

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 13-24506-CIV-DIMITROULEAS

CITY OF MIAMI, a Florida municipal
corporation,

Plaintiff,

vs.

BANK OF AMERICA CORPORATION;
BANK OF AMERICA, N.A.;
COUNTRYWIDE FINANCIAL
CORPORATION; COUNTRYWIDE
HOME LOANS; and COUNTRYWIDE
BANK, FSB,

Defendants.

ORDER DENYING MOTION FOR RECONSIDERATION

THIS CAUSE is before the Court upon Plaintiff City of Miami (“Plaintiff” or “City”)’s Motion for Reconsideration and Leave to File First Amended Complaint, filed herein on July 21, 2014. [DE 72]. The Court has carefully considered the Motion [DE 72], Defendants Bank of America Corporation (“BoA”), Bank of America, N.A., Countrywide Financial Corporation, Countrywide Home Loans, and Countrywide Bank FSB (“Defendants”)’s Opposition [DE 74], Plaintiff’s Reply [DE 75], and is otherwise fully advised in the premises.

On December 13, 2013, Plaintiff filed this suit pursuant to the Fair Housing Act of 1968 (“FHA”), as amended, 42 U.S.C. § 3601, *et seq.*, to seek redress for injuries allegedly caused by Defendants’ pattern or practice of illegal and discriminatory mortgage lending. [DE 1]. Specifically, Plaintiff sought injunctive relief and damages for financial injuries due to foreclosures on Defendants’ loans in minority neighborhoods and to minority borrowers that were the result of Defendants’ discriminatory lending practices. Plaintiff sought damages based

on reduced property tax revenues based on: (a) the decreased value of the vacant properties themselves; and (b) the decreased value of properties surrounding the vacant properties. Plaintiff also sought damages based on the expenditures of municipal services that have been and will be required to remedy the blight and unsafe and dangerous conditions which exist at vacant properties that were foreclosed as a result of Defendants' illegal lending practices.

Defendants moved to dismiss the Complaint on the grounds that Plaintiff lacked standing under the FHA, Plaintiff's FHA claim was time-barred by the statute of limitations, and the Complaint failed to state a claim upon which relief can be granted. After extensive briefing and oral argument, the Court entered an Order Granting Motion to Dismiss on July 8, 2014. *See* [DE 71].

Therein, the Court held that the City did not meet the zone of interests nor the proximate causation requirements for standing to sue under the FHA. *See Lexmark Intern., Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1387 (2014). In making that ruling, the Court was guided by the Eleventh Circuit's opinion in *Nasser v. City of Homewood*, 671 F. 2d 432 (11th Cir. 1982). The policy and purpose of the Fair Housing Act is to "provide, within constitutional limitations, for fair housing throughout the United States." 42 U.S.C.A. § 3601. After a thorough review of the Complaint, the Court explained that Plaintiff alleged merely economic injuries -- Plaintiff sought relief for economic injury from the reduction in tax revenue from the decrease in property values and for injury caused by direct expenditures that the City spent due to the foreclosures. The Court held that neither of these economic injuries is "somehow affected by a racial interest." Thus, the Court found that the City of Miami's claims fell outside of the zone of interests protected by the FHA, as the City's complaints of decreased tax revenue and increased municipal services are "so marginally related to . . . the purposes implicit in the statute

that it cannot reasonably be assumed that Congress intended to permit suit.” *Thompson v. N. Am. Stainless, LP*, 131 S. Ct. 863, 870 (2011). Additionally, the Court held that proximate causation for standing was not adequately alleged, as Plaintiff’s allegations failed to demonstrate that the Defendants’ alleged practices of redlining and reverse redlining caused the foreclosures to occur. Further, the Court noted that the independent actions of a multitude of non-parties -- a historic drop in home prices and a global recession, the decisions and actions of third parties, such as loan services, government entities, competing sellers, and uninterested buyers -- break the causal chain, thwarting the City’s ability to trace a foreclosure to Defendants’ activity. *See Fla. Family Policy Council v. Freeman*, 561 F. 3d 1246, 1253 (11th Cir. 2009) (casual chain cannot rely on “independent action of some third party not before the court”). Moreover, the Court held that Plaintiff’s offered vague and generalized allegations of harm, failing to allege facts demonstrating that the foreclosures caused the City to be harmed. Finally, the Court held that the Complaint was also subject to dismissal on statute of limitations grounds, as the Complaint contained no allegations of any loan that was closed within the relevant limitations period. The Complaint merely alleged a generalized policy of discrimination, failing to allege facts evidencing that each type of alleged discriminatory practice continued into the limitations period. The Court dismissed Count I, violation of the FHA, with prejudice, explaining that, while it is possible that an amendment could remedy the statute of limitations problems the Court identified with Plaintiff’s Complaint, it would not remedy the Plaintiff’s lack of standing to bring this action under the FHA.

