

IN THE COURT OF COMMON PLEAS
BUTLER COUNTY, OHIO

MICHAEL APPLEBERRY, et al.,

Case No. CV03-01-0162

Plaintiffs,

vs.

DDH INC. dba FRANKLIN
COLLEGE, dba 5-STAR TRUCK
DRIVING, et al.,

Defendants.

ENTRY & DECISION DENYING
DEFENDANT WELLS FARGO
BANK, MINNESOTA, N.A.'S
MOTION FOR SUMMARY
JUDGMENT

Judge Matthew J. Crehan

March 6, 2006

Final Appealable Order: Civ.R. 54(B)

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Defendant Wells Fargo Bank Minnesota, N.A. ("Wells Fargo" or "Trustee"), as trustee for SFC Grantor Trust, Series 2000-3 and SFC Grantor Trust, Series 2001-1 ("Trusts") filed a motion to dismiss which this Court converted to a motion for summary judgment. The issue before the Court involves personal jurisdiction of the Court over the Defendant Wells Fargo. The Court, in converting the motion, allowed for discovery as to the operation of the trusts and the trustee. Specifically, Wells Fargo asserts that this Court lacks personal jurisdiction over the Trusts. Briefs and oral arguments have been submitted and reviewed by the Court.

I. BACKGROUND

The plaintiffs, Michael Appleberry, James Bell, and Samuel Schmucker, seek damages for fraud in its educational lending practices. The plaintiffs enrolled with defendant DDH¹ to obtain a certification to obtain Class A commercial driver's licenses. At the end of the course the plaintiffs were informed that the instructor providing their certification was not accredited and consequently were denied commercial drivers licenses. The plaintiffs claim that the school committed fraud in its failure to provide an educational program sufficient to gain and maintain their commercial licenses.

¹ It is the Court's understanding that DDH has filed for bankruptcy and will be dismissed from this suit.

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CINDY CARPENTER
CLERK OF COURTS

JUDGE MATTHEW J. CREHAN
Common Pleas Court
Butler County, Ohio

When the plaintiffs enrolled at DDH they were provided school financing information through Student Finance Corporation (“SFC”)². The plaintiffs executed promissory notes to SFC, whose standard practice was to sell the loans and create trusts known as securitization trusts. The loans obtained by the plaintiffs in this case were put into securitization trusts, identified as SFC Grantor Trust, Series 2000-3 and SFC Grantor Trust Series 2001-1. Investors then bought shares in the trusts as investments. The trusts are administered by Defendant Wells Fargo as trustee.

On October 6, 2000 a Pooling and Servicing Agreement created the 2000-3 Trust. Under the agreement, SFC Acceptance IV, a Delaware limited liability company, assigned student loan contracts to the 2000-3 Trust. The agreement provided that Student Loan Servicing LLC would service the student loan contracts.

On April 24, 2001 a Pooling and Servicing Agreement created the 2001-1 Trust. Under the agreement SFC Acceptance VI, a Delaware limited liability company, assigned student loan contracts to the 2001-1 Trust. The agreement provided for the same servicer as the 2000-3 Trust.

The trusts hold the loan contracts, receive payments collected by the servicer, distribute payments to shareholders of the trusts, pay certain fees and expenses of the trusts, and submit claims to the relevant insurer under the financial guaranty policies. Both the 2000-3 and 2001-1 Trusts were created, located, and administered in Minnesota. It is undisputed that the trusts only exist to collect payments from a servicer and then pass the money along to the investors in the trust. Wells Fargo Bank Minnesota, N.A. acts solely as a trustee for the trusts.

During the sale of the notes and subsequent creation of the trusts, money derived from the sale was paid to SFC. SFC in turn used the proceeds to fund additional loans within Ohio and throughout the country.

At some point the Trustee assumed the role of the servicer. It thereafter assigned its obligations to a Sub-Servicer, Wells Fargo Servicing Solutions, LLC of Lake Mary, Florida (“Sub-Servicer”). Wells Fargo Bank Minnesota, N.A. remains the trustee.

² SFC is in bankruptcy and has been dismissed from this lawsuit.

II. ANALYSIS

Summary judgment can only be granted when it appears from the evidence, construed most strongly in favor of the non-moving party, that there is no genuine issue of material fact; that reasonable minds can only come to one conclusion which is adverse to the non-moving party; and that as a matter of law the moving party is entitled to judgment. Civ.R. 56(C). The only evidence to be considered when ruling upon a motion for summary judgment are pleadings, depositions, affidavits, written discovery responses filed with the court, transcripts of evidence, and written stipulations of fact. Civ.R. 56(C).

Where a motion for summary judgment is properly made and supported, the non-moving party may not rest upon its pleadings, but, instead, must produce evidence showing a genuine issue of fact as to issues upon which it has the burden of proof. *Dresher v. Burt*, 75 Ohio St.3d 280, 1996-Ohio-107.

Summary judgment is proper when there is no genuine issue of material fact, the moving party is entitled to judgment as a matter of law, and reasonable minds, construing the evidence most strongly in favor of the non-moving party, can come to only one conclusion adverse to the non-moving party. *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66.

