



U.S. Department of Justice

Civil Division
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December 15, 2017

VIA ECF

The Hon. Brian R. Martinotti, U.S. District Judge
U.S. District Court for the District of New Jersey
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street Room 2020
Trenton, NJ 08608

Re: Voacolo v. Fannie Mae et al., Civil Action No. 3:17-cv-5667-BRM-LHG

Dear Judge Martinotti:

On December 11, 2017, the Clerk of Court issued a notice of call for dismissal of the above-referenced action, directing counsel to “show good cause by affidavit setting forth what good faith efforts to prosecute this action have been made and what further efforts are intended.” ECF No. 4. In response, counsel for the Plaintiff filed a letter on December 14, 2017, indicating that the parties had “agreed” to a scheduled timeline and that the defendants would file “a motion to dismiss” by today, December 15, 2017. ECF No. 5. Counsel for the Plaintiff’s letter does not accurately represent the discussions that have taken place to date; as a result, undersigned counsel for the Defendants submit this response to make clear that: (1) all Defendants have not been properly served; (2) Defendants have not agreed to any briefing schedule; and (3) Defendants do not intend to file any motions to dismiss on December 15, 2017 and made this clear to the Plaintiff.

The parties have had preliminary discussions regarding a schedule for dispositive motions briefing in this matter. In particular, in October 2017, the parties tentatively agreed to a schedule pursuant to which the Defendants would file motions to dismiss Plaintiff’s complaint by December 15, 2017, and Plaintiff would file its response by January 15, 2018. The Defendants made clear, however, that their tentative agreement to this schedule was contingent upon Plaintiff perfecting proper service on all Defendants in accordance with the Federal Rules of Civil Procedure. The parties never finalized their tentative agreement or memorialized their briefing schedule in a filing with this Court. Moreover, Plaintiff has still not perfected service on the Defendant the United States Department of the Treasury (“Treasury”) in accordance with the requirements of Federal Rule of Civil Procedure 4(i). Accordingly, undersigned counsel for Treasury contacted counsel for the Plaintiff on December 1, 2017 and represented that Treasury would not respond to

Plaintiff's complaint until Treasury had been properly served and that, because judicial economy favors the defendants and the Federal Housing Finance Agency (which intends to intervene in this matter) filing simultaneous motions to dismiss, the Defendants did not intend to file motions in accordance with the proposed briefing schedule tentatively agreed to in October because that agreement was never finalized.¹ A response from Plaintiff's counsel did not address these concerns, so the undersigned counsel for Treasury sent a follow-up email on December 8, 2017, further clarifying that Plaintiff's continued failure to properly serve Treasury had made filing in accordance with the preliminary briefing schedule from October impractical for all Defendants. Undersigned counsel for the Defendants have had no further communications with counsel for the Plaintiff since that time.

Given these prior discussions, Defendants dispute that they reached a final agreement with the Plaintiff to file dispositive motions on December 15, 2017. Plaintiffs have still not properly served Treasury, and once the agency is properly served, it will have 60 days under the Federal Rules of Civil Procedure to respond to the complaint. Defendants believe that judicial economy favors the filing of simultaneous motions to dismiss in this case, and remain open to negotiating a briefing schedule that would allow for this case to move forward in an efficient manner, while also preserving the response time Treasury is afforded by the Federal Rules.

We thank the Court for its consideration of this information.

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General

WILLIAM E. FITZPATRICK
Acting United States Attorney

DIANE KELLEHER
Assistant Branch Director
Federal Programs Branch

By: /s/ R. Charlie Merritt
R. CHARLIE MERRITT
Trial Attorney, Federal Programs Branch

/s/ Kristin L. Vassallo
KRISTIN L. VASSALLO
Assistant United States Attorney

¹ If the Court deems it necessary, undersigned counsel can submit for the Court's consideration the relevant portions of the email chain.

*Counsel for Defendant
U.S. Department of the Treasury*

/s/ Thomas R. Curtin
THOMAS R. CURTIN
GRAHAM CURTIN

Counsel for Defendant Fannie Mae

cc: Ravi P. Shah