

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

ROSETTA M. ALBERTY,

Plaintiff,

v.

Civil Action No.: 09-C-457-K  
Judge Kirkpatrick

WV COUNTRY HOMES, INC.,  
WELLS FARGO HOME MORTGAGE, INC., and  
U.S. BANK NATIONAL ASSOCIATION,

Defendants.

**ORDER GRANTING DEFENDANT'S MOTION FOR JUDGMENT ON THE  
PLEADINGS AND GRANTING PLAINTIFF'S MOTION FOR LEAVE TO AMEND**

On the 23rd day of October, 2012, came the Plaintiff Rosetta M. Alberty ("Plaintiff"), by counsel, Richard Harrison, and Defendant Wells Fargo Home Mortgage, a division of Wells Fargo Bank, N.A.,<sup>1</sup> ("Wells Fargo"), by counsel, Jason Manning, on Plaintiff's Motion for Leave to Amend and Wells Fargo's Motion for Judgment on the Pleadings. The Court, having read the briefs and hearing the arguments, and for the reasons set forth in Plaintiff's Motion for Leave to Amend and Wells Fargo's Motion for Judgment on the Pleadings, Memorandum in Support, and Supplemental Memorandum, and for good cause shown, hereby **ORDERS** as follows:

1. Wells Fargo's Motion for Judgment on the Pleadings is GRANTED, and Plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE, subject to the Court's findings and rulings in paragraph 2 of this Order.

2. Plaintiff's alleged claims under the West Virginia Consumer Credit and Protection Act ("WVCCPA"), § 46A-1-102 *et seq.*, cannot survive the death of the Plaintiff.

---

<sup>1</sup> Plaintiff incorrectly names Defendant as "Wells Fargo Home Mortgage, Inc." This is not a standalone corporation; instead Wells Fargo Home Mortgage is a division of Wells Fargo Bank, N.A.


Thus, Plaintiff's claims against Wells Fargo arising under the WVCCPA are DISMISSED WITH PREJUDICE because they expired upon Plaintiff's death.

3. Plaintiff failed to comply with this Court's Order dated July 17, 2012 ("July 17 Order"), granting Plaintiff leave to file an Amended Complaint within twenty (20) days of the July 17 Order. Nonetheless, Plaintiff's Motion for Leave to Amend is GRANTED, and Plaintiff is permitted a strict twenty (20) days to file her Amended Complaint, if any. If Plaintiff does not file an Amended Complaint within twenty (20) days of entry of this order or by December 6, 2012, whichever occurs earlier, this action is DISMISSED WITH PREJUDICE.

**IT IS SO ORDERED.**

The Clerk is directed to provide a certified copy of this Order to all counsel of record.

ENTERED this 28<sup>th</sup> day of November, 2012.



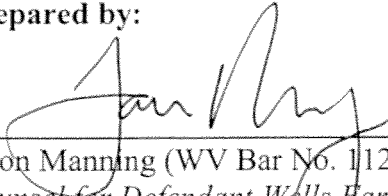
Hon. H. L. Kirkpatrick III

The foregoing is a true copy of an order entered in this office on the 29 day of Nov., 2012.

PAUL H. FLANAGAN, Circuit Clerk of Raleigh County, West Virginia

By: aw  
Deputy

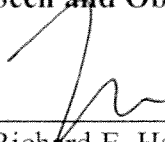
Prepared by:



---

Jason Manning (WV Bar No. 11277)  
*Counsel for Defendant Wells Fargo*  
Troutman Sanders LLP  
222 Central Park Ave., Suite 2000  
Virginia Beach, VA 23462

Seen and Objected to for the reasons stated on the record:



w/ permission  
via e-mail

---

Richard E. Hardison, Jr.  
*Counsel for Plaintiff*  
101 Main Street  
P. O. Box 1700  
Beckley, West Virginia 25802-1700