

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 51

BC659293

SUN WEST MORTGAGE CO INC VS FIRST ALLIANCE

HOME MORTGAGE LLC

July 29, 2019

4:00 PM

Judge: Honorable Dennis J. Landin

Judicial Assistant: J. Clavero

Courtroom Assistant: A. Alba

CSR: None

ERM: None

Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): No Appearances

For Defendant(s): No Appearances

NATURE OF PROCEEDINGS: Ruling on Submitted Matter

Tentative Decision

The Court has read and considered the post-trial briefs following a one day trial on May 29, 2019, and finds as follows:

While the Exhibit 3-1 suggests that Sun West may have engaged in an underwriting function, the balance of the evidence shows that it was only First Alliance that served as the underwriter relative to the subject loan. This is based on the other exhibits presented at trial as well as Mr. Helm's testimony, which the Court finds to be credible and reasonable. And even if Sun West personnel were engaged in tasks similar to those of an underwriter, they were not given information about the borrower's insufficient cash reserves until the time of closing. Therefore, the contract provision that First Alliance seeks to invoke to avoid repurchasing the loan, i.e. that when Sun West makes a mistake, First Alliance is relieved of its repurchase obligation, is not applicable.

In addition, the Court finds that there were two other reasons First Alliance was required to buy back the loan: the loan was ineligible for purchase (by Fannie Mae) and the failure to cure a breach within ten days.

Although the defense argues otherwise, the plaintiff clearly has been damaged because it had to repurchase the loan from Fannie Mae as a result of its contract with that entity. And its contract with First Alliance is clear that such payments, as well as attorney fees and other costs, could be passed on to First Alliance.

Defendant's argument that plaintiff's did not sufficiently attempt to mitigate the damages is unpersuasive. First of all, according to the terms of the contract, Sun West was not obliged to sell

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the loan on the open market. In addition, it made efforts to convince Fannie Mae to keep the loan. In particular, it sought further documentation from First Alliance to rectify the deficiency, but such documentation was never produced by First Alliance. Also, Sun West proposed a “lender credit” to Fannie Mae to reduce the risk. Hence, plaintiff did all it was required to do under the law.

The Court further finds that the proffered defenses of unconscionability and breach of implied warranty of good faith and fair dealing are forfeited because they were not previously asserted. In any event, there is insufficient evidence to support such defenses, as well as the doctrines of equitable estoppel and the unclean hands defense.

Accordingly, as to the first cause of action for breach of contract and the second cause of action for indemnity, the court finds in favor of the Plaintiff and against the Defendant. The Plaintiff will be awarded \$73,077.13, pre-judgment interest, costs of suit and reasonable attorney fees. The Plaintiff is ordered to provide documentation for the Court to determine a reasonable amount of attorney fees within twenty (20) days. Also, the parties are ordered to meet and confer to determine how and when the subject loan will be returned to the defendant and what credit against the judgment, if any, should be allowed given that payments on the loan have been made.

Non-Appearance Case Review Re: Documentation to determine amount of attorney fees is scheduled for 08/20/2019 at 08:30 AM in Department 51 at Stanley Mosk Courthouse.

Clerk is to give notice.

Certificate of Mailing is attached.