The Court’s July 8, 2014 Order Granting Motion to Dismiss also held that Plaintiff failed to allege sufficient facts to support its unjust enrichment claim. That claim suffered the same insufficient causal allegations that were fatal to Plaintiff’s FHA claim. Moreover, the City failed

to allege sufficient facts demonstrating that the City conferred any benefit on the Defendants to which they were not legally entitled. The Court dismissed Count II, unjust enrichment, without prejudice with leave to amend in accordance with the Court's Order.

Rather than appeal the Court's July 8, 2014 Order Granting Motion to Dismiss challenging this Court's application of *Lexmark* and *Nassar* to the City's FHA claim, or file an amended complaint as to Plaintiff's unjust enrichment claim in accordance with the dismissal Order, Plaintiff has moved for reconsideration.

“[R]econsideration of a previous order is an extraordinary remedy to be employed sparingly.” *Burger King Corp. v. Ashland Equities, Inc.*, 181 F. Supp. 2d 1366, 1370 (S.D. Fla. 2002) (citing *Mannings v. School Board of Hillsborough County*, 149 F.R.D. 235, 235 (M.D. Fla. 1993)). For a court to reconsider its prior judgment the moving party must present facts or law of a “strongly convincing nature” that would induce a court to reverse its prior decision. *Id.* (citing *Sussman v. Salem Saxon & Nielsen, P.A.*, 153 F.R.D. 689, 694 (M.D. Fla 1994)). Three major grounds justify reconsideration: “(1) an intervening change in the controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice.” *Burger King*, 181 F. Supp. 2d at 1369. “A motion for reconsideration cannot be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment.” *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 957 (11th Cir. 2009) (internal quotation marks omitted).

Plaintiff has not presented strongly convincing arguments in the instant reconsideration Motion that would cause the Court to reconsider its prior Order. The arguments in the Motion are ones that the Plaintiff already made or that it could have, but chose not to, in the extensive process of briefing, supplemental briefing, and oral argument related to Defendants' Motion to

Dismiss. Arguing that this Court's reasoning was flawed is not enough for a motion for reconsideration. Furthermore, to the extent that the Plaintiff alternatively seeks to amend its FHA claim to assert it has a generalized non-economic interest in having an integrated community and in racial diversity -- claims it never made and amendments it did not previously raise or offer despite ample opportunity -- these new matters are improperly raised as grounds for reconsideration.¹

Finally, regarding Plaintiff's unjust enrichment claim, the Court stated in its July 8, 2014 Order Granting Motion to Dismiss:

While it does not appear that Plaintiff can overcome the deficiencies in its claim for unjust enrichment, in an abundance of caution, the Court will dismiss this count without prejudice, with leave to amend in accordance with the analysis set forth in this Order. If Plaintiff chooses to file an amended complaint, the deadline to do so is July 21, 2014. As currently pled, Plaintiff's unjust enrichment claim is pled as a supplemental jurisdiction state law claim. The Court takes no position, at this time, as to whether it would exercise supplemental jurisdiction over a complaint that only contains a state law claim.

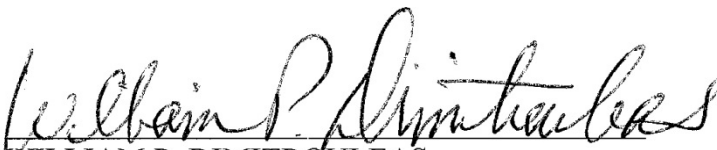
See case no. 13-24506 at [DE 71], p. 14, n. 2. Thus, the Court has already granted Plaintiff permission to file an amended complaint as to its unjust enrichment claim. If Plaintiff chooses to file such an amended complaint, the Court will extend the deadline to do so until September 15, 2014. Any arguments Defendants have raised in the instant briefing regarding the sufficiency of the unjust enrichment claim set forth in Plaintiff's proposed amended complaint may be reasserted in response to the amended complaint, if one is timely filed.

Based upon the foregoing, it is **ORDERED AND ADJUDGED** that Plaintiff's Motion

¹ Moreover, sprinkling in allegations that the City has a generalized interest in racial integration falls far short of alleging facts sufficient to demonstrate that Defendants' lending practices adversely affected the racial diversity or integration of the City, nor do those generalized allegations appear to be connected in any meaningful way to the purported loss of tax revenue and increase in municipal expenses allegedly caused by Defendants' lending practices.

for Reconsideration and Leave to File First Amended Complaint [DE 72] is **DENIED**.

DONE AND ORDERED in Chambers at Ft. Lauderdale, Broward County, Florida, this
8th day of September, 2014.


WILLIAM P. DIMITROULEAS
United States District Judge

Copies to:

Counsel of record