

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
PAUL L. MUCKLE and IRENE WOOD,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 07-CV-11437-DPW
)	
FREMONT INVESTMENT & LOAN,)	
ASC/WELLS FARGO, U.S. BANK)	
NATIONAL ASSOC., SG MORTGAGE)	
SBAC, et al.,)	
)	
Defendants.)	
_____)	

**U.S. BANK NATIONAL ASSOCIATES AND ASC/WELLS FARGO'S OPPOSITION
TO PLAINTIFFS' MOTION TO RECONSIDER**

Defendant U.S. Bank National Associates, as Trustee for SG Mortgage Securities Asset Backed Certification, Series 2006-FRE2 ("US Bank") and Defendant America's Servicing Company/Wells Fargo ("ASC" and together with US Bank, "Defendants") hereby oppose Plaintiffs' Motion to Reconsider Motion To Join Multiple Defendants, On The Grounds Of Sovereign Citizenship (the "Motion to Reconsider"), which has been recently untimely filed by Plaintiff Paul L. Muckle ("Muckle") and Plaintiff Irene Wood ("Wood" and together with Muckle, "Plaintiffs"). As set forth herein, the Motion to Reconsider should be denied because it is procedural flawed, untimely, and lacks any rational basis in fact or law.

ARGUMENT

On August 7, 2007, this Court denied Plaintiffs' Motion For Injunctive Relief (paper no. 3) and then on August 17, 2007, this Court denied Plaintiffs' Motion To Join Multiple Plaintiffs (paper no. 6). Now, over a year and a half later, and after filing numerous motions

in the interim, Plaintiffs are asking this Court to reconsider its prior decisions and join "multiple defendants and ALL 10 million subprime homeowners" in this case. In support of their claimed relief, Plaintiffs assert, with vague description, that they are in possession of "irrefutable physical evidence" of a conspiracy to "defraud the people of the United States Of America."¹ Plaintiffs' claims are nothing more than empty rhetoric and hyperbole; the documents produced to them relate solely to the loan at issue in this case. See Affidavit of Christine A. Murphy, submitted herewith².

Plaintiffs' Motion is not permitted by the Rules of Procedure, is untimely, and is legally deficient. Because Defendants believe that Plaintiffs' motion lacks any procedural basis, this opposition does not address Plaintiffs' substantive legal arguments, which Defendants submit should not be considered by this Court. To the extent that this Court is inclined to entertain any of Plaintiffs' substantive arguments, Defendants reserve their right to brief and/or present oral arguments on those points, and respectfully request that this Court allow them leave to respond, if necessary. For the reasons more fully set forth herein, Plaintiffs' motion should be denied, and Defendants requests that this Court award Defendants attorneys' fees in opposing this frivolous and threatening motion.

I. There is No Procedural Basis For Plaintiffs' Motion For Reconsideration

Plaintiffs have not identified any of the Federal Rules of Civil Procedure or Local Rules that permits them to file their Motion to Reconsider some 20 months after the contested Orders. Indeed, Plaintiffs fail to cite any case law that permits a party to file a motion to

¹ To the extent that Plaintiffs allege that they are in possession of such documents, they must produce them to Defendants in accordance with Fed. R. Civ. P. 34.

² As set forth in Ms. Murphy's affidavit, Mr. Muckle mischaracterizes the documents that he received from her during this litigation. Indeed, as Ms. Murphy verifies, Mr. Muckle received nothing more than documents relating to the loan at issue in this matter. Any claim to the contrary is unsupported.

reconsider a denial of a motion for injunctive relief and/or a motion to join multiple plaintiffs over a year and a half after those orders were entered.

Indeed, the timeframe for any review of this Order under the Rules has long since expired. Under Fed. R. Civ. P. 59, "a motion to alter or amend a judgment must be filed no later than 10 days after the entry of judgment." See Eck v. Dodge Chemical Co. (In re Power Recovery Systems, Inc.), 950 F.2d 798, 800 (1st Cir. 1991) (denying motion for reconsideration filed three days after 10-day filing period expired). Here, Plaintiffs are far outside of the 10 day period to timely file their Motions. Therefore, the Motion to Reconsider being untimely, it should be denied under Rule 59.

