

## **APPENDIX**

**APPENDIX**

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**APPENDIX A**

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[DO NOT PUBLISH]

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

**No. 17-10556  
Non-Argument Calendar**

**D.C. Docket No. 2:16-cv-00031-LGW-RSB**

**[Filed September 6, 2017]**

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PAMELA M. TIMBES, )  
 )  
 Plaintiff-Appellant, )  
 )  
 versus )  
 )  
 DEUTSCHE BANK NATIONAL TRUST )  
 COMPANY, as Indenture Trustee for )  
 American Home Mortgage Investment )  
 Trust 2005-3, OCWEN LOAN SERVICING, LLC, )  
 ALDRIDGE PITE, LLP, f.k.a. Aldridge Connors, )  
 )  
 Defendants-Appellees. )  
 )

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Appeal from the United States District Court for the  
Southern District of Georgia

(September 6, 2017)

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Before MARTIN, ROSENBAUM, and ANDERSON,  
Circuit Judges.

PER CURIAM:

Pamela Timbes, proceeding *pro se*, appeals the district court's denial of her motion to remand to state court and dismissal of her complaint against Deutsche Bank National Trust Company ("Deutsche Bank"), Ocwen Loan Servicing, LLC ("Ocwen"), and Aldridge Pite, LLP ("Aldridge"), raising state and federal claims related to the foreclosure of her property. After the defendants removed her complaint from state court, the district court denied Timbes's motion to remand and dismissed her complaint for failure to state a claim under Rule 12(b)(6), Fed. R. Civ. P. On appeal, Timbes argues that the district court should have declined to exercise jurisdiction and instead remanded her complaint to state court. She also challenges the dismissal of her complaint. After careful review, we affirm.

I.

In connection with the purchase of her home in St. Simons Island, Georgia, in 2005, Timbes executed a security deed to Mortgage Electronic Registration Systems, Inc. ("MERS"), as nominee for American Home Mortgage Acceptance, Inc. The security deed contained a power-of-sale provision authorizing a non-judicial foreclosure sale in the event of default. In 2010, the security deed was assigned to Deutsche Bank and recorded in Glynn County, Georgia, where St. Simons Island is located.

Timbes alleges that the assignment to Deutsche Bank was prepared and signed by Lender Processing

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Services (“LPS”), which she says is “a known document fabricator” for lenders and law firms.

In December 2015, Aldridge placed an advertisement for foreclosure of Timbes’s property in *The Brunswick News*. Then on January 5, 2016, Deutsche Bank exercised the power of sale in the security deed and conducted a non-judicial foreclosure sale of the property.

The day before the scheduled foreclosure sale, Timbes filed suit against Deutsche Bank, Ocwen, and Aldridge in Georgia state court. In her complaint, Timbes brought causes of action for fraud upon the court, void assignment of a deed, wrongful foreclosure, violations of the Georgia and federal Racketeer Influenced and Corrupt Organizations Acts, and violations of the Fair Debt Collection Practices Act (“FDCPA”).

With Aldridge’s consent, Deutsche Bank and Ocwen removed the case to the United States District Court for the Southern District of Georgia. Soon after, Timbes moved to remand the case and to stay ruling on a motion to dismiss that had been filed in state court. The defendants moved to dismiss the complaint for failure to state a claim. Timbes did not respond to the motions to dismiss.

In January 2017, the district court denied Timbes’s motion to remand and granted the defendants’ motion to dismiss. The court rejected Timbes’s contention that the *Rooker-Feldman* doctrine barred its exercise of jurisdiction, reasoning that the doctrine did not apply because Timbes’s challenge to the non-judicial foreclosure sale did not concern any state court

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judgment. On the merits, the court found that most of Timbes's claims rested on the alleged invalidity of the assignment, which she lacked standing to challenge under Georgia law. As for her claim under the FDCPA, the court found that her allegations were insufficient to show a violation. Accordingly, the court dismissed the complaint with prejudice. Timbes now appeals.

II.

