

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

MIKAYLA GREGORY,

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Plaintiff,

v.

Civil Action No. 20-C-164

TOLER APPRAISAL GROUP, LLC, and
GATEWAY MORTGAGE GROUP, LLP,

Defendants.

THIRD AMENDED CLASS ACTION COMPLAINT

COMES NOW the Plaintiff, Mikayla Gregory, by counsel, who, brings this action in her own right and as representative of a class of persons similarly situated.

Introduction

1. This is a civil action seeking monetary damages, equitable and statutory relief from Gateway Mortgage Group, LLC, (“Gateway Mortgage”), arising from its illegal and/or predatory lending practices on a class-wide basis and Defendant, Toler Appraisal Group, LLC (“TAG”) on an individual claim.

2. The U.S. Department of the Treasury has defined predatory lending as “engaging in deception or fraud, manipulating the borrower through aggressive sales tactics, or taking unfair advantage of a borrower’s lack of understanding about loan terms...that, alone or in combination, are abusive or make the borrower more vulnerable to abusive practice.”

Parties

3. Plaintiff:

(a) Plaintiff Mikayla Gregory resides at 187 Pine Run Road, Summersville, West Virginia.



4. Appraiser Defendant: Defendant TAG is a West Virginia LLC providing real estate appraisal services and at all relevant times was licensed to do business in the state of West Virginia with its address at 330 Harper Park Dr. # G, Beckley, West Virginia 25801. TAG may be served at the same address upon its member and agent, Christopher R. Toler.

5. Lender: Defendant Gateway Mortgage is the originating lender, as well as the current loan servicer of the subject consumer loan. Its primary place of business is 244 South Gateway Place, Jenkins, Oklahoma 74037, and it does business nationwide, including West Virginia. Service may be completed upon its agent, Corporation Service Company, 209 West Washington Street, Charleston, West Virginia 25302

Facts

6. In 2018, Plaintiff's ex-husband, Roger Allen Gregory, Jr. and Gateway Mortgage were discussing a possible refinance of Mr. Gregory's existing residential mortgage loan.

7. At that time, Mr. Gregory owned the real property at issue here separate and apart from his wife, the Plaintiff Mikayla Gregory. The property was obtained and a structure constructed by Roger Gregory prior to his marriage to Mikayla. The subject property is commonly known by the address: 272 Heavenly Lane, Summersville, WV 26651.

8. Defendants Gateway Mortgage and TAG, among others including Roger Allen Gregory, Jr., collectively acted to induce Ms. Gregory to take a legal interest in the subject property and utilize her Veteran Association credentials as an active duty member of the military in order to originate the subject mortgage loan, which as described below was detrimental to her interests.

9. Appraiser Defendant issued a report with an effective date of April 4, 2018 that assigned an appraised value of \$225,000 to the subject property.

10. To underscore the deficient lending process, the appraisal is inaccurate due to one or more of the following: (1) the home or structure described in the appraisal, to the extent the claims of Mr. Gregory as describe below are true, is not located within the boundaries of the land pledged as collateral; (2) the amount of acreage for the subject property is materially overstated by the appraiser; (3) the appraiser's sales comparison approach failed to account for differences between the subject property and comparable sales 1 & 2 through proper adjustments and comparable sale 3 should not have been selected by the appraiser as it is not comparable; and (4) other errors, defects or omissions within the appraisal report. The appraisal is neither bona fide nor in compliance with uniform standards of professional appraisal practice

11. Gateway failed to appropriately and meaningfully review and underwrite the appraisal consistent with industry standards.

12. Through this appraisal, Defendants were able to misrepresent the market value of the Plaintiff's property to the Plaintiff upon which she materially and justifiably relied to her detriment.

13. Lender's employees and agents acting at its direction performed the necessary deed, title and legal work to complete and close the subject loan transaction. Lender is liable for the acts and omissions of all of its agents used to complete and close the subject loan transaction.

14. In reliance on the appraisal and various representations of the Lender, the Plaintiff executed a promissory note in the principal sum of \$230,400 on April 24, 2018. The note was secured by a deed of trust on property Plaintiff purportedly owned in favor of Gateway Mortgage.

15. Without the home, the subject property has a true market value of only a fraction of the loan amount. The proximate value would also be materially less with the proper acreage accounted for. The Plaintiff did not begin to discover the inflated appraised value or any land

discrepancy until Roger Allen Gregory, Jr. began making suspect references to the property in 2019 during the course of the Gregory's separation and divorce.

