

**IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO**

KAREN RIMMER,)	Case No. CV-05-564493
)	
Plaintiff,)	
)	JUDGE CASSANDRA COLLIER-WILLIAMS
v.)	
)	
CITIFINANCIAL, INC.,)	<u>OPINION AND ORDER</u>
)	
Defendant.)	

PROCEDURAL HISTORY

This case was filed on June 6, 2005, by Ms. Karen Rimmer (hereinafter, "Rimmer") against Citifinancial, Inc. (hereinafter, "Citi") alleging that her satisfaction of her mortgage had been improperly recorded by Citi in violation of Ohio's civil statute, O.R.C. 5301.36. On January 25, 2006, Plaintiff filed her Motion for Class Certification. Rimmer seeks to represent a class of all persons who, from March 8, 1999, paid residential mortgages in full and Citi, among other named banks, did not file an entry of satisfaction of mortgage with the Cuyahoga County Recorder's office within ninety (90) days of loan payoff.

On January 22, 2007, this Court issued an opinion and ruling granting summary judgment to Rimmer on her individual claim against Citi and denying judgment to Citi. Without stating its reasons, this Court also denied Rimmer's Motion for Class Certification.

Both Rimmer and Citi appealed this Court's January 22, 2007, Order and on April 18, 2008, the Eighth District Court of Appeals of Ohio reversed and remanded the case back to this Court as to the issue of class certification, finding that, "Rimmer has met her burden of demonstrating the factual and legal prerequisites for class certification." The Court of Appeals further stated that, "A single adjudication as a class action is the most efficient and fair manner

by which to resolve the matter.” *Karen Rimmer v. Citifinancial, Inc.*, 2008-Ohio-1814, quoting *Schmidt v. Avco Corp.*, 15 Ohio St.3d 310.

On June 12, 2008, Citi filed its Notice of Appeal and Memorandum in Support of Jurisdiction to the Ohio Supreme Court. On September 22, 2009, the Ohio Supreme Court remanded the instant case back to the Court of Appeals for further consideration of its findings for class certification in view of its holdings in *Alexander v. Wells Fargo Financial Ohio 1, Inc.*, 122 Ohio St.3d 341, 2009-Ohio-2962. The Ohio Supreme Court, in the companion cases, *Alexander* and *Coleman*, held that arbitration provisions in loan documents apply to statutory claims for the late recording of mortgage satisfactions. *Alexander v. Wells Fargo Fin. Ohio 1, Inc.*, 122 Ohio St.3d 341, 2009-Ohio-2962, 911 N.E.2d 286.

On November 24, 2009, the Court of Appeals again remanded this case to this Court but with specific instructions “to determine whether the prerequisites of Civ.R. 23 have been satisfied, in light of *Alexander v. Wells Fargo Financial Services, Inc.*, 112 Ohio St.3d 341, 2009-Ohio-2962, and the fact that Plaintiff’s loan agreement does not contain an arbitration clause.”

This Court has reviewed all relevant law and based thereon finds that Plaintiff has satisfied by a preponderance of the evidence all prerequisites of Civil Rule 23 class certification.

LAW AND ANALYSIS

A trial judge must make seven (7) affirmative findings before a case may be certified as a class action. Two prerequisites are implicitly required by Civ. R. 23, while five others are specifically set forth therein. *Warner v. Waste Mgmt.*, 36 Ohio St. 3d, 91, 94, 521 N.E.2d 1091, 1998 Ohio LEXIS 114 (Ohio 1998). The following seven requirements must be satisfied before

an action may be maintained as a class action under Civ.R. 23: (1) an identifiable class must exist and the definition of the class must be unambiguous; (2) the named representatives must be members of the class; (3) the class must be so numerous that joinder of all members is impracticable; (4) there must be questions of law or fact common to the class; (5) the claims or defenses of the representative parties must be typical of the claims or defenses of the class; (6) the representative parties must fairly and adequately protect the interests of the class; and (7) one of the three Civ.R. 23(B) requirements must be met. *Hamilton v. Ohio Sav. Bank*, 82 Ohio St.3d 67, 71, 694 N.E.2d 442, 448 (1998). The Civil R. 23(B)(3) requirements in a damages action direct the court to find that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

This Court finds that all seven (7) prerequisites have been satisfied in the instant case.

1. IDENTIFIABLE CLASS

The proposed class easily identifies qualifying members and excludes those who do not qualify as the definition is unambiguous. The class description need only be definite enough for it to be feasible for the court to determine if someone is a member. *Hamilton v. Ohio Sav. Bank*, 82 Ohio St. 3d 67, 694 N.E.2d 442, 1998 Ohio LEXIS 1514. Put succinctly as to Rimmer's class, this class is anyone who, within a specified time, entered into and later paid off a mortgage where Citi was the mortgagee and Citi then failed to timely record satisfaction of the mortgage, where the parties did not agree to an arbitration clause. This is a well-defined, unambiguous and ascertainable class. These parameters eliminate potential claimants who satisfied loans before March 8, 1999, paid off loans with mortgagees other than Citi, had their satisfactions recorded properly or agreed to arbitrate disputes arising from their mortgage with Citi.

2. CLASS MEMBERSHIP

Plaintiff Karen Rimmer is clearly a member of the defined class, based on the pleadings and uncontroverted facts of this case. She satisfied a mortgage with Citi after March 8, 1999, Citi failed to timely record the fact of satisfaction as directed in O.R.C. 5301.36, and she and Citi had never entered into any clause agreeing to possible arbitration of disputes arising from the mortgage.