Timbes first argues that the district court should have remanded her complaint to state court either because it lacked subject-matter jurisdiction under the *Rooker-Feldman*<sup>1</sup> doctrine or because abstention was warranted under the *Younger*<sup>2</sup> abstention doctrine. We review *de novo* a district court's denial of a motion to remand. *City of Vestavia Hills v. Gen. Fid. Ins. Co.*, 676 F.3d 1310, 1313 (11th Cir. 2012).

"Generally speaking, the *Rooker-Feldman* doctrine bars federal district courts from reviewing state court decisions." *Nicholson v. Shafe*, 558 F.3d 1266, 1270 (11th Cir. 2009). Somewhat relatedly, the *Younger* abstention doctrine prohibits federal courts from interfering with or enjoining certain ongoing state proceedings, such as criminal prosecutions, civil proceedings that are akin to a criminal prosecution, or "strictly civil proceedings which implicate state courts' important interests in administering certain aspects of their judicial systems." *Green v. Jefferson Cty. Comm'n*,

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<sup>1</sup> The *Rooker-Feldman* doctrine is named for *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983).

<sup>2</sup> *Younger v. Harris*, 401 U.S. 37 (1971).

563 F.3d 1243, 1250–51 (11th Cir. 2009) (internal quotation marks omitted).

Neither doctrine applies, however, where there is no state proceeding, either concluded or ongoing, to which the present federal action relates. No related state proceeding is involved in this case. It is undisputed that Timbes’s property was sold through *non-judicial* foreclosure proceedings under Georgia law. *See You v. JP Morgan Chase Bank*, 743 S.E.2d 428, 430 (Ga. 2013) (stating that Georgia law “authorizes the use of non-judicial power of sale foreclosure as a means of enforcing a debtor’s obligation to repay a loan secured by real property”) (internal quotation marks omitted). The non-judicial foreclosure process, which is governed primarily by contract law with some “limited” statutory consumer protections, “permits private parties to sell at auction, without any court oversight, property pledged as security by a debtor who has come into default.” *Id.*

Because Timbes’s property was sold through non-judicial foreclosure proceedings, it was conducted without court oversight, which means that there was no state-court proceeding, no state-court judgment, and no sheriff’s sale. Therefore, *Rooker-Feldman* does not apply because there is no state-court judgment that could be reviewed, and *Younger* does not apply because there is no pending state-court or court-like proceeding with which the federal district court could interfere by exercising jurisdiction over the case. Timbes does not otherwise dispute that the district court had federal subject-matter jurisdiction over her complaint in light of her federal claims. *See* 28 U.S.C. § 1331. Accordingly, we affirm the denial of her motion to remand.

III.

Next, Timbes argues that the district court denied her due process of law by denying her motion to remand and granting the motions to dismiss her complaint, in a single order, without ruling on her motion to stay. She asserts that the district court erred in dismissing her complaint on the ground that she lacked standing to challenge the assignment. Timbes notes that the Supreme Court of Georgia has indicated that O.C.G.A. § 44-14-162(b) could provide a debtor with standing to challenge a foreclosure. Finally, she argues that she should have been allowed to amend her complaint.

We review *de novo* the dismissal of a complaint for failure to state a claim under Rule 12(b)(6), accepting as true the facts alleged in the complaint and construing them in the light most favorable to the plaintiff. *Hunt v. Aimco Props, L.P.*, 814 F.3d 1213, 1221 (11th Cir. 2016). To withstand dismissal, a plaintiff must plead sufficient facts to state a claim for relief that is plausible on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). While we liberally interpret briefs filed by *pro se* litigants, issues not briefed on appeal are deemed abandoned. *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008).

We review for an abuse of discretion a district court’s denial of a motion to stay litigation. *Klay v. All Defendants*, 389 F.3d 1191, 1203 (11th Cir. 2004).

As an initial matter, even liberally construing her initial brief on appeal, we find no argument Timbes has raised as to the district court's dismissal of her FDCPA claim, so she has abandoned that issue. *See Timson*, 518 F.3d at 874. As for Timbes's right to due process, the district court did not violate it by denying her motion to remand at the same time the court granted the motions to dismiss. The motion to remand was properly denied, and Timbes had nearly a year to respond to the motions to dismiss. Nor is there any indication in the record that the district court otherwise acted in a manner inconsistent with due process.

