

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
Caption in Compliance with D.N.J. LBR 9004-2(c) WASSERMAN, JURISTA & STOLZ, P.C. 110 Allen Road, Suite 304 Basking Ridge, New Jersey 07920 Phone: (973) 467-2700 Fax: (973) 467-8126 <i>Counsel for Debtor, Zucker, Goldberg & Ackerman, LLC</i> DANIEL M. STOLZ, ESQ. DONALD W. CLARKE, ESQ. BROWN MOSKOWITZ & KALLEN, P.C. 180 River Road Summit, New Jersey 07901 Phone: (973) 376-0909 Fax: (973) 376-0903 <i>Special Litigation Counsel for Debtor, Zucker, Goldberg & Ackerman, LLC</i> SHALOM D. STONE, ESQ. REBEKAH R. CONROY, ESQ.	
In Re: ZUCKER, GOLDBERG & ACKERMAN, LLC, Debtor-in-Possession.	Chapter 11 Case No. 15-24585 CMG Honorable Christine M. Gravelle, U.S.B.J.
ZUCKER, GOLDBERG & ACKERMAN, LLC, Plaintiff, v. WELLS FARGO BANK, N.A., Defendant.	Adv. Proc. No. 16-

ADVERSARY COMPLAINT

Plaintiff, Zucker, Goldberg & Ackerman, LLC (“ZGA” or “Debtor”), brings this Adversary Proceeding to recover legal fees and costs owed by Wells Fargo Bank, N.A. (“Defendant”), ZGA’s former client.

PARTIES

1. ZGA is a New Jersey limited liability company.
2. ZGA is a law firm specializing in lender representation, foreclosure, and insolvency law. ZGA’s main operations are conducted from leased space at 200 Sheffield Street, Suite 101, Mountainside, New Jersey.
3. Upon information and belief, Defendant’s principal place of business is located at 1 Home Campus, Des Moines, Iowa.
4. Upon information and belief, Defendant engaged in the business of servicing residential mortgage loans.

JURISDICTION AND VENUE

5. The Court has jurisdiction over the parties and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334.
6. Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

ZGA’S REPRESENTATION OF DEFENDANT

7. Defendant agreed to engage ZGA to represent Defendant, and ZGA agreed to represent Defendant, in connection with residential foreclosure proceedings brought, or to be brought, against defaulting borrowers (the “Agreement”).
8. ZGA represented Defendant and appeared as counsel of record for Defendant in connection with many foreclosure proceedings, including but not limited to those matters listed in **Exhibit A** (the “Actions”).

9. ZGA's representation of Defendant in the Actions included filing pleadings; researching ownership, payment history, and title history; ensuring compliance with state and federal regulations surrounding the foreclosure of residential mortgages; and other related work.

10. Pursuant to the Agreement, Defendant agreed to pay fees to ZGA for legal services performed by ZGA on Defendant's behalf (at agreed-upon rates), and to pay ZGA for expenses incurred by ZGA on Defendant's behalf.

11. When ZGA was no longer able to represent Defendant, ZGA arranged for Defendant's files to be transferred to Defendant and/or Defendant's new counsel. Defendant is liable to ZGA for the cost of those file transfers ("File Transfer Fees").

12. ZGA issued invoices to Defendant documenting the fees and expenses incurred by ZGA on behalf of Defendant (the "Invoices").

13. Defendant has refused to pay the balance due to ZGA, in the amount of \$2,536,063.14 (the "Balance Due"). ZGA has demanded payment of the Balance Due from Defendant. The Balance Due to ZGA from Defendant is reflected on **Exhibit A**.

14. Notwithstanding Defendant's obligations under the Agreement and ZGA's demand for payment, Defendant has failed to remit payment for the Balance Due.

15. As it grew, ZGA developed innovative systems and procedures for the handling of a large volume of foreclosure cases. As a result, many of the largest lenders and loan servicers placed a huge volume of foreclosure cases with ZGA. ZGA's largest client was Defendant.