3. NUMEROSITY

Generally, if a proposed class has greater than forty members, the numerosity element is satisfied. *Warner, 36 Ohio St.3d 91, at 97*. Defendant's estimations conclude approximately 5,000 individuals qualify as falling into this class of Plaintiffs. This satisfies the requirement that the class is so numerous that joinder of all members is impracticable.

4. COMMONALITY

The Commonality prerequisite has been construed to require a common nucleus of operative facts. *Warner, 36 Ohio St.3d 91, at 97*. "Typically, the subdivision (a)(2) requirement is met without difficulty for the parties and very little time need be expended on it by the judge." *Id.* In this case at least one common question of law or fact exists as to this particular class. All Plaintiffs must show they entered into a mortgage agreement which they satisfied with Citi as the mortgagee. Citi has violated the relevant civil statute with regard to every Plaintiff in this particular class.

5. TYPICALITY

The typicality requirement has been found to be satisfied where there is no express conflict between the representatives and the class. *Warner, 36 Ohio St.3d 91, at 98*. Plaintiff Karen Rimmer's claim is identical and typical of the claims of all class members. There is no

express conflict between her and the class she poses to represent. She is a mortgagor in the same position and under the same circumstances as all remaining class members.

6. ADEQUATE REPRESENTATION

a. Adequacy of the Representatives

A representative is deemed adequate so long as his interest is not antagonistic to that of other class members. *Warner, 36 Ohio St.3d 91, at 98.* The court finds that Plaintiff Rimmer's interests are not antagonistic to those of the other class members, as all members are entitled to an identical \$250.00 award of damages for the statutory civil penalty committed by Citi. Plaintiff Rimmer would fairly and adequately protect the class' interests.

b. Adequacy of Counsel

This Court is aware of Plaintiff's Counsel's experience in dealing with class-action law. The Court finds Plaintiff's Counsel to be adequate.

7. CIVIL RULE 23 (B)

The Rule 23(B)(3) action is the so-called "damage action." *Warner, 36 Ohio St. 3d 95-96.* Rule 23(B)(3) requires two findings by the court: that the common questions predominate over questions affecting only individual members and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy. *Warner* at 96. In this case, allowing Ms. Rimmer's class to proceed by using a common adjudication would be highly efficient and economical, and clearly outweighs the difficulties and complexities of treating approximately 5,000 class members with an identical claim all individually.

CONCLUSION AND ORDER

Plaintiff Karen Rimmer's Motion for Class Certification, filed on 01/25/2006, is granted in part. The class certification shall only include those individuals with no arbitration clause contained within their mortgage.

In light of the Ohio Supreme Court's decision in *Alexander v. Wells Fargo Fin. Ohio 1, Inc.*, 122 Ohio St.3d 341, 2009-Ohio-2962, 911 N.E.2d 286, and the Eighth District Court of Appeals prior Journal Entry, dated 11/24/2009 as well as its Journal Entry and Opinion No. 89407, *Rimmer v. Citifinancial, Inc.*, 2008-Ohio-1814, dated 04/17/2008, reversing and remanding this Court's prior opinion of 01/10/2007 on the issue of class certification, and this Court's analysis outlined above, it is the holding of this Court that Plaintiff has met the prerequisites of Civ. R. 23, by a preponderance of the evidence, and a clearly defined class exists for purposes of class certification. The Court will view this action heretofore as a class action defining the class of Plaintiffs as:

All persons who from March 8, 1999 entered into a residential mortgage agreement (as defined by R.C. 5301.36) with Citifinancial, Inc. without entering into an arbitration provision agreement with Citifinancial, Inc. relating to disputes arising out of said mortgage agreement, and thereafter satisfied their obligation where CitiFinancial, Inc. (or any predecessor or other entity acquired or merged with, or otherwise now part of CitiFinancial, Inc., including any affiliates, subsidiaries, and/or related lending institutions) was the mortgagee at the time of satisfaction, and, for each such satisfied mortgage, Citifinancial, Inc. did not record the fact of the satisfaction in the appropriate county recorder's office and pay fees required for the recording within 90 days from the date of satisfaction.

IT IS HEREBY ORDERED THAT:

The named Plaintiff Karen Rimmer shall serve as the Class Representative.

Patrick J. Perotti and Dworken & Bernstein Co., L.P.A., along with Brian Ruschel, are appointed as, and shall serve as, Class Counsel.

IT IS FURTHER ORDERED that, under Civ. R. 23(C)(2), the defendant shall, by regular U.S. Mail, give written notice of the class certification in this case to each mortgagor as defined in the class definition. The Notice shall advise each class member that the Court will exclude them from the class if they file a written request for exclusion by a specific date; that the judgment, whether favorable or not, will include all class members who do not request exclusion; and that any class member who does not request exclusion, may, if they desire, enter an appearance through their own counsel.

IT IS FURTHER ORDERED that within 14 days of the date of journalization of this order, plaintiff's counsel shall submit a proposed Class Notice to defense counsel. The parties shall meet and confer on the language of the Notice, and within thirty days of the date of journalization of this Order, they shall file a joint report indicating that they are in agreement on the language of the notice, or listing specifically each area of disagreement by the defense with plaintiff's proposed notice (with alternate language proposed by the defense).

A Pretrial conference is hereby scheduled for April 25, 2013, at 10:00am, in Courtroom 23A to finalize the Notice and further set dates and deadlines for this matter. All counsel shall be present.

IT IS SO ORDERED.

March 8, 2013
DATE

Cassandra Collier Williams
JUDGE CASSANDRA COLLIER-WILLIAMS

RECEIVED FOR FILING

MAR 11 2013

CUYAHOGA COUNTY
CLERK OF COURTS
By [Signature] Deputy