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**IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO**

KAREN RIMMER, INDIVIDUALLY AND ON BEHALF  
OF ETC.

Plaintiff

2016 JUL 15 A 10:30  
CLERK OF COURTS  
CUYAHOGA COUNTY

Case No: CV-05-564493

Judge: CASSANDRA COLLIER-WILLIAMS

CITIFINANCIAL, INC.

Defendant

**JOURNAL ENTRY**

PLAINTIFF KAREN RIMMER'S MOTION FOR DISCOVERY ABOUT CLASS IDENTIFICATION AND EXCLUSIONS, FILED 05/31/2016, IS DENIED. OPINION AND ORDER IS SIGNED AND ORDERED RECORDED. ORDER ATTACHED. OSJ.

OSJ

Judge Signature

Date

IN THE COURT OF COMMON PLEAS  
CUYAHOGA COUNTY, OHIO

FILED

KAREN RIMMER, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 CITIFINANCIAL, INC., )  
 )  
 Defendant. )

Case No. CV-05-564493

2016 JUL 15 A 10:30

JUDGE CASSANDRA COLLIER-WILLIAMS COURTS  
CUYAHOGA COUNTY

OPINION AND ORDER

**JUDGE C. COLLIER-WILLIAMS:**

This cause came on for consideration upon Plaintiff Karen Rimmer's, (hereinafter, "Rimmer"), Motion for Discovery about Class Identification and Exclusions. Plaintiff argues that none of the earlier discovery completed in this case addressed arbitration clauses at all and asks that discovery on that issue alone be re-opened. The Court, having undertaken an independent review of the record, denies Plaintiff's motion.

**PROCEDURAL HISTORY**

This case was filed on June 6, 2005, by Ms. Karen Rimmer against Defendant Citifinancial, Inc. (hereinafter, "Citi") alleging that her satisfaction of her mortgage had been improperly recorded by Citi in violation of Ohio's civil statute, O.R.C. 5301.36. On January 25, 2006, Plaintiff filed her Motion for Class Certification. Rimmer sought to represent a class of all persons who, from March 8, 1999, paid residential mortgages in full and Citi, among other named banks, did not file an entry of satisfaction of mortgage with the Cuyahoga County Recorder's office within ninety (90) days of loan payoff. The class was later certified.

On August 29, 2005 the Court denied Defendant's Motion for Protective Order and refused to stay discovery. The Court also denied a Motion for Reconsideration of its denial of

the Motion for Protective Order. The Court set a case schedule after a pretrial on September 28, 2005, in which it noted that discovery had begun and that extensions would be granted upon a showing of good cause. The Court was also made aware that a Motion to Certify a Class was forthcoming. The Court granted Plaintiff's Motion to Extend Discovery on January 25, 2006 and left open the time period for completing discovery. The issue of Arbitration Agreements is first docketed on May 4, 2006 when Plaintiff filed a Motion to Strike Arbitration Arguments. That motion was denied by the Court on May 22, 2006. On May 16, 2006 the Court denied Plaintiff's Motion to Order Defendant to Answer Interrogatories and stated "The Defendant does not have to answer the remaining interrogatories." The issue of Arbitration clauses in these matters was determined by the Ohio Supreme Court in relevant litigation in 2009.

The Court set a new case schedule on January 25, 2013, in which it set a new discovery cutoff date of May 31, 2013. The denial of a Motion to Revise Class Certification Order was appealed on April 10, 2013 and the case was stayed in the trial court. After a subsequent appeal the case was set for a pre-trial on February 17, 2015 "to finalize the notice and set further dates in this matter." Plaintiff filed a report to the Court on notice issues and a statement on class notice. Plaintiff appealed the Court's ruling regarding the form of class notice and the case was appealed and stayed once again. After the appeal was dismissed Plaintiff filed a Motion to Modify Class Definition and Order Notice to that Class on June 11, 2015 which was denied. Multiple status conferences were subsequently held regarding the identification of class members. Finally, on May 31, 2016, Plaintiff filed the current Motion for Discovery about Class Identification and Exclusions.

## LAW AND ANALYSIS

A trial court is vested with wide discretion in rendering decisions on discovery matters. *See v. Haugh*, 8<sup>th</sup> Dist. Cuyahoga No. 101380, 2014-Ohio-5290. The standard of review of a trial court's decision in a discovery matter is whether the court abused its discretion. *State ex rel. Denton v. Bedinghaus*, 98 Ohio St. 3d 298, 2003-Ohio-861. An abuse of discretion occurs only "if the trial court's decision is improvident and affects the discovering party's substantial rights." *Berger v. Lu-Jean Feng*, 8<sup>th</sup> Dist. Cuyahoga No. 96513, 2012-Ohio-1041, ¶50. In other words, a trial court does not abuse its discretion unless "it acts in an unreasonable, arbitrary, or unconscionable manner." *Bedinghaus* at ¶31.

In this case, the Court set an original discovery schedule in 2005 when the case was filed and noted that extensions would be granted upon a showing of good cause. In January of 2006 such an extension was granted and discovery was allowed to remain open without a cutoff date. Of particular relevance, the issue of Arbitration Agreements first appeared on the docket on May 4, 2006 when Plaintiff filed a Motion to Strike Arbitration Arguments. That motion was denied on May 22, 2006.

On June 30, 2009, the Supreme Court of Ohio held that arbitration language demonstrates an agreement between parties to a mortgage to arbitrate the failure to timely file an entry of satisfaction of the mortgage. *Alexander v. Wells Fargo Fin. Ohio 1, Inc.*, 2009-Ohio-2962. This Court set a new case schedule on January 25, 2013, eight years after the complaint was filed, in which it set a new discovery cutoff date of May 31, 2013. Prior to this new discovery period it was clear to the parties that arbitration agreements were held to be valid and enforceable and that only those mortgages without an arbitration clause would be included as members of this class. This issue was also being litigated in other courts throughout the state. Both Plaintiff and

Defendant's counsel participated in some of the other litigation. Both Plaintiff and Defendant knew that those persons with an arbitration clause would be excluded from the class.

Plaintiff now brings this Motion for Discovery about Class Identification and Exclusions 11 years after the filing of the complaint and 10 years after the issue of arbitration clauses first arose. It is undisputed that Defendant complied with all prior discovery requests and made available for inspection all possible relevant mortgagor files. Plaintiff had ample opportunity to search all of Defendant's records in this matter throughout the pendency of the case. Also, the issue of arbitration clauses arose in 2006, and was determined in 2009. Consequently, Plaintiff's Motion for Discovery about Class Identification and Exclusions, is hereby **DENIED**.

#### **CONCLUSION AND ORDER**

Plaintiff Karen Rimmer's Motion to Motion for Discovery about Class Identification and Exclusions, filed May 31, 2016, is hereby **DENIED**. Plaintiff had ample opportunity to request and review the relevant files made available by Defendant for the inclusion of the relevant arbitration clauses. Plaintiff and Defendant are hereby ordered to finalize the notice to be sent to class members and submit the notice to the Court for approval by no later than thirty days from the date of this order. Failure to comply with any part of this order may result in sanctions, including but not limited to the dismissal of the Complaint or judgment rendered against the Defendant.

IT IS SO ORDERED.

7-14-2016  
DATE

  
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JUDGE CASSANDRA COLLIER-WILLIAMS