16. Prior to its bankruptcy filing, ZGA was handling over 40,000 active foreclosure cases. Approximately 30% of those cases were on behalf of Defendant.

17. In September 2010, the New Jersey Court system became aware that certain mortgage servicers had not adhered to the Court Rules governing the submission of pleadings in

residential foreclosure cases. As a result, the New Jersey Supreme Court placed a freeze on any court personnel handling residential foreclosures. This effectively placed a moratorium on residential foreclosures in New Jersey.

18. The Supreme Court began an investigation of certain mortgage servicing practices, including the execution and submission to the Supreme Court of certain evidentiary pleadings. Ultimately, the Supreme Court came to suspect that there were serious problems with the submission of various pleadings. On or about December 20, 2010, the Supreme Court issued an Order to Show Cause against certain servicers, including Defendant, requiring each to show cause as to why pending uncontested residential foreclosures should not be suspended. These servicers, including Defendant, were also required to submit their policies and procedures for review by a Special Master. Those servicers were prohibited from proceeding with their residential foreclosures until such time as the Special Master reviewed and approved their policies and procedures so that “robosigning” would not occur.

19. Independent of the investigation into mortgage servicing practices, case law developed which called into question the validity of more than 80% of all Notices of Intention to Foreclose (“NOI”) used in New Jersey’s pending foreclosures actions. ZGA had previously warned Wells that its NOIs may not have been compliant with state law, but Wells continuously refused to address the deficient and non-compliant NOI issue. An NOI is the state-mandated demand letter that must precede the initiation of a residential foreclosure in New Jersey.

20. As a result, Defendant was forced to correct its NOI process and to issue corrective NOIs in those cases requiring such a correction.

21. It took Defendant several years to rectify its robosigning and NOI problems.

22. Defendant falsely represented and promised to ZGA that Defendant’s robosigning and NOI problems would be resolved imminently.

23. In reliance upon Defendant's false promises and representations, ZGA agreed to maintain its then-existing staffing and business infrastructure, at significant cost.

24. During this period of time when Defendant could not or would not move its residential foreclosures through the New Jersey system, Defendant refused to adjust its internal procedures to reflect that these cases were put on hold. Instead, Wells continued to require that ZGA undertake various tasks relating to the cases in question, including but not limited to, obtaining and analyzing granular-level data for each file, and adjourning sheriff sales on a month-to-month basis. This work, and other voluminous and time-consuming work, was completed as requested, but ZGA never received payment for its valuable services in this regard and Wells continues to refuse to compensate ZGA for this work.

25. Additionally, even once Wells had its procedures in place to again move forward with residential foreclosures, thousands of its cases had been dismissed by the court for lack of prosecution. Wells demanded that Zucker have these cases reinstated, but then refused to pay and/or reimburse Zucker fully for having the cases reinstated, causing additional, direct losses to Zucker.

DEFENDANT HAS DECLINED FEE ARBITRATION

26. In accordance with R. 1:20A-6 of the New Jersey Rules of Court, ZGA wrote to Defendant on July 6, 2016, to provide Defendant with notice of its right to fee arbitration and of ZGA's intent to file suit in the event Defendant did not elect fee arbitration (the "Notice").

27. More than thirty days have passed since the Notice was sent to Defendant.

28. Defendant has not filed a fee arbitration demand.

FIRST COUNT
(Breach of Contract)

29. ZGA repeats and realleges the preceding allegations of the Complaint as if set forth at length herein.

30. ZGA has rendered valuable professional legal services to Defendant pursuant to the terms of the Agreement.

31. Defendant breached its obligation under the Agreement to pay ZGA for the fees and expenses incurred by ZGA in connection with its representation of Defendant.

32. Defendant owes ZGA the Balance Due, no part of which has been paid, despite payment having been duly demanded by ZGA.

SECOND COUNT
(Breach of Contract)

33. ZGA repeats and realleges the preceding allegations of the Complaint as if set forth at length herein.

34. Defendant breached the representations and warranties that are part of the Agreement.

THIRD COUNT
(Quantum Meruit)

35. ZGA repeats and realleges the preceding allegations of the Complaint as if set forth at length herein.

36. At Defendant's request, and with Defendant's knowledge, ZGA rendered professional legal services and incurred various expenses on behalf of Defendant during the course of ZGA's representation of Defendant.

