IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE

JACK L BEAVER, et al. individually, and as representatives of all others similarly situated,	)	
Plaintiffs,	)	**Case No. 1216-CV21345**
v.	)	**Division 13**
U S BANK TRUST NATIONAL ASSOCIATION, et al.	)	
Defendants.	)	

ORDER

NOW, on this ____ day of November, 2014, the Court takes up for consideration Plaintiff's Motion to Enforce Settlement Agreement and Judgment, With Suggestions in Support.

This case is a class action lawsuit that was settled between the Parties when they executed a Settlement and Release Agreement ("The Agreement") in August 2012. The Court entered its Order Preliminarily Approving the Class Action Settlement on August 21, 2012. The Court entered its Order Finally Approving the Class Action Settlement and Certifying a Class for Settlement Purposes on November 26, 2012.

Plaintiffs' Class Action Petition alleged that, as borrowers, their second mortgage loans violated the Missouri Second Mortgage Loan Act (MSMLA). More specifically, Plaintiffs claimed that their loan originators charged closing costs which were not permitted under the MSMLA Sections 408.321-408.241. After entering into second mortgage loans with the Plaintiffs, the originators of the loans subsequently assigned them to the Defendants, which Plaintiffs argued made the Defendants liable as an assignee.

The central issue before the Court relates to a definition of the term "Active Loan" in the Settlement and Release Agreement, executed by the parties.

"Active Loan" is defined by the agreement as follows: "Active Loan" means any U.S. Bank Direct Loan that is owned by a settling Defendant and has not been fully paid as of the Effective Date. (Settl. Agr. Pl. Br., Ex. B Sec. 2.1).

Defendants assert that by using the term "Active Loans" as defined, the term includes any loan they owned where the borrowers had not fully paid off the loans.

Plaintiffs assert that "active loans" should only include those loans where the borrowers were still making payments on the loans and the services were actively collecting. Therefore, Plaintiffs seek to have the Court interpret the settlement agreement to require that certain loans not be considered as part of the settlement agreement. Specifically, Plaintiffs want the Court to enforce the settlement so that only the loans on which the borrowers were still making regular payments as of June 1, 2011 be considered to be loans which are within the meaning of the Settlement Agreement and that these loans are the only loans for which the unpaid principal as of the effective date can be permissibly reduced from the claim amounts available from the settlement.

The resulting differences in the interpretation of the term "active loans" creates a dispute over certain loans which the Defendants claim should be included in the settlement and that the Plaintiff's claim should not be included in the settlement.

In the alternative, the Plaintiffs seek relief from the Judgment asking the Court to vacate the Judgment solely as to the Class Members who have disputed loans pursuant to Missouri Supreme Court Rule 74.06(b) (1),(2), or (5) on the grounds that when reduced to writing the Settlement Agreement does not accord with the real understanding of the Settlement of the

Parties reached on June 1-2, 2011 due to fraud, misrepresentation, and other misconduct by Defendant, or because of mutual mistake, inadvertence or surprise, and or because the Judgment would be "no longer equitable".

DISCUSSION

There is a presumption of validity of an executed release. This presumption is founded in the policy of law to encourage freedom of contract and the peaceful settlement of disputes. *Andes v. Albano et al*, 853 S.W.2d 936, 940 (Mo. en banc 1993)(citations omitted).

Settlement agreements are governed by principles of contract law, and therefore, the rules of contract construction apply. *Id*. at 941. Ultimately, the intention of the parties shall govern. *Id*. Language within an agreement that is plain and unambiguous will be given full effect. *Id*.

The Court must first look to the plain language of the agreement. "If that language clearly addresses the matter at issue, the inquiry ends". *TAP Pharmaceutical Products, Inc. v. State Bd. of Pharmacy*, 238 S.W.3d 140 (Mo. en banc 2007).

Here, the Court finds the language in the agreement is unambiguous. The parties were represented by competent and experienced attorneys who worked on the ultimate settlement and release document for an extended period of time. The term "active loan" was defined in an unambiguous fashion. The language of the agreement clearly addresses the issue of "active loans" and thus the inquiry into the term's meaning should begin and end within the confines of the Settlement Agreement.

Plaintiffs argue that the matter, taken as a whole, with other elements of the agreement, as well as other extraneous documents, including the "Term Sheet", leaves confusion and uncertainty as to the meaning of the term "active loan". However, any doubts or confusion about whether or not an agreement itself contains the full and final expression of the parties

understanding of the agreement shall be resolved using the contracts integration clause. *Union Elec. Co. v. Fundways, Ltd.*, 886 S.W.2d 169, 170 (Mo. App. E.D. 1994). Where an integration clause states that the agreement supersedes all prior communications or agreements, the parol evidence rule is applicable. *Id*.

Here, the Settlement Agreement has an integration clause which states:

> "This agreement constitutes the full, complete, and entire understanding and agreement of and between the Named Plaintiffs and the U.S. Bank Direct Loans Settlement Class Members, on the one hand, and the Settling Defendants, on the other hand, with respect to the Settlement and the Released Claims against the Released Persons. This agreement supersedes any and all prior oral or written understandings, agreements, term sheets and arrangements executed or made by or between the Parties with respect to the Settlement and Released Claims against Released Persons. Except for those set forth expressly in this Agreement, there are no agreements, covenants, promises, representations or arrangements between the Parties with respect to the Settlement and/or the Released Claims against Released Persons." (Settl. Agr., Pl. Br., Ex. B, Sec 21.e.)

Plaintiffs request that the Settlement Agreement be interpreted and enforced to mean that only those loans which they considered active, i.e. current, should be included, and that those loans which defendants wish to be included be excluded. However, the Settlement Agreement, as unambiguous and clear as it is, in conjunction with the Settlement Agreement's integration clause, does not afford the Court the option of going beyond the Settlement Agreement to make such an interpretation.

When read in a straightforward manner, defining all terms as outlined in the Settlement Agreement, the Court determines that Plaintiff's Motion to Enforce Settlement Agreement and Judgment should be, and is hereby, **DENIED.**

As it relates to the alternative relief sought by the Plaintiffs pursuant to Supreme Court Rule 74.06 (b), the Court finds that the Plaintiff has failed to prove the existence of any of the factors required for relief under that subsection and therefore, Plaintiffs' alternative request for

relief, pursuant to Supreme Court Rule 74.06 (b), in their Motion to Enforce, should be, and is hereby, **DENIED**.

IT IS SO ORDERED.

CHARLES H MCKENZIE, Judge

Certificate of Service

This is to certify that a copy of the foregoing was hand delivered/faxed/emailed/mailed and/or sent through the eFiling system to the following on 11/24/2014.

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