Turning to Timbes's challenge to the validity of the assignment, we agree with the district court that she lacks standing to contest the assignment. Under Georgia law, "a person who is not a party to a contract, or an intended third-party beneficiary of a contract, lacks standing to challenge or enforce a contract." *Haynes v. McCalla Raymer, LLC*, 793 F.3d 1246, 1251 (11th Cir. 2015). Therefore, a borrower ordinarily lacks standing to challenge an assignment of her security deed because she is not a party to the assignment or its intended beneficiary. *Ames v. JP Morgan Chase Bank, N.A.*, 783 S.E.2d 614, 620 (Ga. 2016); *Jurden v. HSBC Mortg. Corp.*, 765 S.E.2d 440, 442 (Ga. Ct. App. 2014).

Even in cases alleging forgery, we have found that "Georgia law is clear that borrowers do not have standing to attack a forged assignment of their security deed, which—if attacked by a party with standing—would provide the basis for a claim of wrongful foreclosure." *Haynes*, 793 F.3d at 1252; *see Montgomery v. Bank of Am.*, 740 S.E.2d 434, 437–38

(Ga. Ct. App. 2013) (holding that a borrower could not challenge an assignment to which he was not a party, even if the assignment was forged). Here, Timbes's claim is essentially one of forgery. She asserts that the assignment of her security deed was fabricated by LPS, a "known document fabricator," and signed by known "robosigners." Accordingly, *Haynes* makes clear that Timbes lacks standing to bring her claim.

Nor does it make any difference if Timbes frames her challenge as asserting a facial defect, rather than a latent defect, in the assignment. In *Haynes*, we held that even a facial defect in the assignment—such as the lack of proper attestation— does not provide a borrower with standing to challenge a security deed. *See* 793 F.3d at 1253. Therefore, we rejected a claim that "the lack of a valid official witness to the assignment rendered the deed facially defective and not fit for recording in violation of O.C.G.A. § 44-14-162(b)." *Id.* at 1251.

Timbes points out that Georgia courts have not gone quite so far as *Haynes*. In *Ames*, the Supreme Court of Georgia adopted the general rule that a borrower lacks standing to challenge an assignment of his or her security deed. 783 S.E.2d at 619-20. But the Court left open the possibility that a debtor could have standing to challenge the validity of an assignment indirectly, if the invalid assignment violated a statutory protection and thereby injured the debtor. *Id.* at 621. One question left unresolved by *Ames* is whether O.C.G.A. § 44-14-162(b) "could ever provide a debtor with standing to challenge a foreclosure based on an unrecorded or facially invalid assignment." *Id.* at 622 n.7. Section § 44-14-162(b) "requir[es] foreclosures to be

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conducted by the current owner of the mortgage, as shown by public records.” *Duke Galish LLC v. SouthCrest Bank*, 726 S.E.2d 54, 56 (Ga. Ct. App. 2012). Thus, *Ames* left open a possibility—that a debtor could have standing to challenge an unrecorded or facially invalid assignment under § 44-14-162(b)—that *Haynes* appears to foreclose. Compare *Ames*, 783 S.E.2d at 622 n.7 (noting *Haynes*), with *Haynes*, 793 F.3d at 1252–53.

Nevertheless, while *Ames* did not fully foreclose the possibility of borrower standing to challenge an assignment, it also did not work any changes in existing Georgia law. Significantly, nothing in *Ames* appears to cast doubt on our statement in *Haynes* that “Georgia law is clear that borrowers do not have standing to attack a forged assignment of their security deed.” *Haynes*, 793 F.3d at 1252. Indeed, *Ames* indicates that if a borrower believes that the assignment of his or her security deed was invalid or fraudulent, he or she should alert the true deed holder so that it “may intercede to assert any rights it believes it has,” which “would be expected to lead to remedial action by the true holder.” *Ames*, 783 S.E.2d at 620–21. But a borrower “cannot manufacture standing . . . by asserting a claim that the party with standing has not asserted.” *Id.* at 621. There has been no indication that MERS or American Home Mortgage Acceptance believed that Timbes’s security deed was fraudulently conveyed, even if, as Timbes asserts, American Home Mortgage Acceptance had sued LPS for robo-signing in the past.

