

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

SHERMAN D. WITCHER,)	
)	
Plaintiff,)	Civil Action No. 7:01CV00948
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
STERLING NATIONAL MORTGAGE)	By: Samuel G. Wilson
CORPORATION, et al.)	Chief United States District Judge
)	
Defendants.)	

On November 9, 2001, Sherman D. Witcher (“Witcher”) filed suit in the Circuit Court for the County of Franklin against Sterling National Mortgage Corporation (“Sterling National”); Patrick Stewart; the United States Farm Service Agency (“Farm Service Agency” or “FSA”); Tom Gourley, an employee of the Farm Service Agency; the Franklin County Clerk’s Office; Alice Hall; and James Jefferson. On December 4, 2001, the Farm Service Agency and Tom Gourley filed a notice of removal under 28 U.S.C. § 1441(a) and 1442(a)(1), and, on December 10, 2001, this court entered an order of removal. On December 17, 2001, Witcher filed a motion to quash a temporary injunction ordered by a circuit court judge in Franklin County. On January 7, 2002, this court denied Witcher’s motion under the Rooker-Feldman doctrine. This matter is now before the court on motions to dismiss filed by the Farm Service Agency, Tom Gourley, Patrick Stewart, Alice Hall and James Jefferson and motions for summary judgment filed by Sterling National and Patrick Stewart. For the reasons stated below, the court will grant these motions to dismiss and motions for summary judgment.

I.

Witcher was a member of a class action lawsuit against the United States Department of Agriculture (“USDA”). Under the terms of the settlement agreement, the USDA agreed to pay Witcher \$290,890 and revoked its rights on the deed of trust on Witcher’s farm land. (See “Agreement to Resolve Claims” attached to FSA and Gourley’s Mem. in Supp. of Mot. to Dismiss.)

In February 1999, Witcher purchased a house in Rocky Mount, Virginia, from Sterling National. Witcher financed the purchase by a loan from Sterling National which was secured by a deed of trust on the house and a deed of trust on a sixty-seven acre tract of farm land that Witcher already owned.

Witcher failed to make payments due under his note to Sterling National, and he subsequently filed a Chapter 13 bankruptcy. On October 26, 2000, the United States Bankruptcy Court for the Western District of Virginia entered an order granting Sterling National relief from the bankruptcy stay to foreclose on its collateral. (See Sterling National’s Mem. in Supp. of Mot. for Summ. J., Ex. C). Sterling National conducted a foreclosure sale on January 18, 2001. The trustee in foreclosure conveyed title to the subject property by deed which Sterling National recorded in the Clerk’s Office of Franklin County Circuit Court.

II.

In his pleadings, Witcher seems to make three separate claims against Sterling National: (1) the seventy-six acre farm property was subject to a federal moratorium by the USDA, which prohibited Sterling National from foreclosing on his property; (2) Sterling National contracted to sell Witcher “faulty” residential property, and (3) Sterling National agreed to loan him money

based on a Witcher's pending lawsuit against the USDA and Sterling National failed to wait until Witcher received money from the settlement of that lawsuit before foreclosing on his property.

First, the court finds that there is no federal moratorium by the USDA that prohibits Sterling National from foreclosing on Witcher's property. The settlement agreement between Witcher and the USDA speaks to the deeds of trust between Witcher and the USDA and not the deeds of trust between Witcher and Sterling National. (Sterling National and Stewart's Mem. in Supp. of Mot. for Summ. J., Ex. E; and "Agreement to Resolve Claims" attached to FSA and Gourley's Mem. in Supp. of Mot. to Dismiss) Thus, this claim is without merit. Second, the court finds that Witcher's claim that Sterling National contracted to sell him "faulty" residential property is without merit. The contract of sale between Witcher and Sterling National, dated January 25, 1999, provided that Witcher agreed to accept the property "as is" subject to several inspections. (Sterling National and Stewart's Mem. in Supp. of Mot. for Summ. J., Ex. A) Witcher, however, made no objection to the condition of the house before closing. Witcher cannot bring a contract claim, three years later, after Sterling National foreclosed on his house. Third, Witcher's claim that the repayment of his loan from Sterling National was conditioned on the settlement of his lawsuit with the USDA is without merit. The note executed by Witcher does not contain any language to support this claim. (Sterling National and Stewart's Mem. in Supp. of Mot. for Summ. J., Ex. B) Accordingly, the court will grant Sterling National's motion for summary judgment.

Witcher claims that Patrick Stewart, Sterling National's file manager, ignored necessary legal steps in the foreclosure proceedings and illegally misrepresented documentation. However, Witcher does not allege facts to support these conclusory allegations. Therefore, the court will

grant Stewart's motion to dismiss.