37. Defendant knew, understood, and agreed that it was obligated to pay ZGA for all such legal services and expenses.

38. Defendant accepted the benefit of the professional legal services rendered by ZGA and the expenses incurred by ZGA without paying in full for such benefit.

39. The fair and reasonable value of the professional legal services rendered and expenses incurred by ZGA on Defendant's behalf that remain unpaid is the Balance Due.

40. ZGA has demanded payment of the Balance Due.

FOURTH COUNT
(Book Account)

41. ZGA repeats and realleges the preceding allegations of the Complaint as if set forth at length herein.

42. The Invoices were transmitted by ZGA to Defendant and were accepted by Defendant without any particularized objection or challenge to any item contained therein.

43. An account was therefore taken and stated between ZGA and Defendant that shows a balance in the amount of the Balance Due which remains due and owing by Defendant to ZGA.

44. No part of the Balance Due has been paid by Defendant to ZGA despite payment having been duly demanded by ZGA.

FIFTH COUNT
(Duty of Good Faith and Fair Dealing)

45. ZGA repeats and realleges the preceding allegations of the Complaint as if set forth at length herein.

46. In its dealings with ZGA, Defendant had a duty of good faith and fair dealing.

47. In its dealings with ZGA, Defendant acted with dishonesty, with bad faith, and with bad motives and intentions.

48. By such conduct, Defendant denied ZGA the bargain initially intended by the parties under the Agreement.

SIXTH COUNT
(Negligent Misrepresentation)

49. ZGA repeats and realleges the preceding allegations of the Complaint as if set forth at length herein.

50. As set forth above, Defendant made numerous inaccurate factual statements.

51. ZGA justifiably relied on those statements in conducting its business, including its representation of Defendant.

52. As a result of Defendant's numerous inaccurate factual statements and ZGA's justifiable reliance on those statements, ZGA incurred significant costs and damages.

SEVENTH COUNT
(Promissory Estoppel)

53. ZGA repeats and realleges the preceding allegations of the Complaint as if set forth at length herein.

54. As set forth above, Defendant made clear and definite promises to ZGA, with the expectation that ZGA would rely on those promises.

55. ZGA in fact relied on Defendant's promises.

56. Defendant failed to keep those promises.

57. As a result, ZGA incurred a definite and substantial harm.

WHEREFORE, ZGA demands Judgment against Defendant as follows:

- (a) Compensatory damages;
- (b) Attorneys' fees, interest, and costs of suit; and
- (c) Such other and further relief as this Court deems just and equitable.

Respectfully submitted,

Daniel M. Stolz, Esq.
Dstolz@wjslaw.com
Donald W. Clarke, Esq.

dclarke@wjslaw.com

WASSERMAN, JURISTA & STOLZ, P.C.

110 Allen Road, Suite 304

Basking Ridge, New Jersey 07920

Phone: (973) 467-2700

Fax: (973) 467-8126

Counsel for Debtor, Zucker, Goldberg & Ackerman, LLC

Shalom D. Stone

sdstone@bmk-law.com

Rebekah R. Conroy

rconroy@bmk-law.com

BROWN MOSKOWITZ & KALLEN, P.C

180 River Road

Summit, New Jersey 07960

Phone: (973) 376-0909

Fax: (973) 376-0903

*Special Litigation Counsel for Debtor,
Zucker, Goldberg & Ackerman, LLC*

By: /s/ Daniel M. Stolz
Daniel M. Stolz

Dated: October 10, 2016

CERTIFICATION PURSUANT TO LOCAL CIVIL RULE 11.2

Pursuant to District of New Jersey Local Civil Rule 11.2, I hereby certify that the matter in controversy is not the subject of any other action pending in any court or of any pending arbitration or administrative proceeding.

By: /s/ Daniel M. Stolz
Daniel M. Stolz

Dated: October 10, 2016