The § 44-14-162(b) issue left unresolved by *Ames* concerns borrower standing based on an “unrecorded or

*facially invalid* assignment,” *Ames*, 783 S.E.2d at 622 n.7 (emphasis added), but a forged assignment is not invalid on its face, *see Haynes*, 793 F.3d at 1252 (describing forged signatures as a latent defect within an assignment). For this reason, Timbes’s allegations of a latent forgery in a recorded assignment do not fit within the limited possibility left open by *Ames*.

Moreover, the fact that *Ames* declined to address an issue of law that *Haynes* addressed does not clarify or change state law in a way that casts doubt on or is inconsistent with *Haynes*. We are bound to follow prior panel precedent even when addressing state-law issues, unless the state law changes or later state-court or United States Supreme Court decisions cast doubt on the prior panel’s interpretation of the state law. *See World Harvest Church, Inc. v. Guideone Mut. Ins. Co.*, 586 F.3d 950, 957 (11th Cir. 2009); *Venn v. St. Paul Fire & Marine Ins. Co.*, 99 F.3d 1058, 1066 (11th Cir. 1996). Because *Ames* does not cast doubt on *Haynes*’s interpretation of Georgia state law, Timbes lacks standing to challenge the allegedly forged assignment.

Finally, the district court did not abuse its discretion by failing to provide Timbes with an opportunity to amend her complaint. While a *pro se* plaintiff ordinarily must be given at least one chance to amend her complaint, *Bank v. Pitt*, 928 F.2d 1108, 1112 (11th Cir. 1991), *overruled in part by Wagner v. Daewoo Heavy Indus. Am. Corp.*, 314 F.3d 541, 542 (11th Cir. 2002) (*en banc*) (holding that this rule does not apply to counseled litigants who never requested leave to amend), the district court need not grant leave to amend where amendment would be futile, *Corsello v. Lincare, Inc.*, 428 F.3d 1008, 1014 (11th Cir. 2005).

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Here, amendment would have been futile because Timbes lacks standing to challenge the assignment. Accordingly, the court properly denied leave to amend.

For the reasons stated, we **AFFIRM** the judgment of the district court.

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**APPENDIX B**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
BRUNSWICK DIVISION**

**CV 216-31**

**[Filed January 13, 2017]**

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PAMELA M. TIMBES,

Plaintiff,

v.

DEUTSCHE BANK NATIONAL TRUST  
COMPANY, as Indenture Trustee for American  
Home Mortgage Investment Trust 2005-3;  
OCWEN LOAN SERVICING, LLC; ALDRIDGE  
PITE, LLP, FKA ALDRIDGE CONNERS,

Defendants.

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**ORDER**

Pending before the Court is Plaintiff Pamela Timbes' ("Plaintiff") Motion to Remand ( Dkt. No. 5), Defendant Deutsche Bank National Trust Company's ("Deutsche Bank") Motion to Dismiss (Dkt. No. 6) and Defendant Aldridge Pite, LLP's ("Aldridge Pite") Motion to Dismiss (Dkt. No. 10). Plaintiff has failed to respond to either of the defendants' motions. For the reasons stated below, Plaintiff's Motion to Remand (Dkt. No. 5) is **DENIED**, and Defendant Deutsche Bank's Motion to Dismiss (Dkt. No. 6) and Defendant

Aldridge Pite's Motion to Dismiss (Dkt. No. 10) are **GRANTED**.

### **FACTUAL BACKGROUND**

The following allegations are taken solely from Plaintiff's Complaint. Dkt. No. 1-3. Plaintiff secured title to a home on St. Simons Island, Georgia by conveying legal title by way of security deed with American Home Mortgage Investment ("American Home"). *Id.* ¶6. The assignment of this security deed to Deutsche Bank was filed on December 2, 2010. *Id.* ¶8. In December 2015, Aldridge Pite, a foreclosure firm, placed an advertisement for foreclosure regarding Plaintiff's home in the Brunswick News. *Id.* ¶7. Plaintiff alleges that she made multiple requests to all Defendants seeking written proof as to the legal holder of the security deed. *Id.* ¶9. Plaintiff alleges that Defendant Ocwen Loan Servicing, LLC ("Ocwen") was identified as the secured creditor of the property in a June 5, 2015 letter to the United States Bankruptcy Court. *Id.* ¶11. Plaintiff claims that there was no assignment of the security deed to Ocwen. *Id.* On January 5, 2016, Deutsche Bank foreclosed on Plaintiff's home. Plaintiff now brings multiple causes of action stemming from the foreclosure of her home against all Defendants.

