a declaratory judgment that both agreements are void as a matter of law because they were entered into without court approval, contrary to the order that confirmed the chapter 13 plan. She also asks that Wells Fargo be required to return to her all money paid under the agreements.

A. The Complaint[5]

The complaint alleges that Bernice and John Spraglin borrowed money from Wells Fargo to purchase property in Lorain, Ohio and executed a mortgage to secure the loan. Several years later they filed a chapter 13 case, which was confirmed by order entered December 4, 2006.[6] The order provided in part that: "The Debtor shall not incur additional debt exceeding $500.00 in the aggregate without notice to the Trustee and the approval of the Court."[7]

The Spraglins fell behind in making their monthly mortgage payments to Wells Fargo. Wells Fargo responded by filing a motion for relief from stay to pursue state court remedies; i.e.

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[5] Although both sides allege facts beyond those stated in the complaint, the court has not recited or considered those facts because they are outside of the complaint and the court does not elect to convert this motion into a motion for summary judgment. *See* FED. R. CIV. P. 12(d) (made applicable by FED. R. BANKR. P. 7012(b)). The court has, though, taken judicial notice of documents filed in this case. *See Rondigo, L.L.C. v. Twp. of Richmond*, 641 F.3d 673, 680-81 (6th Cir. 2011).

[6] Bernice Spraglin filed this case jointly with her spouse, John Spraglin. On March 31, 2010, the court granted their motion to sever the case to allow Mr. Spraglin to convert his case to chapter 7 while Ms. Spraglin remained in the chapter 13. *See* Case No. 06-14339 at docket 134. Ms. Spraglin has been represented by counsel throughout these proceedings, which the court notes without suggesting that Ms. Spraglin consulted with counsel before taking the steps that are at issue here.

[7] Confirmation Order, Case No. 06-14339 at docket 17.

foreclosure. The court granted that motion. The stay was reinstated, but the debtors again fell behind and Wells Fargo again moved for stay relief. The parties resolved that motion through an agreed order entered March 3, 2008.

The complaint alleges further that on June 2, 2008, Wells Fargo sent the debtors a letter[8] in which it attempted to enter into a loan modification with them. Wells Fargo stated there that court approval was needed for any modification. Wells Fargo sent a similar letter later that month. On July 7, 2008, Wells Fargo stated by letter that it could not process the modification because it required court approval. A few weeks later, Wells Fargo sent a letter stating that it declined to enter into the loan modification.

The next year, Wells Fargo filed an affidavit establishing that the debtors had defaulted under the agreed order, and the court lifted the stay once again. On April 10, 2009, Wells Fargo sent a forbearance agreement to Bernice Spraglin which she signed without court approval. On June 11, 2010, Wells Fargo sent a letter stating that the loan modification was approved. The complaint alleges that "[t]he modification stated that court approval was given or the equivalent of an approval on February 28, 2007." There is nothing on the docket on any date that shows the court approved the agreement. Bernice Spraglin, by now the sole debtor, signed the modification agreement on June 15, 2010. Five months later, she modified her confirmed plan to surrender the real estate and to discharge the debt owed to Wells Fargo.

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[8] The letters and other documents from Wells Fargo that are referred to in the complaint are not attached. The court, therefore, limits this factual recitation to those stated in the complaint, which may or may not be different from what the documents actually say.

The debtor completed her chapter 13 plan and received a discharge. She alleges that she then tried to buy a home with FHA financing, but was declined by FHA because she had received a loan modification.

The debtor asks the court to declare the forbearance agreement and the loan modification null and void because they were entered into without court approval, contrary to the confirmation order. Her hope is that, with the agreements nullified, she will be eligible for FHA financing. She also asks that Wells Fargo be ordered to return all money that she paid under the two agreements. It is not clear if the debtor asserts this as a separate cause of action for restitution, or whether she requests this as a remedy if the agreements are nullified.

B. <u>Rule 12(b)(6): Dismissal for Failure to State a Claim</u>

Civil Rule 12(b)(6) provides that a complaint may be dismissed for "failure to state a claim upon which relief may be granted[.]" FED. R. CIV. P. 12(b)(6) (made applicable by FED. R. BANKR. P. 7012(b)). The purpose of this rule is to test the sufficiency of the complaint. In ruling on a 12(b)(6) motion, the court accepts the plaintiff's factual allegations as true and construes the complaint in the light most favorable to the plaintiff. *In re Travel Agent Comm'n AntiTrust Litig.*, 583 F.3d 896, 903 (6th Cir. 2009), *cert. denied*, 131 S. Ct. 896 (2011). The factual allegations must, however, be sufficient to show that the plaintiff is entitled to relief.

