

# Federal Court Magistrate Recommends Dismissing Borrower's Breach Of Fiduciary Duty Claim Against A Mortgage Servicer As There Was No Fiduciary Relationship

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In *Gooden v. Mackie*, a borrower sued a mortgage servicer after the servicer foreclosed on the property. No. 4:19-CV-02948, 2020 U.S. Dist. LEXIS 25142 (S.D. Tex. January 22, 2020). Among other claims, the borrower filed a breach of fiduciary duty claim. The federal magistrate recommended dismissing that claim. The magistrate held:

The mortgagor-mortgagee relationship is considered an arm's-length business relationship that does not impose any fiduciary duties. Likewise, the mortgage servicer does not owe fiduciary duties to a borrower. Thus, no formal fiduciary relationship arises between the Removing Defendants and Plaintiff. Similarly, there is no plausible basis to believe an informal fiduciary relationship arose between Plaintiff and the Removing Defendants. "To impose an informal fiduciary duty in a business transaction, the special relationship of trust and confidence must exist prior to, and apart from, the agreement made the basis of the suit." Plaintiff does not contend any relationship existed between herself and the Removing Defendants prior to and apart from the mortgagor-mortgagee relationship. Because Plaintiff has failed to allege any relationship with the Removing Defendants other than that of mortgagor, mortgagee, and mortgage servicer, no amendment to her pleading would establish the existence of an informal fiduciary relationship.

*Id.* at \*18-19. The magistrate recommended that the plaintiff's breach of fiduciary duty claim be dismissed with prejudice because "she cannot establish a required element of her breach of fiduciary duty claim—a fiduciary relationship." *Id.*

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