16. In fact, Roger Allen Gregory, Jr. represented to the Family Court that "marital home is not on the land owned by the parties," and the Family Court ordered that the property be surveyed before completing equitable distribution.

17. The survey obtained indicates that the home is indeed located within the boundaries of the subject property. However, it indicates that the acreage reflected in the subject appraisal was materially inflated. Mikayla Gregory does not have sufficient information at present to know whether this survey is accurate or not.

18. According to Mr. Gregory, the property that Mikayla Gregory believed was her home is actually owned by Roger Allen Gregory, Jr.'s grandparents.

19. Even if one assumes the improvements are within the boundaries of the subject real estate and those boundaries equal approximately 1.8 acres, the fair market value of the subject property as of April 4, 2018 is \$198,000 opposed to \$225,000. In other words, the subject appraisal was inflated by at least \$27,000.

20. Roger Allen Gregory Jr. has filed for Chapter 13 bankruptcy protection and, in doing so, he described the subject property as only unimproved land with a value of \$5,000.

20. Defendants had a duty to perform a reasonably diligent search of public records, which upon information and belief, alerted or should have alerted those with professional expertise to a problem and the unfair nature of this transaction.

21. Even if the home-structure is in reality located within the bounds of the secured property, as it should be, the loan at issue is still in violation of statute as it far exceeds the fair market value of the secured property.

22. The appraisal that Mr. Toler prepared at the request of Gateway Mortgage was for \$225,000, but a security interest was taken for \$230,400 in direct and willful violation of W.Va. Code 31-17-8(m)(8).

23. Had acceptable and standard application, approval, underwriting and closing practices been followed, the subject loan could not have justifiably been made.

24. As a result of the subject mortgage transaction, the Plaintiff unknowingly entered into an upside-down mortgage transaction and has suffered finance charges, economic losses, annoyance, inconvenience and other damages.

25. Since entering into the mortgage agreement, Plaintiff Mikayla Gregory has divorced from Roger Gregory and moved away from the subject property that is commonly known by the address: 272 Heavenly Lane, Summersville, WV 26651.

26. The December 2, 2019 divorce order recognized that Mikayla Gregory separated from her husband in December 2018, less than a year after finalizing the Gateway loan.

27. The Divorce Order ordered Mikayla Gregory to vacate the marital home within 30 days of the order.

28. After Mikayla Gregory vacated the home, her ex-husband was awarded sole and exclusive use, ownership and possession of the home located at 272 Heavenly Lane, Summersville, West Virginia and exclusive liability for the payment of any mortgage indebtedness, taxes, and utilities. Roger Gregory was to save, indemnify and hold the respondent harmless for payment of the mortgage.

29. Despite being ordered by the Family Court to vacate the home, the Family Court did NOT require Roger Gregory to refinance the house and instead only ordered Roger Gregory to “timely make all payments so [Mikayla Gregory]’s credit will not be harmed.”

30. Upon information and belief, Roger Gregory attempted to modify the subject loan with Defendant Gateway. Defendant Gateway has refused to modify the loan to remove Mikayla Gregory from being personally obligated on the loan.

31. Plaintiff Mikayla Gregory has no desire to ever return to the subject property at 272 Heavenly Lane, Summersville, WV 26651. She intends to fully abide by her divorce decree and recognizes Roger Gregory as the owner subject to any legally existing lien.

32. Accordingly, Mikayla Gregory has no interest in the title to the subject property and is not in any way resisting foreclosure through this action or otherwise.

33. Plaintiff Mikayla Gregory expressly disclaims any right to enjoin any actions Defendant Gateway may take to obtain title to the subject property at 272 Heavenly Lane, Summersville, WV 26651.

34. Although Mikayla Gregory has been ordered to vacate 272 Heavenly Lane and her ex-husband has been given exclusive use and possession of the home, Mikayla Gregory remains obligated to repay Gateway Mortgage under the terms of the promissory note. Through this action, Mikayla Gregory seeks relief from said personal obligation and to have the promissory note inasmuch as it pertains to her canceled.

35. If Gateway Mortgage wished to do right by its customer, in light of the circumstances, it would have released Mikayla Gregory from any personal obligation on the loan and sought relief through foreclosure of the property (to which Mikayla Gregory would consent if so requested) and solely against Roger Gregory.

Additional Facts Pertaining to Class Action Claim For Violating Appraiser Independence

36. Gateway Mortgage has systematically sought to influence appraisers to provide appraised values to support higher loan amounts.