Witcher claims that Alice Hall was negligent in performing her duties as Franklin County Circuit Court Clerk because she allowed deeds in this matter to be illegally recorded. Witcher, however, does not claim that Hall recorded the deed in a negligent manner. Rather, Witcher claims that Hall was negligent simply because she recorded an allegedly unlawful deed. Hall's duty does not extend to questioning the legality of the land transfer on which the deed to be recorded is based. Therefore, Witcher has failed to state a claim upon which relief may be granted. Accordingly, the court will grant Hall's motion to dismiss.

Witcher claims that the Farm Service Agency was negligent in failing to intervene in the foreclosure proceedings conducted by Sterling National. Witcher's pleadings, however, do not indicate under what authority he has brought his suit against the Farm Service Agency.

Additionally, the United States Attorney for the Western District of Virginia and the Attorney General have not been properly served with a copy of the summons and complaint. Therefore, Witcher's claim is dismissed for failure to properly serve an agency of the United States under Federal Rule of Civil Procedure 4(i)(2)(A)¹ and failure to establish a waiver of federal sovereign

¹ Federal Rule of Civil Procedure 4(i)(1) states that service upon the United States shall be effected

(A) by delivering a copy of the summons and of the complaint to the United States attorney for the district in which the action is brought or to an assistant United States attorney or clerical employee designated by the United States attorney in a writing filed with the clerk of the court or by sending a copy of the summons and of the complaint by registered or certified mail addressed to the civil process clerk at the office of the United States attorney and

(B) by also sending a copy of the summons and of the complaint by registered or certified mail to the Attorney General of the United States at Washington, District of Columbia, and

immunity.

Witcher also names as a defendant Tom Gourley, an employee of the Farm Service Agency in Rocky Mount, Virginia. However, Witcher makes no specific allegations against Tom Gourley. Therefore, Witcher's claim is dismissed for failure to state a claim upon which relief may be granted.

Witcher claimed that Franklin County Attorney James Jefferson purposefully "gave ill will advice" to the Franklin County Building Inspector regarding Witcher's request for a building permit for his farm land in August 2001. Witcher, however, fails to allege facts to support this conclusory allegation. Also, in January 2001, Sterling National had already foreclosed on the property for which Witcher requested the building permit. It is clear from the pleadings that Witcher does not state a claim against Jefferson upon which relief can be granted. Therefore, the court will dismiss this claim.

Witcher's pleadings also suggest that he is suing the Franklin County Clerk's Office. However, Witcher does not explain the basis of his complaint against the Clerk's Office and the court has dismissed the claims against Alice Hall, Clerk of the Franklin County Circuit Court, and James Jefferson, Franklin County Attorney. Therefore, to the extent that Witcher is suing the Franklin County Clerk's Office, that claim is dismissed for failure to state a claim upon which relief may be granted.

During oral arguments, Witcher was unable to establish the legal basis for a specific claim against a specific defendant. Instead, he generally complained that he was "beat up by a system

(C) in any action attacking the validity of an order of an officer or agency of the United States not made a party, by also sending a copy of the summons and of the complaint by registered or certified mail to the officer or agency.

sworn to protect us.” The court notes, however, that a plaintiff cannot base a lawsuit on general unfairness. The power of this court is limited to deciding specific “cases and controversies” – not generalized grievances. Witcher’s concerns are best addressed through the legislative process, and indeed Witcher claims that Congress and the President are looking into his complaints. Therefore, since Witcher has failed to establish a legal basis for any of his claims, this court cannot provide a remedy and must dismiss Witcher’s claims.

III.

For the reasons stated above the court will grant the motions to dismiss filed by the Farm Service Agency, Tom Gourley, Patrick Stewart, Alice Hall and James Jefferson and grant the motions for summary judgment filed by Sterling National. Additionally, the court will dismiss Witcher’s claims against the Franklin County Clerk’s Office. An appropriate order will be entered this day.

ENTER: This ____ day of April, 2002.

CHIEF UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

SHERMAN D. WITCHER,)	
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Plaintiff,)	Civil Action No. 7:01CV00948
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v.)	<u>FINAL ORDER</u>
)	
STERLING NATIONAL MORTGAGE)	By: Samuel G. Wilson
CORPORATION, et al.)	Chief United States District Judge
)	
Defendants.)	

For the reasons stated in the court's Memorandum Opinion entered this day, it is

ORDERED and **ADJUDGED** that:

- (1) Farm Service Agency's motion to dismiss is **GRANTED**;
- (2) Tom Gourley's motion to dismiss is **GRANTED**;
- (3) Patrick Stewart's motion to dismiss is **GRANTED**;
- (4) Alice Halls' motion to dismiss is **GRANTED**;
- (5) Sterling National Mortgage Corporations' motion for summary judgment is **GRANTED**;
- (6) Witcher's claims against the Franklin County Clerk's Office are **DISMISSED**.

This action shall be stricken from the active docket of the court.

ENTER: This ___ day of April, 2002.

CHIEF UNITED STATES DISTRICT JUDGE