For the purposes of this motion the Court is not concerned with the underlying claims. The only issue with respect to this motion is whether an Ohio court has personal jurisdiction over the defendant trustee. In order to establish personal jurisdiction the Court must determine if the conduct of the Trustee falls within Ohio's "long-arm statute" and applicable civil rule, and if so, does granting jurisdiction comport with the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *U.S. Sprint Communications Company Limited Partnership v. Mr. K's Foods, Inc.* (1994), 68 Ohio St.3d 181, 183-184; *Kentucky Oaks Mall Co. v. Mitchell's Formal Wear, Inc.* (1990), 51 Ohio St.3d 73, 74. The plaintiffs also argue that the FTC clause gives the Ohio jurisdiction.

In support of its motion the defendant cited *Williams v. Firstplus Home Loan Owner Trust 1998-4* (W.D.Tenn. 2004), 310 F.Supp.2d 981. In *Williams* the court dealt specifically with trust similar to those before this Court and looked specifically at the conduct of the trustee. Prior to the 2004 decision the court had determined that it did not have personal jurisdiction over the trusts themselves. *Williams v. Firstplus Home Loan Trust 1996-2* (W.D.Tenn. 2002), 209 F.R.D. 404.³ The court took a similar approach in determining first whether the activities of the trusts fell within the Tennessee long arm statute and then if due process is respected. *Williams02* at 410-411. The Tennessee long arm statute extends the personal jurisdiction to the limits of the Due Process Clause. *Id.* at 410. The court in *Williams02*, found that it did not have personal jurisdiction over the trusts for the reasons given by the defendant Wells Fargo in this case. However, in *Williams04* the court found that Tennessee did have jurisdiction over one of the trustees acting in its trustee capacity.⁴

In this case Wells Fargo Bank Minnesota, N.A., named only as trustee, filed a motion to dismiss.

A. Do the actions of the Trusts Comport with Ohio's "Long-Arm" Statute?

The Court must first determine if the actions of the Trust fall within the "long-arm" statute. *Id.*

Ohio's "long-arm statute," R.C. 2307.382 provides:

- (A) A court may exercise personal jurisdiction over a person who acts directly or by an agent, as to a cause of action arising from the person's:
- (1) Transacting any business in this state;
 - (2) Contracting to supply services or goods in this state;
 - (3) Causing tortious injury by an act or omission in this state;
 - (4) Causing tortious injury in this state by an act or omission outside this state if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or

³ When citing to the *Williams* cases the Court will refer to the 2002 decision as *Williams02* and in turn will refer to the 2004 decision as *Williams04*.

⁴ In *Williams04* the court in its first footnote stated that the parties stipulated that U.S. Bank was only named in its capacity as trustee. *Id.* at 985.

services rendered in this state;

The plaintiffs cite to the fact that Wells Fargo has twenty nine "financial stores" in Ohio and argue that the Court has general jurisdiction over Wells Fargo, thereby allowing jurisdiction over this matter. It is undisputed that Wells Fargo, in its activity as a bank and financial institution, has customer retail outlets located within Ohio and more than likely has negotiated, maintained, and foreclosed on mortgages and properties throughout Ohio. Clearly, Wells Fargo transacts business within Ohio and is subject to the jurisdiction of Ohio Courts.

B. Is Due Process Met if Jurisdiction is Exercised?

The second part of the two step process for determining whether a Court has personal jurisdiction is determining whether exercising jurisdiction comports with the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *U.S. Sprint, supra.*; *Kentucky Oaks Mall, supra.*

This Court must determine if the Trusts have certain minimum contacts with the state so that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. *U.S. Sprint* at 186; citing *Internatl. Shoe Co. v. Washington* (1945), 326 U.S. 310, 316, 66 S.Ct. 154, 158. Such analysis is not simply mechanical or quantitative, but depends upon the quality and nature of the activity. *U.S. Sprint, supra.*, citing *Internatl. Shoe* at 319.

Once again Wells Fargo operates multiple retail outlets in Ohio. Since Wells Fargo maintains daily operations within Ohio, the Court finds that exercising personal jurisdiction over the company would not offend the traditional notion of fair play and substantial justice.

C. Does the FTC Clause Allow Jurisdiction?

It is undisputed that the loan contract signed by the plaintiffs contains an FTC Holder in Due Course Clause. The plaintiffs argue that the inclusion of the clause in the contract establishes jurisdiction in Ohio. The clause states that the holder of the consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of the goods or the services provided. The Court finds the plaintiffs argument not well taken. A plain reading

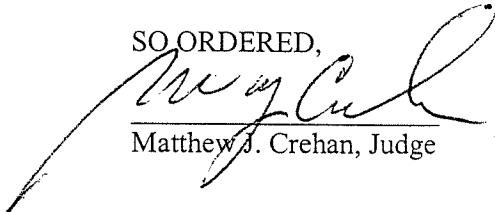
of the clause simply establishes defenses not jurisdiction. The plaintiffs have failed to demonstrate why the clause would trump both Ohio's "long-arm" statute and the Due Process Clause of the Fourteenth Amendment of the United States Constitution. However, this is not determinative of the issue since the Court has already found jurisdiction under the long arm statute that comports with the Due Process Clause.

III. CONCLUSION

The Court finds construing the evidence most strongly in favor of the non-moving party that as a matter of law this Court has personal jurisdiction over Wells Fargo, trustee of SFC Grantor Trust, Series 2000-3 and SFC Grantor Trust, Series 2001-1.

The Court is handing down two rulings in this matter. The other deals with the liability of R&L Carriers personal jurisdiction over Wells Fargo Minnesota, N.A., trustee. Combined the decisions significantly affect the direction this case must take. Therefore the Court finds that there is no just cause for delay. Civ.R. 54(B).

SO ORDERED,


Matthew J. Crehan, Judge

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