IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

GARY DETEMPLE,
Plaintiff,

vs. **Case No. 17-C-249 MJO**

AMERICAN ADVISORS GROUP,
a California corporation, and
FRANK JAMES PEARSON, an individual,
Defendants.

ORDER

Before the Court is *Plaintiff's Rule 59 Motion to Amend or Alter Judgment* (*Motion*). After reviewing the *Motion*, applicable law, the response and reply, the Court has determined to **GRANT** Plaintiff's *Motion* in part, but **DENY** the remainder of the *Motion* and thus, the relief requested.

As the parties will recall, this civil action arises out of a reverse mortgage loan issued by AAG to the Plaintiff. Importantly, this reverse mortgage is known as a Home Equity Conversion Mortgage (HECM). The HECM loans were created under the authority of the United States Department of Housing and Urban Development (HUD). Said loans are issued and then sold to the Government National Mortgage Association (Ginnie Mae), which is wholly owned by the United States Government. Hence, these loans are heavily regulated by the Federal Housing Administration (FHA) to ensure consumer protection. Plaintiff contends that Defendant Pearson entered into the unauthorized practice of law by facilitating the subject loan closing without a law license on behalf of AAG and that AAG violated consumer protection laws within the West Virginia Consumer Credit Protection Act (WVCCPA) and the Residential Mortgage Lending Act (RMLA). After careful consideration of the facts and the applicable law, this Court **FOUND** for the Defendants on Summary Judgment.

Hence, before the Court today is Plaintiff's attempt to alter the aforementioned judgment under W. Va. C. P. 59. Most importantly, similarly to the standard for summary judgment under

W. Va. R. C. P. 56, the West Virginia Supreme Court frowns upon granting a motion under W. Va. R. C. P. 59. This remedy is considered "extraordinary" by the Supreme Court and should only be utilized in rare circumstances including the following, "... where: (1) there is an intervening change in controlling law; (2) new evidence not previously available comes to light; (3) it becomes necessary to remedy a clear error of law or (4) to prevent obvious injustice." *Mey v. Pep Boys-Manny, Moe & Jack*, 228 W. Va. 48, 717 S.E.2d 235, 237 (2011).

First, Plaintiff argues this Court erred in finding that Defendant did not participate in the unauthorized practice of law at the closing of the loan due to no licensed attorney being present at the closing. However, West Virginia law does not prohibit a non-attorney from facilitating a closing if he/she is doing so under the supervision of a licensed attorney. In this case, Robert Milner, Esquire was available by phone and a notary was sent to the closing on his behalf. Importantly, West Virginia law does not expressly prohibit this type of supervision; and thus, it is not a "clear error of law" for this Court to determine it appropriate for Mr. Milner to send a notary in his stead.

Next Plaintiff argues this Court erred in concluding that Plaintiff's loan was a "commercial" loan rather than a "consumer" loan. As stated in the summary Judgment Order, this HECM loan was determined to be a "commercial" loan based upon the Plaintiff's *sworn testimony* where he testified to applying for this loan for the purpose of finishing the construction of two townhouses he was having built to sell for profit. Consequently, the Court did not clearly err by rendering its conclusion, based on the Plaintiff's sworn testimony. Plaintiff then argues this Court misinterpreted the language of W. Va. Code § 47-24-8(c). To this point, the Court agrees and adopts Plaintiff's interpretation of this statutory language. However, amending this aspect of the Court's Order is immaterial to the ultimate issue due to Mr. DeTemple having not been aggrieved by any actions taken on the part of the Defendants. To summarize, Mr. DeTemple pursued and

received the loan he desired and then used the loan proceeds to his commercial advantage. Hence, the Plaintiff appears to be attempting through this Motion to "have his cake and eat it too." Moreover, Plaintiff suggested in oral argument that Mr. DeTemple was an elderly male being taken advantage of by the Defendants. However, Mr. DeTemple testified to owning several businesses over the course of his lengthy career as an entrepreneur and currently owning approximately seventy (70) parcels of real property. Hence, the idea that Mr. DeTemple could walk into a loan closing and be taken advantage of due to being ignorant to the process is simply untenable.

Whether the RMLA and/or the WVCCPA applies is irrelevant as a party must be aggrieved to make out a viable cause of action and in this case, there is no aggrieved party. Accordingly, the Court has determined this *Motion* is **GRANTED** as to the limited issue of the statutory construction of W. Va. Code § 47-24-8(c). However, the *Motion* is **DENIED** as to the other arguments and the ultimate issue; and thus, this civil action is again **ORDERED STRICKEN** from this Court's docket.

It is so **ORDERED**.

It is further **ORDERED** that the clerk of the Court shall send attested copies of this Order to the following to all parties and counsel of record.

ENTER this 16th day of December 2021.

HON. MICHAEL J. OLEJASZ
First Judicial Circuit Court Judge