### **DISCUSSION**

#### **I. Plaintiff's Motion to Remand**

The Court first considers Plaintiff's Motion to Remand. Under 28 U.S.C. § 1441(a), a defendant in a case originally filed in state court may remove the case to federal district court if the district court could have exercised original jurisdiction. Under 28 U.S.C.

§ 1447(c), however, the case must be remanded to state court “[i]f at any time before final judgment it appears that the district court lacks subject matter jurisdiction.” Defendants claim that the Court has jurisdiction under 28 U.S.C. § 1331 because this case involves a federal question under the federal Fair Debt Collection Protection Act (“FDCPA”) and the Racketeer Influenced and Corrupt Organizations Act (“RICO”). Dkt. No. 1 p. 3-4. Defendants claim that the Court may exercise supplemental jurisdiction over related state-law claims under 28 U.S.C. § 1367. Id.

Plaintiff’s sole argument in support of her petition to remand is that the Court may not exercise jurisdiction over this action under the Rooker-Feldman doctrine. The Rooker-Feldman doctrine makes it clear that federal district courts cannot review state-court final judgments because that task is reserved for state appellate courts or, in rare instances, the United States Supreme Court. D.C. Ct. of App. v. Feldman, 460 U.S. 462, 482 (1983). However, the state court judgment must be final prior to removal for the Rooker-Feldman doctrine to apply. Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005). Further, “[a]bstention from the exercise of federal jurisdiction is the exception, not the rule.” Colo. River Water Conservation Dist. v. United States, 424 U.S. 800, 813 (1976). The Court finds there are no grounds for abstention under the Rooker-Feldman doctrine here. It is undisputed that the foreclosure on Plaintiff’s property was *non-judicial* in nature. Dkt. No. 5 p. 4. Therefore, the Court need not concern itself with an ongoing state court proceeding because no such proceeding has been initiated. See Fabre v. Bank of Am. Bank, NA, 523 F. App’x 661, 664 (11th Cir. 2013)

(finding Rooker-Feldman abstention inapplicable when a non-judicial foreclosure had occurred but no prior state-court action had been filed). Therefore, the Court will deny Plaintiff's Motion to Remand and exercise jurisdiction over this case.

## **II. Defendant Deutsche Bank and Aldridge Pite's Motions to Dismiss**

Defendants Deutsche Bank and Aldridge Pite now move separately to dismiss Plaintiff's Complaint. When ruling on a Rule 12(b)(6) motion to dismiss, a district court must accept as true the facts set forth in the complaint and draw all reasonable inferences in the plaintiff's favor. Randall v. Scott, 610 F.3d 701, 705 (11th Cir. 2010). Although a complaint need not contain detailed factual allegations, it must contain sufficient factual material "to raise a right to relief above the speculative level." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). At a minimum, a complaint should "contain either direct or inferential allegations respecting all the material elements necessary to sustain a recovery under some viable legal theory." Fin. Sec. Assurance, Inc. v. Stephens, Inc., 500 F.3d 1276, 1282-83 (11th Cir. 2007) (per curiam) (quoting Roe v. Aware Woman Ctr. for Choice, Inc., 253 F.3d 678, 683 (11th Cir. 2001)). Additionally, because Plaintiff is acting pro se, her "pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed." Tannenbaum v. United States, 148 F.3d 1262, 1263 (11th Cir. 1998). "This leniency, however, does not require or allow courts to rewrite an otherwise deficient pleading in order to sustain an action." Thomas v.

Pentagon Fed. Credit Union, 393 F. App'x 635, 637 (11th Cir. 2010).

