

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSISSIPPI

DALLAS DUHON

PLAINTIFF

VS.

CIVIL ACTION NO. 1:06-CV-718-LG-RHW

TURSTMARK BANK and  
FIDELITY NATIONAL FINANCIAL, INC.  
D/B/A LSI FLOOD SERVICES

DEFENDANT

OPINION

Summary of Factual Allegations in the Pleadings

On June 9, 2006, the Plaintiff, Dallas A. Duhon, filed this action to recover losses he sustained as a result of flood damage incurred from hurricane Katrina against Trustmark Bank ("Trustmark") and Fidelity National Financial, Inc., d/b/a FSI Flood Services ("LSI").

In June of 2005, Duhon purchased a home located at 2301 Rue Beau Chenes, Ocean Springs, Mississippi. The purchase of the home was financed through Trustmark by a mortgage executed in favor of Coastal. Coastal subsequently assigned the mortgage to Trustmark. As a part of the loan closing, Trustmark and/or Coastal was required to determine if the property was in the floodplain and subject to mandatory flood insurance coverage under the National Flood Insurance Program ("NFIP"). Trustmark and/or its loan originator, Coastal, contracted with LSI who made an erroneous determination that the structure was not affected by a special flood hazard area as defined by NFIP. This determination is evidenced by a FEMA form 81-83 Oct 02. The form was made an exhibit to the complaint, and was a part of the loan closing documents. The form issued by LSI clearly indicated that the property was not in a flood hazard area. Duhon did not obtain flood insurance, the loan was closed and Duhon acquired title to the property.

On August 29, 2005, hurricane Katrina struck the Mississippi Gulf Coast and caused extensive wind and flooding damage. Duhon now claims, as a result of Trustmark's and LSI's negligence, misrepresentation and breach of contract, he is now saddled with extensive, if not total damage, to the home and contents. In addition, he claims that as a result of FEMA elevation guidelines, he will be faced with the additional burden of elevating the home to comply with these guidelines.

On Motion of LSI, this case was removed to the United States District Court For the Southern District of Mississippi, Southern Division. On Motion of the Plaintiff, the case was remanded back to the Circuit Court of Jackson County, Mississippi by order dated February 25, 2007 and by Order of the District Court denying Trustmark's Motion to Reconsider dated April 12, 2007.

#### Subsequent Pleadings

After remand, Duhon filed a MRCP Rule 15 Motion to Amend his complaint with an attached copy of the proposed Amended Complaint. For the purposes of this opinion, the Court will treat the Motion to Amend as allowed. The Court notes that Trustmark did not object to the Motion to Amend, so long as Trustmark was dismissed from the case. Trustmark filed its Motion for a Judgment on the pleading pursuant to Mississippi Rules of Civil Procedure Rule 12(c) on September 7, 2007. LSI filed a separate motion to dismiss. The Plaintiff filed a Memorandum in Opposition to Motions to Dismiss on September 4, 2007. On September 4, 2007, LSI filed its Supplemental Brief in Support of its pending Motion to Dismiss. On September 11, 2007, LSI filed its Motion for Leave to File Responsive Brief which apparently includes its proposed supplement, and the Court will accept the Motion as a Supplement Brief.

