

**IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CIVIL DIVISION**

GENE ANDREW JORDAN, JR., AMY
CLAIRE JORDAN, AND GENE ANDREW
JORDAN, JR., AS TRUSTEE OF THE
JORDAN FAMILY LIVING TRUST, U/T/D
SEPTEMBER 17, 2001,

Plaintiff,

v.

WELLS FARGO BANK, N.A.

Defendant.

CASE NO.: 2015-CA-8870

Division: E

**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS AMENDED
COMPLAINT AND FINAL ORDER OF DISMISSAL**

THIS CAUSE came before the Court during the January 3, 2019 Case Management Conference and continued during a January 17, 2019 hearing on Defendant's Motion to Dismiss Amended Complaint. The Court, having heard arguments of counsel, considered the Motion, and being otherwise fully advised in the premises, hereby states:

1. In reviewing Plaintiffs' Amended Complaint, the Court has accepted the facts alleged therein as true, with all reasonable inferences drawn in favor of Plaintiffs. *Burgess v. N. Broward Hosp. Dist.*, 126 So. 3d 430, 433 (Fla. 4th DCA 2013).

2. Based on the face of the Amended Complaint, Plaintiffs' claim for tortious interference is based, in part, on the allegation that Plaintiffs' initial default occurred when Defendant "instructed Andrew Jordan, Jr. to cease making payments in order to qualify for loan modification." However, Plaintiffs allege that these actions occurred in 2009. Therefore, Plaintiffs' claim relating to the 2009 initial default is barred by the four-year statute of

limitations. Fla. Stat. § 95.11; *GLK, L.P. v. Four Seasons Hotel Ltd.*, 22 So. 3d 635, 637 (Fla. 3d DCA 2009); *City of Riviera Beach v. Reed*, 987 So. 2d 168, 170 (Fla. 4th DCA 2008); *see Yusuf Mohamad Excavation, Inc. v. Ringhaver Equip., Co.*, 793 So. 2d 1127, 1128 (Fla. 5th DCA 2001).

3. Plaintiffs' claim is also barred as the Amended Complaint alleges that Wells Fargo is acting as servicer for Bank of America's mortgage loan, not a third party or stranger to the business relationship between Plaintiffs and Bank of America. As a matter of law, an agent cannot tortiously interfere with its principal's contract except in certain limited circumstances not present here. *Sloan v. Sax*, 505 So. 2d 526, 527-28 (Fla. 3d DCA 1987); *Johnson v. Wellborn*, 418 F. App'x 809, 816 (11th Cir. 2011).

4. Further, as a matter of law, there was no requirement for Bank of America to modify the loan with Plaintiffs.

5. Plaintiffs have also not alleged that they are members of a protected class under the Equal Credit Opportunity Act. 15 U.S.C. § 1691(a); *Chen v. Whitney Nat. Bank*, 65 So. 3d 1170, 1172 (Fla. 1st DCA 2011).

6. Finally, the January 30, 2013 letter from Wells Fargo, attached as Composite Exhibit D to the Amended Complaint, does not release the note and mortgage with Bank of America. The letter expressly relates to the "Wells Fargo Home Equity account ending in 743727." Am. Compl. Ex. D. The mortgage loan at issue in this case is with Bank of America and has a loan number of 0155672926. Am. Compl. Ex. A. Thus, on the face of the exhibits, the loan that is the subject of the January 30, 2013 letter is not the mortgage loan with Bank of America. The exhibits to a complaint are a part of the pleading for purposes of a motion to dismiss and control over the allegations. Fla. R. Civ. P. 1.130; *Fladell v. Palm Beach County*

Canvassing Bd., 772 So. 2d 1240, 1242 (Fla. 2000); *Harry Pepper & Assocs., Inc. v. Lasseter*, 247 So. 2d 736, 736 (Fla. 3d DCA 1971).

Accordingly, it is hereby:

ORDERED AND ADJUDGED that:

7. Defendant's Motion to Dismiss Amended Complaint is **GRANTED**.
8. The Court reserves jurisdiction to consider Defendant's request for attorney's fees.
9. Plaintiffs' Amended Complaint is **DISMISSED** with prejudice and without leave to amend. This action is accordingly dismissed with prejudice.
10. Plaintiffs shall take nothing by this action and shall go hence without day.

DONE AND ORDERED in Chambers, Hillsborough County Courthouse, Tampa, Florida, this _____ day of _____, 2019.

Electronically Conformed 2/1/2019

~~Gregory P. Holder~~
Circuit Court Judge Gregory P. Holder

cc to all counsel of record

Benjamin Hillard, Esq.
Castle Law Group
13143 66th Street North
Largo, FL 33773

Christopher W. Smart, Esq.
Samantha Culp, Esq.
Carlton Fields Jordan Burt, P.A.
P. O. Box 3239
Tampa, FL 33601-3239