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HELL IN A HELOC.

by

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Doroles Zirbser and Bruce Jon Spalla made a loan agreement for a home equity line of credit ("HELOC"). The loan originated with Wachovia Bank. Wachovia sold the loan to Wells Fargo.

Zirbser and Spalla sued Wells Fargo in December 2018 over billing them for allegedly "erroneous fees" and taking other payments that were not authorized by the loan contract. Wells successfully argued for dismissal of five of the six counts of the complaint on the basis of the statute of limitations, i.e., that the allegedly "illegal charges" were time-barred because they took place too long ago to sue on now.

Except for three charges that were within the time to sue on them. The federal judge denied Wells's motion to dismiss the last remaining count, which is alleged for breach of the implied covenant of good faith and fair dealing under New Jersey law. In New Jersey,

[t]o show a breach of the covenant of good faith and fair dealing, a plaintiff must show "(1) the defendant act[ed] in bad faith or with a malicious motive, (2) to deny the plaintiff some benefit of the bargain originally intended by the parties, even if that benefit was not an express provision of the contract." [Citation omitted.] Proof of a party's "bad motive" or "intention" must support a claim of breach of contract grounded on an alleged breach of the implied covenant of good faith and fair dealing.

Zirbser v. Wells Fargo Bank, N.A., No.: 19-cv-01099-RBK-KMW, 2019 WL 3244621, at *4 (D.N.J. July 19, 2019).

In this case, the federal judge held that the plaintiffs adequately alleged a breach of the good faith covenant that was implied in their loan agreement

as to those unauthorized charges that were not excluded by the statute of limitations:

... Plaintiffs sufficiently allege bad faith because they state that the Defendant knowingly charged them for three fees outside the express terms of the contract. (Compl. at ¶¶ 21-22.) Defendant did so intentionally and therefore acted “in bad faith, dishonestly, or with improper motive” and “destroy[ed] or injure[d] the right of the [Plaintiffs] to receive the benefits or reasonable expectations of the contract.” (*Id.* at ¶ 129). Taking all inferences in the Plaintiffs’ favor, Plaintiffs were denied the benefit of their bargain because they contracted to pay for only those fees permitted by the agreement, not any others. (*Id.*)

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Alleged bad faith in a HELOC. If proven, that means hell in a HELOC. So wait for it: This case will settle now.

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