Counts I-IV of Plaintiff's claims rely heavily on the allegation that Deutsche Bank received the security deed via "fraudulent" assignment. See generally Dkt. No. 1-3. The Court has reviewed the security deed referenced in Plaintiff's Complaint. Dkt. Nos. 6-1.<sup>1</sup> The agreement indeed granted American Home and its assigns the "power of sale" over the property.<sup>2</sup> Dkt. No. 6-1 p. 1-3. Here, Plaintiff does not challenge the validity of the security deed. She does, however, challenge the validity of the assignment of rights of the security deed to Deutsche Bank. She argues that this document was fraudulently created in order to foreclose on her property. Dkt. No. 1-3 ¶4. Even assuming that this is true, Plaintiff's claim still fails.

At the outset, the Court notes that Counts I through IV of Plaintiff's claims sound in fraud. As such, these allegations are subject to the higher pleading standard imposed by Federal Rule of Civil Procedure 9(b). To satisfy Rule 9(b) in a civil action involving a scheme to

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<sup>1</sup> On a motion to dismiss, the Court may look outside the pleadings and properly consider documents that are central to the Plaintiff's complaint and undisputed in authenticity. Horsley v. Feldt, 304 F.3d 1125, 1134 (11th Cir. 2002). Plaintiff's claim is entirely based upon the allegation that the assignment to Deutsche Bank is void and, presumably, that this makes the Security Deed unenforceable. Plaintiff has not disputed the authenticity of the security deed, but does dispute the authenticity of the assignment contract.

<sup>2</sup> A "power of sale" means the ability to conduct a non-judicial disclosure, which is what ultimately occurred in this case.

defraud, a plaintiff must identify “(1) the precise statements, documents, or misrepresentations made; (2) the time, place, and person responsible for the statement; (3) the content and manner in which these statements misled [Plaintiff]; and (4) what the defendants gained by the alleged fraud.” Brooks v. Blue Cross & Blue Shield of Fla., Inc., 116 F.3d 1364, 1381 (11th Cir. 1997). When the alleged fraud involves multiple defendants, Rule 9(b) requires that the plaintiff plead sufficient facts to “inform each defendant of the nature of [its] alleged participation in the fraud.” Id. (quoting Vicom, Inc. v. Harbridge Merchant Servs., Inc., 20 F.3d 771, 777-78 (7th Cir. 1994)).

Plaintiff fails to satisfy this heightened pleading standard. Plaintiff plainly fails to state the time, place, and person responsible for the allegedly fraudulent assignment. Furthermore, she fails to state how she was misled by the alleged fraud as a non-party to the assignment contract. As such, Plaintiff fails the heightened pleading standard of Rule 9(b) and Counts I-IV of her Complaint must be dismissed.

Regardless, a third-party has no standing to challenge an assignment of rights between an assignor and an assignee. Woodberry v. Bank of Am., N.A., No. 1:11-CV-3637-TWT, 2012 WL 113658 at \*2 (N.D. Ga. Jan. 12, 2012) (citing Haldi v. Piedmont Nephrology Assocs., 641 S.E.2d 298 (Ga. Ct. App. 2007)). Furthermore, this principle applies under circumstances where the third-party’s property has been foreclosed upon by the assignee. Montoya v. Branch Banking & Tr. Co., No. 1: 11-CV- 01869-RWS, 2012 WL 826993, at \*4 n.3 (N.D. Ga. Mar. 9, 2012)

(citing Breus v. McGriff, 413 S.E.2d 538, 539 (Ga. Ct. App. 1991)). Therefore, Plaintiff has no standing to challenge the allegedly fraudulent assignment. This finding is fatal to Count I (Fraud), Count II (Petition to Void Assignments), Count III (Wrongful Foreclosure) and Count IV (State and Federal RICO claims).<sup>3</sup> All four counts are based upon the allegation that the assignment was fraudulent, and these claims will be dismissed.<sup>4</sup>

Lastly, the Court turns to Plaintiff's FDCPA claims against Aldridge Pite. The purpose of the FDCPA is to prohibit debt collectors from using abusive debt collection practices. 15 U.S.C. § 1692(e). The FDCPA requires "debt collectors" to send "consumers" written notice containing information related to the debt owed within five days of attempting to collect a debt. 15 U.S.C. § 1692g(b). Therefore, Plaintiff must plausibly allege that (1) Aldridge Pite is a debt collector and (2) the challenged conduct is related to debt collection. Saint Vil v. Perimeter Mortg. Funding Corp., 630 F. App'x 928, 930 (11th Cir. 2015). Plaintiff does not allege that Aldridge Pite is a debt collector, nor does she allege that at any point in time the firm attempted to collect a debt in its communications with her. Aldridge Pite appears to have sent Plaintiff a notice

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<sup>3</sup> Plaintiff similarly lacks standing to challenge the "Master Servicing and Trust Agreement" because she does not allege she was a party to it, either.

