

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

WEKESA O. MADZIMOYO,

Plaintiff,

v.

THE BANK OF NEW YORK  
MELLON TRUST COMPANY,  
N.A., formerly known as The Bank of  
New York Trust Company, N.A., JP  
MORGAN CHASE BANK, NA,  
GMAC MORTGAGE, LLC,  
MCCURDY & CANDLER, L.L.C.,  
and ANTHONY DEMARLO,  
Attorney,

Defendants.

CIVIL ACTION FILE

NO. 1:09-CV-02355-CAP-GGB

**ORDER**

This case is before the Court on Plaintiff Wekesa O. Madzimoyo's ("Plaintiff's") Motion for Reconsideration of Order on Motion to Remand to State Court (Doc. 15) and Defendants GMAC Mortgage, LLC; JP Morgan Chase Bank, NA; and the Bank of New York Mellon Trust Company, N.A.'s ("Defendants'") Motion for Leave to File Dispositive Motion (Doc. 20).<sup>1</sup>

On July 3, 2009, the law firm McCurdy & Candler, L.L.C. sent Plaintiff an initial communication letter pursuant to the Fair Debt Collection Practices Act, 15

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<sup>1</sup>Defendants McCurdy & Candler, L.L.C. and Anthony DeMarlo filed a separate dispositive motion. (Doc. 16).

U.S.C. § 1692, et seq. (“FDCPA”). (Doc. 1-1 at 39). On the same date, Anthony DeMarlo with the law firm McCurdy & Candler, L.L.C. sent Plaintiff a Notice of Foreclosure Sale. (Id. at 40).

On July 17, 2009, Plaintiff filed in the Superior Court of DeKalb County, Georgia a document titled “Affidavit of Notice of Demand for Cease and Desist of Foreclosure Procedures.” (Id. at 20). In this document Plaintiff demanded that the defendants cease and desist all foreclosure procedures set for the property at 852 Brafferton Place, Stone Mountain, Georgia 30083. (Id. at 21). Plaintiff also demanded that “all parties and associates named and unnamed . . . provide verification of their authority as agent, attorney, debt collector, lender, note holder, services, investor, trustee, attorney in fact, etc.” (Id.). Plaintiff stated that this information was requested pursuant to the FDCPA and the Truth in Lending Act, 15 U.S.C. § 1601 et seq. (“TILA”). (Id.). Plaintiff also stated that failure to respond to his demand would constitute the defendants’ agreement that they waive all claims against him. (Id. at 24).

On July 29, 2009, Plaintiff filed an Emergency Petition for Temporary Restraining Order to Stop Foreclosure. (Id. at 3). Plaintiff noted that none of the defendants had provided the verification he sought. (Id. at 4). That same day, a DeKalb County Superior Court judge granted Plaintiff’s petition for a temporary restraining order and restrained the defendants from proceeding with the scheduled

foreclosure on the property on August 4, 2009. (Id. at 50).

On August 27, 2009, the defendants removed the case to this Court on the basis of federal question jurisdiction. (Doc. 1). Plaintiff filed a motion to remand (Doc. 9), which I denied (Doc. 13).

Plaintiff then filed the instant Motion for Reconsideration (Doc. 15) of my Order denying his motion to remand. Defendants subsequently filed their Motion for Leave to File Dispositive Motion (Doc. 20). For the reasons below, I **DENY** Plaintiff's Motion for Reconsideration of Order on Motion to Remand to State Court (Doc. 15) and **GRANT** Defendants' Motion for Leave to File Dispositive Motion (Doc. 20).

**I. Plaintiff's Motion for Reconsideration**

This Court's Local Rules caution that "[m]otions for reconsideration shall not be filed as a matter of routine practice," but only when "absolutely necessary." LR 7.2(E), NDGa. Such absolute necessity arises where there is "(1) newly discovered evidence; (2) an intervening development or change in controlling law; or (3) a need to correct a clear error of law or fact." Bryan v. Murphy, 246 F.Supp.2d 1256, 1258-59 (N.D. Ga. 2003). "A motion for reconsideration cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment." Richardson v. Johnson, 598 F.3d 734, 740 (11th Cir. 2010) (internal quotation omitted) (quoting Michael Linet, Inc. v. Village of Wellington, 408

F.3d 757, 763 (11th Cir.2005)).

Plaintiff implicitly argues that his motion for reconsideration is necessary to correct a clear error of law or fact. He contends that I erred in finding that he brings claims under two federal statutes, the FDCPA and TILA. (Doc. 15 at 6). Plaintiff failed to argue in his Motion to Remand that he did not bring any claims under federal law. Because a motion to remand “cannot be used to . . . raise argument . . . that could have been raised prior to the entry” of an order, Richardson, 598 F.3d at 740, Plaintiff’s argument that he does not bring any federal claims does not warrant reconsideration of my Order. **IDENY** Plaintiff’s Motion for Reconsideration of Order on Motion to Remand to State Court (Doc. 15).

**II. Defendants’ Motion for Leave to File Dispositive Motion**

Defendants seek an extension of time to file a dispositive motion. Rule 6 of the Federal Rules of Civil Procedure allows a court, for good cause, to extend the time originally permitted for a party to make the subject filing. Fed. R. Civ. P. 6(b). Rule 6 “requires both a demonstration of good faith . . . and also it must appear that there was a reasonable basis for not complying within the specified period.” In re Four Seasons Sec. Laws Litig., 493 F.2d 1288, 1290 (10th Cir. 1974).

Here, good cause having been shown, I **GRANT** Defendants’ Motion for Leave to File Dispositive Motion (Doc. 20). Defendants may file their dispositive motion

within FOURTEEN DAYS of the date of the entry of this Order.

**III. Conclusion**

I **DENY** Plaintiff's Motion for Reconsideration of Order on Motion to Remand to State Court (Doc. 15). I **GRANT** Defendants' Motion for Leave to File Dispositive Motion (Doc. 20).

IT IS SO ORDERED this 29th day of September, 2010.

  
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GERRILYN G. BRILL  
UNITED STATES MAGISTRATE JUDGE

**Orders on Motions**

1:09-cv-02355-CAP-GGB Madzimoyo v. The Bank of New York Mellon Trust Company, N.A. et al

4months, SUBMMG

**U.S. District Court****Northern District of Georgia****Notice of Electronic Filing**

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**Case Name:** Madzimoyo v. The Bank of New York Mellon Trust Company, N.A. et al

**Case Number:** 1:09-cv-02355-CAP-GGB

**Filer:**

**Document Number:** 21

**Docket Text:**

**ORDER DENYING [15] Motion for Reconsideration ; GRANTING [20] Motion for Leave to File Dispositive Motion; Defendants may file their dispositive motion within 14 days of the date of entry of this order. Signed by Magistrate Judge Gerrilyn G. Brill on 9/29/2010. (adg)**

**1:09-cv-02355-CAP-GGB Notice has been electronically mailed to:**

Alan William Loeffler bill.loeffler@troutmansanders.com

Frank Reid Olson folson@mccurdyandcandler.com

John Dale Andrle jandrle@mccurdycandler.com

Kelly Lane Atkinson kelly.atkinson@troutmansanders.com

**1:09-cv-02355-CAP-GGB Notice has been delivered by other means to:**

Wekesa O Madzimoyo  
852 Brafferton Place  
Stone Mountain, GA 30083

The following document(s) are associated with this transaction:

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