

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 10-md-02193-RWZ

IN RE BANK OF AMERICA
HOME AFFORDABLE MODIFICATION PROGRAM (HAMP)
CONTRACT LITIGATION

MULTIDISTRICT LITIGATION

ORDER

July 11, 2012

ZOBEL, D.J.

On December 10, 2010, the United States Panel on Multidistrict Litigation transferred to this court from the Eastern District of Virginia a class action complaint for, among other claims, breach of contract under the Home Mortgage Affordable Modification Program (“HAMP”). Four of the six plaintiffs named therein now move for leave to file an amended complaint and request a suggestion of remand.¹ They assert that by the amended complaint they withdraw their class claims and seek only individual relief under the Fair Credit Reporting Act, 15 U.S.C. §1681s-2(b), the Real Estate Settlement Procedures Act, 12 U.S.C. §2605(e) and for breach of the covenant of good faith and fair dealing. Although the third claim alleges a course of conduct in the mortgage modification process of each plaintiff, all assert that their claims are

¹ Robert and Susan Brooking, Carrie Lee Arthur and Nicole Sharrett.

based not on breach of contract under HAMP, but on the covenant implied in every Virginia contract as described by Judge Spencer in Acuna v. Chase Home Finance, LLC, 3:10CV905, 2011 WL 1883089 (E.D.Va. May 17, 2011).

The parties agree that resolution of the motion is a matter of discretion. In exercising this discretion, I consider the following.

Defendant opposes the motion but points out, correctly, that the Third Amended Consolidated Class Action Complaint (Docket # 84) omits many causes of action alleged in several transferred cases, including that from the Eastern District of Virginia, and that it is unclear whether the omitted claims will ultimately survive.

Judge Stearns allowed a similar motion filed by the same counsel because “a plaintiff who does not wish to be a member of a class can hardly be deemed an adequate representative of that class as defined in R. 23(a).” In Re: JPMorganChase Mortgage Modification Litigation, 11-md-2290.

I understand plaintiffs’ motion and amended complaint to be their dismissal with prejudice of all claims for breach of contract under HAMP as pled in the Third Amended Consolidated Class Action Complaint and their consequent withdrawal from participation in any class that may be certified pursuant to that or any subsequent amended complaints in this litigation.

With that caveat, the motion of Brooking, et al., is ALLOWED and the court will file a suggestion of remand with the MDL Panel.

July 11, 2012

/s/Rya W. Zobel

DATE

RYA W. ZOBEL
UNITED STATES DISTRICT JUDGE