

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

REGIONS BANK, d/b/a REGIONS
MORTGAGE,

Plaintiff,

v.

ICAP FINANCIAL CORP.; INTELCO,
INC.; TRUSTAMERICA, INC.; BACHE
& CO., INC.; THE MORTGAGE
DEPOT, INC.; ROBERT W. BACHE;
KATHRYN BACHE; L. EDWARD
BACHE; LARRY BACHE, JR.; SHAWN
P. AVERA; and PRISCILLA TURNER,

Defendants.

CIVIL ACTION FILE

NO. 1:08-CV-3128-BBM

ORDER

This matter is before the court on the Motion for More Definite Statement [Doc. No. 12] filed by defendants ICAP Financial Group, Inc.; Intelco, Inc.; TrustAmerica, Inc.; Bache & Co., Inc.; The Mortgage Depot, Inc.; Robert W. Bache; Kathryn Bache; L. Edward Bache; Larry Bache, Jr.; and Priscilla Turner, as well as the Motion for More Definite Statement [Doc. No. 15] filed by Shawn P. Avera. The Motions are opposed by plaintiff Regions Bank d/b/a Regions Mortgage ("Regions").

The court has reviewed the pleadings of the parties associated with these Motions, as well as Regions' Complaint, and finds it appropriate to require Regions to restate its Complaint.

DISCUSSION

Federal Rule of Civil Procedure 12(e) provides:

A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion must be made before filing a responsive pleading and must point out the defects complained of and the details desired. If the court orders a more definite statement and the order is not obeyed within 10 days after notice of the order or within the time the court sets, the court may strike the pleading or issue any other appropriate order.

Fed. R. Civ. P. 12(e). Generally motions for more definite statements are disfavored, and are properly granted only where a pleading is so vague that a response cannot be reasonably be prepared. Royal Shell Vacations, Inc. v. Scheyndel, 233 F.R.D. 629, 630 (M.D. Fla. 2005). Our system is one, after all, of notice pleading. However, based upon the court's review of the Complaint, the court finds that it is so vague and ambiguous that defendants cannot prepare a response. Although the entire Complaint must be replead, the court will attempt to illustrate the problem by way of a couple of examples.

First, with regard to jurisdiction, Regions alleges that Robert W. Bache, L. Edward Bache, Larry Bache, Jr., Kathryn Bache, Priscilla Turner, and Shawn P.

Avera are individuals associated with the corporate defendants, but does not allege the citizenship of these individual defendants. Their citizenship is important because Regions alleges diversity of citizenship as the basis for jurisdiction. (See Compl. ¶ 19.)

Further, with regard to Regions' allegations regarding jurisdiction, it asserts that "[t]he contract or contracts at issue in this case expressly confer jurisdiction over the parties to this lawsuit on this Court."¹ (Id. ¶ 18.) Regions appears to allege quite a number of contracts as the basis for its claims against defendants, but on its face, this allegation as to jurisdiction indicates that it may be referring to only one or perhaps more than one contract, and gives no detail as to who (or what entity) is a party to that contract or those contracts. The court finds that these allegations are insufficient for defendants or the court to evaluate whether jurisdiction properly lies in this court, and Regions is DIRECTED (1) to restate its Complaint as to the basis for diversity jurisdiction, and (2) to specify the contract(s) and contract provision(s) that "expressly confer jurisdiction over the parties to this lawsuit." (Id.)

¹Although the court does not decide the question, it is aware that a question exists as to whether a party may contract to confer jurisdiction on a court where personal jurisdiction does not otherwise exist. See, e.g., Alexander Proudfoot Co. World Headquarters v. Thayer, 877 F.2d 912, 918-19 (11th Cir. 1989); A.I.M. Int'l, Inc. v. Battenfeld Extrusions Sys., Inc., 116 F.R.D. 633, 640-41 (M.D. Ga. 1987).

As a second example, Regions' Complaint also refers with more specificity to various contracts delineated as "a" through "dd," which by the court's count is 30 separate contracts. However, with regard to each one, Regions merely alleges that "defendants" misrepresented various information regarding the borrower. The Complaint does not specify which defendant or defendants is alleged to have made any of the alleged misrepresentations. Further with regard to these contracts, the vagueness and ambiguity problem is compounded by the introduction to paragraphs "a" through "dd" which generally alleges "among other misrepresentations." (Compl. ¶ 31.)

Again, the court finds that the allegations regarding the misrepresentations allegedly made in the Complaint are so vague as to fail to put any particular defendant on notice of the charge or charges he, she or it must defend against. This is particularly true of this Complaint, insofar as Regions is alleging fraud, which must be pled with particularity. See Fed. R. Civ. P. 9(b). Accordingly, with regard to each contract which is the subject of Regions' Complaint, Regions is DIRECTED to specify the date of the contract; designate the parties to the contract; and specify what fraud or misrepresentation was made by which defendant or defendants as to each fraud or misrepresentation. Further, to the extent that Regions is alleging that

any particular defendant owed a duty to it, Regions is DIRECTED to specify the source of the duty – whether it arises from a contractual or other relationship.

Importantly, the court notes that Regions' Complaint constitutes a "shotgun" complaint,² which is a type of pleading not permitted in this Circuit. Byrne v. Nezhat, 261 F.3d 1075, 1133 (11th Cir. 2001) ("[I]f, in the face of a shotgun complaint, the defendant does not move the district court to require a more definite statement, the court, in the exercise of its inherent power, must intervene *sua sponte* and order a repleader.") Thus, this court will further require Regions to replead its Complaint without incorporating by reference previous allegations in the Complaint, and specifying for each allegation the particular defendant or defendants against whom the allegation is being made. Although the court will not **require** Regions to attach copies of the contracts at issue here, providing the copies of the contracts would certainly clarify and aid an understanding of what is at issue here.

²The much-maligned "shotgun" complaint is one, for example against numerous defendants, in which various counts make allegations generally against "defendants," without specifying which defendant. Magluta v. Samples, 256 F.3d 1282, 1284 (11th Cir. 2001). A shotgun complaint is also characterized by a numerous counts, each incorporating by reference the allegations previously made in the Complaint, thereby defeating Fed. R. Civ. P. 10(b)'s requirement for discrete claims in separate counts. Id. Regions' Complaint suffers from both of these defects.

SUMMARY

For the reasons stated here, the Motions for a More Definite Statement [Doc. Nos. 12 and 15] are each GRANTED. Regions is DIRECTED to replead its Complaint to cure the defects discussed above, within 14 days of the date of this Order.

IT IS SO ORDERED, this 29th day of December, 2008.

s/Beverly B. Martin
BEVERLY B. MARTIN
UNITED STATES DISTRICT JUDGE