The only other potential avenue of relief – Fed. R. Civ. P. 60 – is extremely limited and also inapplicable in this case. See Karak v. Bursaw Oil Corp., 288 F.3d 15, 19 (1st Cir. 2002) (noting "the understanding that relief under Rule 60(b) is extraordinary in nature and that motions invoking that rule should be granted sparingly"). Moreover, a Rule 60 motion, which must be brought "within a reasonable period of time" and "may not be used as a back-door substitute for an omitted appeal," would also be untimely. See Cotto v. United States, 993 F.2d 274, 278 (1st Cir. 1993) (noting "in all but the most exceptional circumstances, a party's neglect to prosecute a timeous appeal will bar relief under the rule."). In this case, Plaintiffs were well aware of this Court's Order for over a year and a half. As such, Plaintiffs are not entitled to relief under Rule 60.

II. Defendants Are Entitled To Attorney's Fees

This Court has the inherent power and authority to enter sanctions in the form of attorney's fees against Mr. Muckle for his threats to "overwhelm the courts" and to "cripple the system with lawsuits." See United States v. Kouri-Perez, 187 F.3d 1, 7 (1st Cir. 1999)

("implicit powers include the judicial authority to sanction counsel for litigation abuses which threaten to impugn the district court's integrity or disrupt its efficient management of the proceedings); see also Chambers v. NASCO, Inc., 501 U.S. 32 (1991). In Chambers, the Supreme Court upheld a District Court's entry of sanctions in the form of attorney's fees where the District Court, in its discretion, found that a litigant acted in bad-faith. Chambers, 501 U.S. at 35. (upholding inherent power in assessing attorney's fees as sanction for a party's bad-faith conduct). In this case, the Court should use its inherent powers to enter such sanctions in light of Muckle's repeated threats to this Court and the judicial system, and his patent bad faith efforts to bully the Court and the parties.

The procedural history of this case is well known to this Court and the parties. Plaintiffs most recent Motion To Reconsider is the latest in the line of his numerous attempts to seek redress from this Court without complying with the applicable rules of procedure. But now, the latest filing includes something that requires this Court's particular attention: unconcealed bad-faith threats to disturb and abuse the judicial system. Over the course of this litigation, on numerous occasions, Plaintiffs' have intentionally subverted Defendants' (and this Court's) efforts to litigate and adjudicate this case fairly and properly under the Rules. Their conduct, as pro se plaintiffs, can no longer be viewed as an accidental or innocent miscalculation. Plaintiffs repeatedly request "liberty and justice" but threaten to terrorize the Court if they do not receive what they demand.³ Such conduct should be sanctioned. Here,

³ Plaintiffs' Motion to Reconsider states in pertinent part:

We will flood the federal court in Boston with hundreds of thousands of claims for mortgage fraud, and when the court in Boston is overflowing, we will file in New York and overflow that system also, then we will move on to California, then Texas. We will recruit consumers and taxpayers in all 50 states. We will overwhelm the system with 10 million claims for mortgage fraud and demands that our mortgages be rescinded and that our properties be returned to us free and clear of all incumbencies [sic].

See Plaintiffs' Motion To Reconsider at p. 27.

where Plaintiffs' motion has no procedural basis and also has no basis in law or fact, and where the pleadings include overt threats to "overwhelm the courts" and to "cripple the system with lawsuits," sanctions are in the form of attorney's fees, in an amount to be determined by the Court, are appropriate considering all circumstances.

Wherefore, Defendants respectfully request that this Honorable Court deny Plaintiffs' Motion for Reconsideration and grant Defendants their attorneys' fees and costs in filing this opposition.

Respectfully submitted,
U.S. Bank National Associates, as Trustee for SG
Mortgage Securities Asset Backed Certification,
Series 2006-FRE2, servicer for ASC/Wells Fargo,
by its attorney,

/s/ Sean R. Higgins

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on this date.

/s/ Sean R. Higgins

Date: April 21, 2009