The analysis begins by "taking note of the elements a plaintiff must plead to state a claim[.]" *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1947 (2009). The Sixth Circuit has stated that:

> Under Rule 8(a)(2) of the Federal Rules of Civil Procedure, a complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Although this standard does not require "detailed factual allegations," it does require more than "labels and conclusions" or "a formulaic

> recitation of the elements of a cause of action." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L.Ed.2d 929 (2007). Rather, to survive a motion to dismiss, the plaintiff must allege facts that, if accepted as true, are sufficient "to raise a right to relief above the speculative level," *id.*, and to "state a claim to relief that is plausible on its face," *id*. at 570, 127 S. Ct. 1955; *see also Ashcroft v. Iqbal*, – U.S. – , – - – , 129 S. Ct. 1937, 1949-50, 173 L. Ed.2d 868 (2009). "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*, 129 S. Ct. at 1949. And although we must accept all well-pleaded factual allegations in the complaint as true, we need not "'accept as true a legal conclusion couched as a factual allegation.'" *Twombly*, 550 U.S. at 555, 127 S. Ct. 1955 (quoting *Papasan v. Allain*, 478 U.S. 265, 286, 106 S. Ct. 2932, 92 L. Ed.2d 209 (1986)); *see also Iqbal*, 129 S. Ct. at 1949.

Hensley Mfg. v. Propride Inc., 579 F.3d 603, 609 (6th Cir. 2009) (footnote omitted).

C. The Motion

Wells Fargo argues that the facts alleged by the debtor do not support either her request (1) for declaratory relief, or (2) that Wells Fargo be required to return funds that she paid under the agreements.

On the first point, a request for declaratory relief asks the court to determine the parties' rights. 28 U.S.C. § 2201. If declaratory relief is granted, the court may also grant such further relief as is "necessary or proper." 28 U.S.C. § 2202. However, "[t]he power of the federal courts extends only to '[c]ases and [c]ontroversies,' U.S. Const. art. III, § 2, cl. 1, and this constitutional limitation has been interpreted as precluding the federal courts from issuing advisory opinions." *McCurry v. Adventist Health System/Sunbelt, Inc.*, 298 F.3d 586, 597 (6th Cir. 2002). Consequently, "[t]he constitutional ripeness of a declaratory judgment action depends upon 'whether the facts alleged, under all the circumstances, show that there is a substantial

controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.'" *Cassim v. Educ. Credit Mgmt. Corp. (In re Cassim)*, 395 B.R. 907, 911 (B.A.P. 6th Cir. 2008) (quoting *Blakely v. United States*, 276 F.3d 853, 872 (6th Cir. 2002)), *aff'd*, 594 F.3d 432 (6th Cir. 2010).

Wells Fargo contends that the debtor is not entitled to declaratory relief because there is no present controversy between the parties, the debt reflected in the agreements having been discharged in the modified plan. Wells Fargo argues further that prospective relief cannot be granted, citing *Gen. Elec. Co. v. Local 761, Int'l Union of Elec., Radio and Mach. Workers*, 395 F.2d 891 (6th Cir. 1968). The *General Electric* case is, however, distinguishable from this case. There, GE and a local union entered into an agreement that required the union, for a stated period of time, to give 10 days notice before a strike. When the union advised GE within the agreement period that it would no longer consider the agreement binding, and then went on strike, GE filed an action for a declaratory judgment. In that suit, GE asked the court to declare the agreement binding and the attempted recision invalid. The trial court did so. By the time the matter reached the Sixth Circuit, the agreement had expired by its own terms. As a result, the Court found that there was no longer an actual controversy between the parties because GE had not requested damages in its complaint, only declaratory relief.

In the present case, there is an actual controversy regarding the agreements because the debtor alleges that the fact that the modification existed at all is interfering with her ability to obtain financing. If the modification is nullified, she hopes that the FHA will allow her to borrow money. Wells Fargo argues that the debtor would not be eligible for FHA financing even if the modification is nullified, but that argument relies on facts outside of the Rule 12(b)(6)

record. Additionally, the debtor asks that Wells Fargo be ordered to return money to her, which request also establishes that an actual controversy exists. As a result, declaratory judgment is a proper vehicle to resolve this dispute if the debtor stated a claim upon which relief can be granted.