37. One of the ways Gateway Mortgage has sought to influence appraisers is to provide the appraisers with the proposed loan amounts on appraisal request forms before the appraisers provide their appraisal reports.

38. As part of the loan financing, Toler Appraisal Group, LLC (“TAG”) was contacted directly by Gateway Mortgage to perform a residential real estate appraisal.

39. The appraisal request form, labeled VA Request for Determination of Reasonable Value, sent by Gateway Mortgage to TAG, expressly included a “Refinancing Amount of Proposed Loan.”

40. By this point, as matter of industry best practices and, moreover, federal and state law, it was well established that any suggestion of value, including proposed loan amounts, are not permitted to be communicated to an appraiser performing an independent valuation of a collateral property in a refinance transaction.

41. The practice of influencing appraisers has long been condemned by regulators, government agencies, the Appraisal Foundation, and others.

42. In *Brown v. Quicken Loans, Inc., et al.*, Civil Action No. 08-C-36 (Cir. Ct. of Ohio County) (Recht, J.), the Court determined that such a practice is contrary to the common law and consumer protection statutes of West Virginia, and concluded that “[n]o legitimate purpose is served by providing an appraiser with an estimated value of a property. The only purpose could be to inflate the true value of the property.”

43. In 2009, the mortgage industry adopted the Home Valuation Code of Conduct, which prohibited lenders and their appraisal management companies from “providing to an

appraiser an anticipated, estimated, encouraged, or desired value for a subject property or a proposed or target amount to be loaned to the borrower.”

44. These and unfair tactics like them culminated in the financial meltdown of the housing industry, and ushered in a new wave of federal legislation, including the Dodd-Frank Act that was signed into law by President Obama on July 21, 2010.

45. In pertinent part, the Dodd-Frank Act amended the Truth in Lending Act, 15 U.S.C. § 1631 *et seq.* (“TILA”), by adding Section 1639e (appraisal independence requirements), which provides, *inter alia*, that it is unlawful to “engage in any act or practice that violates appraisal independence,” including “seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of the transaction[.]” *See* 15 U.S.C. § 1639e (2010).

46. Revised interagency guidelines followed:

An institution’s policies and procedures should ensure that it avoids inappropriate actions that would compromise the independence of the collateral valuation function, including:

- Communicating a predetermined, expected, or qualifying estimate of value, or a loan amount or target loan-to-value ratio to an appraiser or person performing an evaluation. 75 Fed. Reg. 77450, 77457

47. To obtain a mortgage, a borrower is required to pay the cost of the appraisal. Gateway charged borrowers, including the Plaintiff, for the appraisal cost, but did not inform them of its efforts to influence the appraisal by passing on loan amounts to purportedly independent appraisers.

48. Gateway Mortgage’s actions in compromising the integrity of the appraisal process rendered the appraisals unreliable and worthless.

49. Upon information and belief, Gateway followed its standard unlawful practice of sending appraisers an appraisal request form that included a proposed loan amount on numerous VA loans – an act which is clearly forbidden in the industry.

50. Plaintiff did not begin to discover this misconduct until she obtained discovery of the appraisal request form by responses dated April 15, 2021 from Defendant TAG.

51. Plaintiff Mikayla Gregory and the putative class have suffered actual harm as the appraisals they paid for have been contaminated by Defendant Gateway's illegal process. As such, they did not receive the benefits of their bargain.

Class Action Allegations

52. Plaintiff brings this action on her own behalf, and on behalf of all other similarly situated individuals, under Rule 23(b)(3) of the West Virginia Rules of Civil Procedure.

53. The proposed nationwide class is tentatively defined as:

All residential mortgage borrowers who, within the applicable statute of limitations preceding the filing of this action through the date of class certification, obtained mortgage loans from Defendant Gateway, and for whom Gateway Mortgage obtained appraisals through an appraisal request form that included a proposed loan amount or estimate of value for the collateral residential property.

54. The requirements of Rule 23 are satisfied.

55. The classes are so numerous that joinder of all members is impracticable.

56. There are questions of law and fact common to all members of the class.

57. The named Plaintiff's claims are typical of those of the class as a whole.

58. The Plaintiff has displayed an interest in vindicating the rights of the class members, will fairly and adequately protect and represent the interest of the class, and are represented by skillful and knowledgeable counsel. The relief sought by the named Plaintiff will inure to the benefit of the class generally.

