

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
OF FLORIDA, IN AND FOR PALM BEACH COUNTY

ARMANDO RIVAS
MILEDY RIVAS,
Plaintiff,
vs.

DOVENMUEHLE MORTGAGE, INC.,
NEXBANK CAPITAL, INC.,
Defendant(s).

Case No: 2023CA002380
Division: AA

**ORDER GRANTING DEFENDANTS DOVENMUEHLE MORTGAGE, INC. AND
NEXBANK CAPITAL, INC.’s MOTION TO DISMISS FOURTH AMENDED
COMPLAINT WITH PREJUDICE**

THIS CAUSE came before the Court for hearing on October 30, 2024 upon Defendants’ Dovenmuehle Mortgage, Inc. and Nexbank Capital, Inc. (“Defendants”) Motion to Dismiss Fourth Amended Complaint. Plaintiff, Miledy Rivas, appeared and argued in opposition to the Motion to Dismiss. Kathleen Achille, Esq. appeared on behalf of Defendants. The Court having reviewed and considered Defendants’ Motion to Dismiss, the Fourth Amended Verified Civil Complaint and all attachments, Plaintiff’s Opposition to Motion to Dismiss Fourth Amended Complaint, argument from counsel for the Defendants and from Plaintiff, Miledy Rivas, and the Court being otherwise fully advised of the premises, it is

ORDERED AND ADJUDGED as follows:

1. The Motion to Dismiss is **GRANTED**. The Fourth Amended Complaint is DISMISSED WITH PREJUDICE. The Fourth Amended Verified Civil Complaint fails to state a cause of action for several reasons and issues that have previously been argued and discussed with the Plaintiff as a basis to dismiss prior complaints, but remain as deficiencies in this fifth attempt for the Plaintiff to state a cause of action. There are numerous issues argued, discussed and considered among all the parties and the Court during hearings related to the

five motions to dismiss over the years. The Court will review a few of those issues that still remain with the Fourth Amended Complaint as examples.

2. From the beginning, and through all of the attempts to amend the complaint, it has been argued on behalf of the Defendants, and the Plaintiff(s) has been advised that the complaints fail to properly state standing of the Plaintiff(s). The original Complaint filed in March of 2023 was brought by Plaintiffs, Armando Rivas and Milady Rivas. It was argued and discussed that the Note and Mortgage at issue were signed by Milady Garcia as the borrower and LoanDepot.com, LLC as the lender. After several attempts at amending the complaints, Armando Rivas was eventually dismissed with prejudice from this lawsuit because he did not sign and was never a party to the Note or Mortgage at issue, and he has never properly alleged standing to attempt to bring any cause of action against these Defendants. As an aside, although the only Plaintiff in this lawsuit is Miledy A. Rivas, throughout the Fourth Amended Verified Complaint (including in the caption) there are only references to “Plaintiffs”, plural not singular. The Opposition to this Motion to Dismiss filed on behalf of the Plaintiff begins with “COMES NOW, plaintiff Armando Rivas and Miley Rivas, by and through its undersigned counsel...” It is unclear if Mr. and Mrs. Rivas are refusing to accept rulings of the Court that Armando Rivas is no longer a party to this lawsuit, or why the Fourth Amended Complaint continues to have “Plaintiffs” (plural) attempting to bring these claims.

Throughout the various pleadings and hearings, Defendants have also argued and provided notice that the named Plaintiff, Milady A. Rivas, did not sign the Note and Mortgage at issue and has never pled any facts of her standing in this name to attempt to bring the claims

in this lawsuit, rather than the borrower, Milady Garcia. The Fourth Amended Verified Civil Complaint still does not contain such allegations or explanation.

3. In the Fourth Amended Complaint, Plaintiff alleges that the original mortgage loan agreement with LoanDepot “was subsequently assigned to the Defendants”, but does not contain specifics of how and when there was an assignment, any documentation of an assignment, or reference to any evidence that the alleged loan servicer, Dovenmuehle Mortgage Inc. was actually assigned the loan. No specific allegations when this assignment occurred in relation to the alleged wrongdoing by the Defendants.
4. Each Defendant is entitled to have separate, specific allegations related to that Defendant, so that each Defendant is apprised of the claims and allegations each must defend, be it claims of direct or vicarious liability. The Plaintiff has never separated the allegations and claims between the two Defendants. The Plaintiff has never specifically alleged any factual allegation of what the Defendant, Nexbank Capital, Inc. has done or failed to do that is allegedly caused damage or injury to the Plaintiff. The Fourth Amended Complaint still continues to join both Defendants together in all three Counts without any specific allegations of what each Defendant has alleged to have done that caused damage to Plaintiff.
5. Count I Breach of Contract against both Defendants refers to the Note and Mortgage attached as exhibits, which exhibits do not contain the name of either Defendant, although it is generally alleged there is an assignment. There is an allegation that Defendants breached the Mortgage contract by improperly opening an escrow account and demanding additional payments for property taxes and insurance that were not part of the original contract. There are no specific allegations how the Plaintiff was damaged by this alleged

conduct. There are no allegations that the Plaintiff had to pay more than the proper amount for property taxes and insurance, or had to pay property taxes and insurance twice because the escrow account was opened. This Count I alleges “harassments” by Dovenmuehle that “forced” Plaintiff to refinance and “made” Plaintiff lose a low rate mortgage, but there are no specific facts to support these vague claims. Defendants are entitled to specific facts to support this type of allegations of intentional, harassing conduct, in addition to allegations of why Plaintiff was “forced” by either Defendant to take some action. The Fourth Amended Complaint general alleges this conduct was caused by both Defendants with no allegations relating to Defendant, Nexbank Capital, Inc. There is a claim for “emotional distress” in this Breach of Contract claim, and other claims for damages that are not explained to support a \$50 million demand for relief.