That brings us to the question of whether the complaint can stand. While the complaint claims that the agreements are void because they violate the confirmation order, the debtor does not advance any particular legal theory for why this is so. Ordinarily, violation of a court order is punishable through contempt proceedings, but the debtor does not suggest that she brings this as a contempt issue. If she did, it seems that the *debtor* violated the court order because the plan term prohibits the *debtor* from incurring debt. Of course, it takes two to tango, so in some circumstances both parties to the contract might be at risk of being held in contempt and sanctioned. But again, the debtor does not argue that her cause of action arises under the court's contempt powers, leaving the court to speculate as to what the cause of action is. Consequently, the complaint does not state a plausible claim for relief.

Moreover, even if the debtor had stated a cause of action against Wells Fargo to support a determination that the two agreements are void, she must also state a claim supporting her request for return of the money paid–either as a separate cause of action or as a remedy if the contracts are nullified. She failed to do so, either in the complaint or in the brief in opposition to the motion to dismiss.

As Wells Fargo notes, the complaint might be construed as a claim for restitution, which is a liability imposed on a party who has been unjustly enriched at the expense of another. *See*

generally RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT § 1 (2011). If the debtor is in fact making such a claim, then under Ohio law she must allege facts to show:

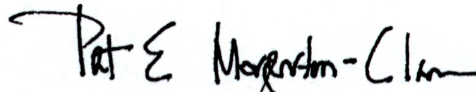
> that: (1) the plaintiff conferred a benefit upon the defendant; (2) the defendant knew of such benefit; and (3) the defendant retained the benefit "under circumstances where it would be unjust to do so without payment." *Brown-Graves Co. v. Obert*, 98 Ohio App.3d 517, 648 N.E.2d 1379, 1383 (1994). The plaintiff must show that the substantial benefit to the defendant is "causally related" to the substantial detriment to the plaintiff. *Gaier v. Midwestern Group*, 76 Ohio App.3d 334, 601 N.E.2d 624, 627 (1991). In determining whether a defendant received an unjust or unconscionable benefit, we must consider whether "the defendant was the party responsible for the plaintiff's detrimental position." *U.S. Health Practices, Inc. v. Blake*, No. 00AP-1002, 2001 WL 277291, at *2 (Ohio App. March 22, 2001) (holding that the plaintiff's responsibility for his detrimental position breaks the requisite causal connection between the defendant's benefit and the plaintiff's loss). "The doctrine of unjust enrichment provides an equitable remedy imposed to prevent injustice." *Giles v. Hanning*, No.2001-P-0073, 2002 WL 1173512, at *2 (Ohio App. May 31, 2002). Thus, the plaintiff must show enrichment that is *unjust*. *Id.* It is insufficient for the plaintiff to prove merely that he conferred a benefit upon the defendant. *Katz v. Banning*, 84 Ohio App.3d 543, 617 N.E.2d 729, 735 (1992). Rather, the plaintiff must prove that, under the circumstances, the plaintiff has a "superior equity so that, as against . . . [the plaintiff], it would be unconscionable for the . . . [defendant] to retain the benefit." *Id*. (internal quotation marks omitted).

Andersons, Inc. v. Consol, Inc., 348 F.3d 496, 501-2 (6th Cir. 2003); *see also* RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT § 31(1)(b) (stating that a person who performs under an agreement that is unenforceable based on the failure to satisfy an extrinsic requirement of enforceability is not unjustly enriched if that person receives the counterperformance specified by the agreement); RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT § 32(2) (2011) (stating the rules for when a person who performs under an

agreement that is unenforceable for reasons of public policy may obtain restitution); 17 Ohio Jur. 3d Contracts § 115 (2011). The complaint fails to allege sufficient facts to assert such a claim.

CONCLUSION

For the reasons stated, Wells Fargo's motion to dismiss is granted. A separate order will be entered reflecting this decision.



Pat E. Morgenstern-Clarren
Chief Bankruptcy Judge

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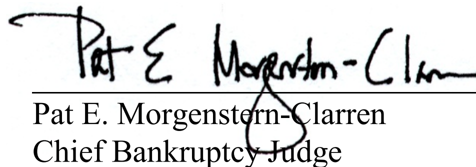
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
WELLS FARGO HOME MORTGAGE, INC.,	)	**ORDER**
	)	
Defendant.	)	

For the reasons stated in the memorandum of opinion entered this same date, the motion of Wells Fargo Home Mortgage, Inc. to dismiss the complaint is granted. (Docket 21).

IT IS SO ORDERED.



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