

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

AURELIO R. FELICIANO, et al.,

Plaintiffs,

v.

Case No.: 5:08-cv-00327-Orl-35-DAB

GINN REAL ESTATE COMPANY, LLC, et al.,

Defendants.

ORDER

THIS CAUSE comes before the Court on Plaintiffs' Corrected Motion for Leave to File a Second Amended Complaint (Dkt. 152) In a Court Order on June 19, 2009, this Court rejected Plaintiffs' proposed Second Amended Complaint due to numerous deficiencies and directed Plaintiffs to re-file a version of the Second Amended Complaint that cured the deficiencies by July 9, 2009. (Dkt. 149) Plaintiffs failed to cure the deficiencies by the deadline, thus the motion is **DENIED**.

I. Background

On June 19, 2009, this Court ruled that Plaintiffs' Amended Complaint (Dkt. 2) and proposed Second Amended Complaint (Dkt. 120-1) failed to satisfy basic pleading requirements. (Dkt. 149) This Court determined that Plaintiffs' pleadings were deficient because they: "(1) [failed] to plead fraud and misrepresentation with particularity; (b) improper[ly] joined] Plaintiffs and Defendants; (c) [pleaded] conclusory elemental allegations rather than facts in support of the various claims being asserted; and (d) [failed] to plead facts specific to each Defendant, as necessary to permit an answer

responsive to facts alleged against that Defendant.” (Id. at 1-2). In rejecting Plaintiff’s proposed Second Amended Complaint, this Court explained to Plaintiff that

any newly proposed complaint or complaints: (i) shall properly segregate the respective parties; (ii) shall allege facts specific to the claims asserted, and (iii) if grounded in fraud or misrepresentation, shall plead with particularity facts sufficient to establish the elements of fraud and to set forth the basis for a claim of misrepresentation, and . . . [in the event Plaintiff decided to re-file the proposed Amended Complaint,] they shall present, **within twenty (20) days from the date of entry of this Order**, such newly proposed second amended complaint(s) to the Court along with a proper motion for leave to file and serve such complaints(s)

(Id. at 3-4) (emphasis in original). Plaintiff has failed to comply with any portion of this Court’s Order and for the following reasons, the Court hereby **DENIES** Plaintiffs’ motion.

II. Analysis

a. Plaintiffs’ Filing is Not Timely

Instead of denying Plaintiffs’ first version of the proposed Second Amended Complaint outright, this Court gave Plaintiffs the opportunity to cure the deficiencies and re-file within a certain time period. Plaintiffs filed the new version of the proposed Second Amended Complaint on July 13, 2009 – four days after the July 9, 2009 deadline. (Dkt. 152)

On July 9, 2009, Plaintiffs filed an incomplete motion and stated that they “reasonably believe[d]” the proposed Second Amended Complaint complied with the Court’s order (Dkt. 151 at 3), but later admitted that the version of the complaint was “a recycled memorandum which failed to adequately address this Court’s concerns.” (Dkt. 152) A review of the docket reveals that Plaintiffs did not file a motion for extension of time to re-file the response. Thus, Plaintiff’s motion is not timely filed.

b. Plaintiffs Continue Improperly to Join 128 Plaintiffs In a Single, Massive and Unwieldy Complaint

Plaintiffs failed to cure the deficiency outlined by this Court in (Dkt. 149), with respect to the joinder of Plaintiffs. As this Court pointed out in its Order, persons may join as plaintiffs in a single action if the harm alleged arises out of “the same transaction, occurrence, or series of transactions or occurrences” and a “question of law or fact common to all plaintiffs will arise in the action.” Fed. R. Civ. P. 20(a).

Plaintiffs’ proposed Second Amended Complaint still contains almost 130 plaintiffs, and the allegations set forth in the proposed complaint suggest that the Plaintiffs were engaged in transactions involving several different parties, different lending institutions, different properties located in different geographical areas, and different transactions closing at different dates/times. This Court is of the opinion now, as it was on June 19, 2009, that Plaintiffs’ basis for their joinder or “consolidation” in this single action “is neither facially apparent nor sufficiently established in the existing or proposed amended pleadings.” (Dkt. 149 at 3).

c. Plaintiff Has Failed To Comply With Fed. R. Civ. P. 9(b) Specificity Requirements

In the proposed Second Amended Complaint, Plaintiffs fail to plea their fraud and misrepresentation causes of action with specificity and contend that their claims under the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), Fla. Stat. §501.201 et seq., and the Interstate Land Sales Full Disclosure Act (“ILSFDA”), 15 U.S.C. 1701 are exempt from the Rule 9(b) fraud requirements. (Dkt. 152) The Court disagrees. “Most courts construing claims alleging violations of the Federal Deceptive Trade Practices Act or its state counterparts have required the heightened pleading standard requirements of Rule 9(b).” Metis v. Park Square Enters., 2009 U.S. Dist. LEXIS 24406,

at *5-6 (M.D. Fla. January 21, 2009) (citing Stires v. Carnival Corp., 243 F. Supp. 2d 1313, 1322 (M.D. Fla. 2002)). "In light of this trend, claims arising under the FDUTPA must be pled with particularity." Metis, 2009 U.S. Dist. LEXIS 24406, at *6 (citing Fla. Digital Network v. N. Telecom. Inc., 2006 U.S. Dist. LEXIS 61983, at *14 (M.D. Fla. August 30, 2006)). Moreover, "[b]ecause [ILSFDA] generally proscribes certain unfair and deceptive trade practices, a violation of [ILSFDA] is a violation of the FDUTPA as well." Metis, 2009 U.S. Dist. LEXIS 24406, at *6 (citing Trotta v. Lighthouse Point Land Co., LLC, 551 F. Supp. 2d 1359, 1367 (S.D. Fla. 2008) (internal citations omitted), *abrogated on other grounds by* Pugliese v. Pukka Dev., Inc., 550 F.3d 1299 (11th Cir. 2008)). Therefore, Plaintiffs' proposed Second Amended Complaint is rejected for Plaintiff's failure to plead with particularity facts sufficient to establish the elements of fraud and to set forth the basis for a claim of misrepresentation.

Accordingly, upon consideration of the foregoing, it is hereby **ORDERED** that

1. the Plaintiffs' Motion for Leave to File a Second Amended Complaint (Dkt. 152) is **DENIED**;
2. Defendant Century 21 Professional Group, Inc.'s Motion to Drop Party and Alternative Motion to Strike From Certificate of Service (Dkt. 206) is **DENIED as moot**;
3. this case is **DISMISSED without prejudice**; and
4. the **CLERK** is directed to **TERMINATE** all pending motions and **CLOSE** this case.

DONE and **ORDERED** in Orlando, Florida, on this 4th day of June 2010.



MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record
Any Unrepresented Party