

Reynolds v. CFX

CV-98-649-M 09/23/99

UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

David C. and Kathryn Reynolds, Individually  
and as Shareholders and Principals of  
Misfits, Inc., a/k/a Craney Hill Restaurant  
& Lounge, Gas Pump Alley, Inc.,  
and Dave and Kay Leasing, LLC,  
Plaintiffs

v.

Civil No. 98-649-M

CFX Mortgage, Inc., CFX Bank, and  
Bank of New Hampshire Corporation,  
Defendants

**O R D E R**

Having carefully considered the Magistrate Judge's Report and Recommendation (document no. 25), plaintiffs' objections (document no. 32), the argument of counsel and exhibits offered at the supplemental hearing (Order, document no. 31), and having reviewed de novo those portions of the report's findings and recommendations to which objection has been made, I hereby accept and approve the Report and Recommendation for the reasons set forth therein, and discussed below.

The supplemental exhibits filed do not assist plaintiff, for there is no evidence suggesting either that the defendant bank had knowledge of the imminent noncompliant character of the fuel tanks or that it somehow orchestrated the loan assumption by unqualified borrowers in order to obtain some advantage. The

assumed loan (the major debt at issue) was already guaranteed by the Small Business Administration and the bank's appraiser reported to the bank before closing that "According to the State, he subject's gasoline tanks were installed in 1981; therefore, the tanks need to be replaced no later than the year 2006." Defendant's Exhibit A (*id.*), Real Estate Appraisal, Craig A. Nichols, at 6. The record does not provide an evidentiary basis for attributing different knowledge about the tanks to the bank. And, plaintiffs' vague suggestion that the bank was motivated to unfairly induce them to assume the seller's loan on the property in order to avoid possible bank liability for environmentally contaminated property is also not supported by evidence of record and is entirely speculative. All of which removes any doubt about the Magistrate Judge's determination.

Finally, I note that the Magistrate Judge requested the parties to brief the question of federal jurisdiction. There is no motion to dismiss for lack of jurisdiction pending, but the court has a *sua sponte* duty to assure itself that jurisdiction exists. Plaintiffs argument - that their ostensible federal claims are at least sufficiently well-pled to support an initial jurisdictional assessment - is weak but plausible enough at this stage. However, should the federal claims meet with pretrial disposition, the state claims will likely be dismissed without

prejudice. See e.g., Camelio v. American Federation, et al., 137 F.3d 666 (1st Cir. 1998) (if court dismisses foundational federal claims it should ordinarily decline supplemental jurisdiction over state claims).

#### Conclusion

The Application for Preliminary Injunction to Enjoin Foreclosure (document no. 12) is denied, for the reasons set forth in the Magistrate Judge's Report and Recommendation (document no. 25) and in this Order.

**SO ORDERED.**

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Steven J. McAuliffe  
United States District Judge

September 23, 1999

cc: Stephen H. Roberts, Esq.  
John D. Frumer, Esq.  
William S. Gannon, Esq.