<sup>4</sup> Plaintiff also claims that she sought "written proof" as to the holder of the security deed. It is unclear whether Plaintiff attempts to make this out as a separate claim. However, the Court can discern no legal basis for requiring Deutsche Bank to tender the security deed prior to foreclosure.

letter notifying her of the non-judicial foreclosure of her property. To the extent Plaintiff argues that this constitutes an attempt to collect a debt, this argument must fail. Aldridge Pite was required to send a notice of foreclosure under Georgia law, and this does not constitute an attempt to collect a debt. Id. at 931-32. Therefore, Plaintiff's FDCA claims must also fail. As such, the Court will dismiss Plaintiff's claim in its entirety.

### CONCLUSION

For the reasons set forth above, Defendant Deutsche Bank's Motion to Dismiss or in the Alternative, Judgment on the Pleadings (Dkt. No. 6) and Aldridge Pite's Motion to Dismiss (Dkt. No. 10) are hereby **GRANTED**. Furthermore, Plaintiff's Motion to Remand (Dkt. No. 5) is hereby **DENIED**. The Clerk of Court is **DIRECTED** to enter the appropriate judgment and to close this case.

**SO ORDERED**, this 13th day of January, 2017.

s/ \_\_\_\_\_  
LISA GODBEY WOOD, CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA

App. 20

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**APPENDIX C**

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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA**

**Case Number: 2:16-cv-31**

**[Filed January 20, 2017]**

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PAMELA M. TIMBES,

v.

DEUTSCHE BANK NATIONAL TRUST  
COMPANY, et al.

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**JUDGMENT IN A CIVIL CASE**

\* \* \*

√ **Decision by Court.** This action came before the Court. The issues have been considered and a decision has been rendered.

**IT IS ORDERED AND ADJUDGED**

that in accordance with the Order of the Court entered this 13th day of January 2017, granting Defendants' Motions to Dismiss, judgment is hereby entered and this case stands closed.

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Approved by s/\_\_\_\_\_

January 20, 2017  
*Date*

Scott L. Poff  
*Clerk*

s/\_\_\_\_\_  
*(By) Deputy Clerk*

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**APPENDIX D**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

**No. 17-10556-CC**

**[Filed November 28, 2017]**

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PAMELA M. TIMBES, )  
 )  
 Plaintiff-Appellant, )  
 )  
 versus , )  
 )  
 DEUTCHE BANK NATIONAL TRUST )  
 COMPANY, as Indenture Trustee for )  
 American Home Mortgage Investment )  
 Trust 2005-3, OCWEN LOAN SERVICING, LLC, )  
 ALDRIDGE PITE, LLP, f.k.a. Aldridge Connors, )  
 )  
 Defendants-Appellees. )

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Appeal from the United States District Court  
for the Southern District of Georgia

BEFORE: MARTIN, ROSENBAUM, and ANDERSON,  
Circuit Judges.

PER CURIAM:

The petition(s) for panel rehearing filed by Pamela  
Timbes is DENIED.

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ENTERED FOR THE COURT:

s/ \_\_\_\_\_  
UNITED STATES CIRCUIT JUDGE

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT**

**No. 17-10556-CC**

**[Filed November 28, 2017]**

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PAMELA M. TIMBES, )  
 )  
 Plaintiff-Appellant, )  
 )  
 versus )  
 )  
 DEUTCHE BANK NATIONAL TRUST )  
 COMPANY, as Indenture Trustee for )  
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 Trust 2005-3, OCWEN LOAN SERVICING, LLC, )  
 ALDRIDGE PITE, LLP, f.k.a. Aldridge Connors, )  
 )  
 Defendants-Appellees. )  