59. The common questions of law and fact predominate over individual questions, and the class action device is superior to other available methods for the fair and efficient adjudication of the controversy.

COUNT I

Illegal Loan in Excess of Fair Market Value of Residential Property (Individual Claim)

60. Plaintiff incorporates herein each allegation in this Complaint.

61. The Defendant Gateway closed the subject loan transaction with the Plaintiff that exceeded the fair market value of her residential property in violation of W.Va. Code § 31-17-8(m)(8).

62. Defendant cannot meet its burden of establishing the elements of the affirmative defense set forth in W.Va. Code § 31-17-8(m)(8), as the appraisal at issue does not reflect an independent valuation, was not bona fide and does not conform to the Uniform Standards of Professional Appraisal Practice (“USPAP”).

63. The subject loan was willfully closed in excess of the fair market value of the subject residential property in violation of W.Va. Code § 31-17-8(m)(8).

64. As a direct and proximate result of this violation, the Plaintiff is entitled to the following statutory relief: actual damages as described herein; restitution of loan payments and costs; to have the loan canceled and declared void; and to attorneys’ fees and litigation costs under W.Va. Code § 31-17-17.

COUNT II (Individual Claim)

Breach of Professional Standards and Negligence

65. Plaintiff incorporates herein each allegation in this Complaint.

66. Appraiser Defendant breached the standards for professional practice in violation of W.Va. Code § 30-38-17.

67. In addition, or in the alternative, Appraiser Defendant breached the duty of care that is required in the appraisal industry, by negligently issuing an erroneous appraisal report upon which the parties relied.

68. The Plaintiff was damaged as a direct and proximate result of the above-described conduct.

69. Plaintiff is entitled to compensatory damages as herein described and is further entitled to a civil penalty pursuant to W.Va. Code § 30-38-15(c).

70. Plaintiff is further entitled to the reasonable attorney fees and litigation costs incurred in this action.

COUNT III

Truth-In-Lending Violation, 15 USC 1639e (Class Claim)

71. The foregoing allegations are each re-alleged as though set forth here fully.

72. On or about April 24, 2018, Plaintiff entered into a consumer credit transaction with Gateway Mortgage, in which the extended consumer credit was subject to a finance charge and which was initially payable to Gateway Mortgage.

73. As part of this transaction, Gateway Mortgage retained a security interest in the premises located at 272 Heavenly Lane, Summersville, WV 26651, which at the time was used as the principal dwelling of the Plaintiff.

74. The Truth in Lending Act, 15 U.S.C. § 1639e makes it “unlawful, in extending credit or in providing any services for a consumer credit transaction secured by the principal dwelling of the consumer, to engage in any act or practice that violates appraisal independence as described in or pursuant to regulations prescribed under this section.”

75. §1639e(b)(3) states that “seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of the transaction” is unlawful.

76. The accompanying regulations make clear that the act of a loan originator, such as Gateway Mortgage, communicating a proposed loan amount to an appraiser constitutes “seeking to influence an appraiser” and is prohibited.

77. Upon information and belief, Gateway Mortgage systematically communicated proposed loan amounts to appraisers.

78. As a result of such violations, Defendant Gateway is subject to the civil enforcement provisions of 15 U.S.C. § 1640 and the penalty provisions of 1639e(k).

79. As a result of such violations, pursuant to 15 U.S.C. § 1640(a), Gateway Mortgage is liable to the Plaintiff and class members for:

- a. Actual damages or restitution of the appraisal fees;
- b. Statutory damages of not more than \$4,000 per class member and in such amount as the court may allow with the total recovery under subparagraph (B) of 15 U.S.C. § 1640(a)(2) not be more than the lesser of \$1,000,000 or 1 per centum of the net worth of the creditor; and
- c. Reasonable attorney fees and costs of litigation.

RELIEF SOUGHT

Unless otherwise specified, Plaintiff, on her own behalf and on behalf of the proposed Plaintiff Class, seeks the following relief:

- a. Certification of the proposed class;
- b. Judgment on all counts, together with an award of all requested relief;
- c. Injunctive relief ordering the Defendant to cease violating established standards of appraisal independence;

- d. Actual damages;
- e. Restitution of all appraisal fees paid by the Plaintiff and class members;
- f. Attorneys' fees and costs;
- g. The additional individual relief requested herein;
- h. Pre- and post-judgment interest; and
- i. All other appropriate relief.

THE PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.

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