

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
GORDON D SCHABER COURTHOUSE

MINUTE ORDER

DATE: 12/21/2012

TIME: 01:30:00 PM

DEPT: 36

JUDICIAL OFFICER PRESIDING: Gerrit Wood

CLERK: B. Frates

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: T. Venkus

CASE NO: **34-2012-00130191-CU-BT-GDS** CASE INIT.DATE: 08/16/2012

CASE TITLE: **Amankonah vs. Bank of America NA**

CASE CATEGORY: Civil - Unlimited

EVENT ID/DOCUMENT ID: ,9277428

EVENT TYPE: Hearing on Demurrer - Civil Law and Motion - Demurrer/JOP

MOVING PARTY: Bank of America NA

CAUSAL DOCUMENT/DATE FILED: Demurrer, 10/31/2012

APPEARANCES

Andrea Williams, counsel, present for Plaintiff(s) telephonically.

Benjamin L Wheeler, counsel, present for Defendant(s) telephonically.

Tentative Ruling:

Defendants' Bank of America N.A. etal demurrer to Plaintiff Thomas D. Amankonah complaint is ruled upon as follows:

Judicial Notice

Defendant's request for judicial notice is **granted**. See *Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 266; *Poseidon Devel., Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117-18; see also *Startfordlrrig. Dist. v. Empire Water Co.* (1941) 44 Cal.App.2d 61, 68 [recorded land documents, not contracts, are the subject of judicial notice on demurrer]. The court, however, does not accept the truth of any facts within the judicially noticed documents except to the extent such facts are beyond reasonable dispute. (See *Poseidon Devel.*, 152 Cal.App.4th at 1117-18.)

First Cause of Action

Defendant demurs to this cause of action on the grounds that Defendant owed no duty of care to Plaintiff in discussing the loan modification. In general, a lender does not owe a duty of care to a borrower. (See *Nymark v. Hart Fed. Savings & Loan Assn.* (1991) 231 Cal.App.3d 1089, 1096 ("Liability to a borrower for negligence arises only when the lender 'actively participates' in the financed enterprise 'beyond the domain of the usual money lender.'").) Here, however, Plaintiff has alleged specific facts indicating that Defendant "actively participated" in managing and servicing Plaintiff's loan, including extensive communications regarding the loan modification request. These allegations are sufficient to allege conduct "beyond the domain of the usual money lender." Defendants' demurrer to the first cause of action is **denied**.

Second Cause of Action

Given the court's ruling as to the first cause of action, Defendants' demurrer to the second cause of action is **denied**.

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Defendants shall answer the complaint no later than January 18, 2013.

This minute order is effective immediately. No formal order pursuant to CRC Rule 3.1312 or further notice is required.

NOTICE:

To request limited oral argument on any matter on this calendar, you must call the Court at (916) 874-7661 in Department 36 by 4:00 p.m. the court day before this hearing and advise opposing counsel. If no call is made, the tentative ruling becomes the order of the court. Local Rule 3.04.

Any party desiring an official record shall make arrangements for reporting services not later than 4:30 p.m. on the day before the hearing with the clerk of the department where the matter will be heard and deposit fees with the clerk prior to the hearing, but not later than the conclusion of the court session. The fee is \$30.00 for civil proceedings lasting under one hour and is \$239.00 per half day. Local Rule 9.06(B) and Government Code 68086.

Court Ruling:

Following oral argument, the Court affirmed the tentative ruling.