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Appeal from the United States District Court  
for the Southern District of Georgia

**ON PETITION(S) FOR REHEARING AND  
PETITION(S) FOR REHEARING EN BANC**

BEFORE: MARTIN, ROSENBAUM, and ANDERSON,  
Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no  
Judge in regular active service on the Court having  
requested that the Court be polled on rehearing en

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banc (Rule 35, Federal Rules of Appellate Procedure),  
the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

s/ \_\_\_\_\_  
UNITED STATES CIRCUIT JUDGE

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**APPENDIX E**

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Deed Book 2801 Page 247, Filed and Recorded  
12/02/2012 at 10:45:12 AM GFN #632010012637  
Lola Jamsky Clerk of Superior Court Glynn County,  
GA

STATE OF Florida File No. 10-20032  
COUNTY OF Duval MIN# 100314000002793076

**ASSIGNMENT OF SECURITY DEED**

FOR VALUE RECEIVED, Mortgage Electronic Registration Systems, Inc. as nominee for American Home Mortgage Acceptance, Inc., its successors and assigns (hereinafter referred to as "Assignor") hereby sells, assigns, transfers, sets over and conveys without recourse unto Deutsche Bank National Trust Company, as Indenture Trustee for American Home Mortgage Investment Trust 2005-3 (hereinafter referred to as "Assignee"), whose address is 6591 Irvine Center Drive Irvine, CA 92618, that certain Security Deed or Deed to Secure Debt executed by Pamela M. Timbes to Mortgage Electronic Registration Systems, Inc. as nominee for American Home Mortgage Acceptance, Inc., its successors and assigns and dated June 23, 2005, recorded in Deed Book 1706, Page 178, Clerk's Office, Superior Court of Glynn County, Georgia, together with the real property therein described; and also the indebtedness described in said Deed and secured thereby, having this day been transferred and assigned to the said Assignee together with all of Assignor's right, title and interest in and to the said Deed, the property therein described and the

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indebtedness secured; and the said Assignee is hereby subrogated to all the rights, powers, privileges and securities vested in Assignor under and by virtue of the aforesaid Security Deed or Deed to Secure Debt.

This Assignment of Security Deed is executed on this 19 day of November, 2010.

Signed, sealed and delivered in the presence of:

Mortgage Electronic Registration Systems, Inc. as nominee for American Home Mortgage Acceptance, Inc., its successors and assigns

By: s/ \_\_\_\_\_ Elizabeth Boulton  
Its: Assistant Secretary

By: s/ \_\_\_\_\_ Michelle Halyard  
Its: Assistant Secretary

s/ \_\_\_\_\_  
Unofficial Witness

s/ \_\_\_\_\_  
Notary Public

My Commission Expires: 4-30-2013 [Seal]

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**APPENDIX F**

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**SUMMARY OF PROSPECTUS SUPPLEMENT**

The following summary is a very broad overview of the notes and does not contain all of the information that you should consider in making your investment decision. To understand all of the terms of the notes, read carefully this entire prospectus supplement and the entire accompanying prospectus. A glossary is included at the end of this prospectus supplement. Capitalized terms used but not defined in the glossary at the end of this prospectus supplement have the meanings assigned to them in the glossary at the end of the accompanying prospectus.

Issuer or Trust	American Home Mortgage Investment Trust 2005-3.
Title of Series	Mortgage-Backed Notes, Series 2005-3.
Cut-off Date	September 1, 2005.
Closing Date	On or about September 20, 2005.
Depositer	American Home Mortgage Securities LLC.
Seller	American Home Mortgage Acceptance, Inc., an affiliate of the depositor and the servicer.
Master Servicer	Wells Fargo Bank, National Association

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Servicer	American Home Mortgage Servicing, Inc.
Indenture Trustee	Deutsche Bank National Trust Company.
Owner Trustee	Wilmington Trust Company.
Securities Administrator	Wells Fargo Bank, National Association.
Payment Dates	Payments on the notes will be made on the 25th day of each month, or, if such day is not a business day, on the next succeeding business day, beginning in October 2005.
Notes	The classes of notes and their note interest rates and initial note principal balances are set forth in the table below.