6. Count II is a stand-alone claim for “Unclean Hands” against both Defendants without specific allegations of fact to support this general claim against both Defendants together. More importantly, Plaintiff acknowledges that the “doctrine of unclean hands prevents a party from seeking equitable relief if they have acted in bad faith or engaged in inequitable conduct in relation to the matter at hand”, but asserts this as a separate Count for damages in the amount of an additional \$50 million, rather than as a defense to some claim or defense of a Defendant. There is not a sufficient basis in fact or law for the Plaintiff to be awarded damages for a claim of “Unclean Hands”.
7. Count III is a claim for tortious conduct against both Defendants. Plaintiff alleges that “tortious conduct includes negligence, intentional infliction of emotional distress, and other wrongful acts”, but is not clear what theory Plaintiff is proceeding with against both or either of the Defendants. There is an allegation of both Defendants “deliberately causing

emotional distress and financial harm to the plaintiffs [sic] through their negligent handling of the mortgage account”. There are allegations of “misapplying payments, falsely reporting delinquencies, and increasing mortgage payments” with no specific description of which Defendant exactly did what and when, or any basic facts alleged in any form of explanation (what happened when and by whom) for either Defendant to understand and meet these allegations. These allegations are in paragraph 19 of the Fourth Amended Complaint and that paragraph refers to “exhibit ten”, but the Court does not find an exhibit 10 attached to the Fourth Amended Complaint. The basis for damages and how damages may be calculated are not explained or documented, although all three Counts in the Fourth Amended Complaint each seek an award of \$50 million.

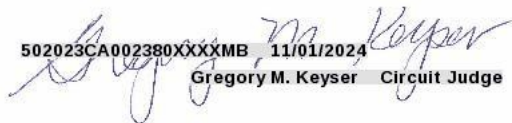
8. As has been argued several times by counsel for the Defendants in arguments related to prior motions to dismiss, the Plaintiff needs to plead specific facts, conduct, who committed the misconduct, under what circumstances, and what was done to support allegations of intentional actions by Defendants. It has been argued in prior motions to dismiss that damages need to be identified and explained in the complaint, but sufficient specificity is lacking, especially to support an award of \$50 million in each Count.
9. From the beginning, the Defendants complained that no documents were attached to the original Complaint that would support the Plaintiff’s allegations and be relied on by the Plaintiff, which documents would potentially help explain the Plaintiff’s allegations of wrongdoing against each Defendant. Through the various amended complaints, documents have been attached, but are often confusing, unclear and insufficient to explain or support the allegations against the Defendants or the relief sought. As an example of this problem that continues, this Fourth Amended Complaint attaches what are identified as exhibits 3,

4, 5, 6, 7, 8 and 9. However, the Fourth Amended Complaint only refers to exhibits 3, 4 and 5, and makes no reference the Court can see to exhibits 6, 7, 8 or 9. Again, the Fourth Amended Complaint refers to exhibit 10, but the Court did not find an exhibit 10 attached to the Fourth Amended Complaint.

10. The above described are examples of how the Court finds the Fourth Amended Complaint has not corrected deficiencies in pleading that have been argued by the Defendants as a basis to dismiss prior complaints, or discussed by the Court at those hearings as necessary to plead a cause of action that the Defendants can understand and respond to. The Court finds that the Fourth Amended Complaint does not contain sufficient specific allegations for either of these Defendants to adequately understand the claims against them individually, properly plead a response to those allegations, and to form their affirmative defenses. Time and effort has been spent by everyone involved through this process of the Plaintiff attempting to state a cause of action in this fifth attempt at an appropriate complaint. The Court does not find that the Defendants should be required to go through expensive and timely depositions and other discovery to try to adequately understand the Plaintiff's claims against each of them. From all of the complaints that have been filed to date, including this Fourth Amended Complaint, the Defendant, Nexbank Capital, Inc. at this point would be at the very beginning of trying to discover and understand the basics of what Nexbank was alleged to have done wrong with regard to the Plaintiff, or what legal theory Plaintiff is trying to pursue for alleged liability of Nexbank. There is no document generated by Nexbank ever attached to any of the complaints or referred to in a complaint, and no specific factual allegations of Nexbank committing any wrongful act or having any direct contact with the Plaintiff.

11. The Court finds that because of the history of the Plaintiff trying to state a cause of action in this case since the lawsuit was first filed in March of 2023 to the point where it is now November of 2024, and the Court finding the Fourth Amended Complaint still does not sufficiently state a cause of action against either Defendant, it is appropriate that the Fourth Amended Complaint is dismissed with prejudice. The Court finds reasonable accommodation has been made to Mr. and Mrs. Revas over the last 20 months or so to provide an opportunity for the Plaintiff to state an appropriate cause of action against these Defendants. The Plaintiff was on notice that this Fourth Amended Complaint would be the last opportunity to attempt to amend the complaint to properly state a cause of action. In the last order granting the Defendants' Motion to Dismiss the Third Amended Complaint filed on July 12, 2024, that order included a statement that "the Fourth Amended Complaint shall be filed on or before August 12, 2024. There shall be no further leave to amend". Even though the Fourth Amended Complaint was filed on September 18, 2024, a month late, this order of dismissal is because the Court finds the allegations in the Fourth Amended Complaint do not properly state a cause of action against either Defendant.

DONE AND ORDERED in Palm Beach County, Florida.


502023CA002380XXXMB 11/01/2024
Gregory M. Keyser Circuit Judge

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Gregory M. Keyser
Circuit Judge

Copies furnished to all parties on the attached service list.
6180-191854 / KA.

SERVICE LIST

Case No. 2023CA002380

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