

APPENDIX A

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 16-CV-586

ALBERT JENKINS, *et al.*, APPELLANTS,

v.

WMC MORTGAGE, *et al.*, APPELLEES.

Appeal from the Superior Court
of the District of Columbia
(CAB-3723-14)

(Hon. Brian Holeman, Trial Judge)

(Submitted March 20, 2018)

Decided April 17, 2018)

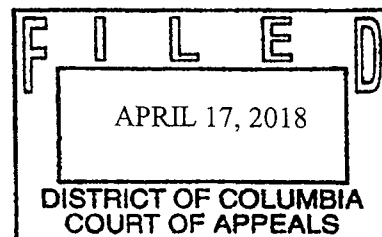
Before FISHER and EASTERLY, *Associate Judges*, and FARRELL, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Appellants Jenkins and Lowther, proceeding *pro se*, challenge the trial court's dismissal of their 2014 complaint against appellees WMC Mortgage and Adam Helfer. On appeal, appellants principally contest the trial court's determinations that appellants' complaint was time-barred and that Jenkins lacked standing to sue WMC Mortgage. Finding no error, we affirm.

I.

Appellants' claims against WMC Mortgage arise out of a 2005 loan transaction that was the subject of earlier litigation. Lowther's initial complaint, filed in 2007, outlined claims against individual alleged fraud perpetrators, a consulting firm, and WMC Mortgage, alleging mainly that defendants had falsely represented their ability to arrange a loan for Lowther to keep her property located at 11 Rhode Island Avenue, N.E. The claims against WMC Mortgage in that lawsuit were resolved by the grant of a motion to dismiss in favor of appellee, without prejudice, in 2007.



In June 2014, as part of a new stream of litigation, Jenkins filed a complaint alleging breach of contract by Lowther. Jenkins later amended his complaint by removing Lowther as a defendant and naming both WMC Mortgage and Adam Helfer, one of the alleged fraud perpetrators (voluntarily dismissed from the original action), as defendants. Lowther was subsequently allowed to intervene. During the next year, appellants sought to amend their complaint on two occasions. The Third Amended Complaint, the subject of this litigation, was filed on February 1, 2016, and asserted multiple claims against WMC Mortgage including fraud, conspiracy, breach of fiduciary duty, and negligence. On February 22, 2016, WMC Mortgage moved to dismiss the claims against it with prejudice. The trial court granted the motion, concluding that each of the claims was time-barred by the statute of limitations and that, moreover, Jenkins lacked standing to join in the suit.

II.

We review an order granting a motion to dismiss *de novo*. *Drake v. McNair*, 993 A.2d 607, 615 (D.C. 2010). “In reviewing the complaint, the court must accept its factual allegations and construe them in a light most favorable to the non-moving party.” *Chamberlain v. Am. Honda Fin. Corp.*, 931 A.2d 1018, 1023 (D.C. 2007).

A.

WMC Mortgage first asserts that the trial court properly dismissed all of appellants’ claims as each claim is time-barred. We agree.

In their Third Amended Complaint, as pointed out, appellants asserted multiple claims all arising from the alleged fraudulent loan transaction in 2005. Lowther had previously sued WMC Mortgage, among others, on August 6, 2007, alleging the same tortious acts or statutory violations asserted in the Third Amended Complaint. Although the earlier suit had been dismissed without prejudice, “once a suit is dismissed, even if without prejudice, ‘the tolling effect of the filing of the suit is wiped out and the statute of limitations is deemed to have continued running from whenever the cause of action accrued, without interruption by that filing.’” *Stewart-Veal v. District of Columbia*, 896 A.2d 232, 237 (D.C. 2006) (quoting *Ciralsky v. Central Intelligence Agency*, 355 F.3d 661, 672 (D.C. Cir. 2004)). Appellants do not dispute that the limitations period for each of Lowther’s claims is between one and three years. See D.C. Code § 12-301 (2012 Repl.) (permitting plaintiffs one to three years in which to bring various common

law claims). At best, therefore, Lowther's claims expired on August 6, 2010, three years after she commenced the original lawsuit against WMC Mortgage, and almost four years before the filing of this suit. Moreover, appellants offer no support for their assertion that WMC Mortgage "fraudulent[ly] conceal[ed]" information necessary to enable them to file suit timely. *See Bailey v. Greenberg*, 516 A.2d 934, 941 (D.C. 1986). The trial court, accordingly, correctly determined that all of Lowther's claims were barred by applicable statutes of limitations.

Appellants rely on Super. Ct. Civ. R. 15 (c) as support for reasserting their claims "deficiently stated in a previously submitted complaint." But Rule 15 (c) "simply does not apply where, as here, the party bringing suit did not seek to 'amend' or 'supplement' [her] original pleading, but rather, opted to file an entirely new [complaint] at a subsequent date." *Stewart-Veal*, 896 A.2d at 237 (quoting *Neverson v. Bissonnette*, 261 F.3d 120, 126 (1st Cir. 2001) (brackets in original)). Thus, Lowther's new complaint filed in 2014 does not relate back to her 2007 complaint within the meaning of Rule 15 (c).

B.

Appellant Jenkins separately challenges the trial court's determination that he had failed "to make *any* allegation stating that he has personally suffered an injury" and therefore lacked standing to sue WMC Mortgage. "[S]tanding requirements are met when a party demonstrates (1) an injury in fact, (2) a causal connection between the injury and the conduct of which the party complains, and (3) redressability, *i.e.*, that it is likely that a favorable decision will redress the injury." *Lewis v. District of Columbia Dep't of Motor Vehicles*, 987 A.2d 1134, 1138 (D.C. 2010) (quoting *Riverside Hosp. v. District of Columbia Dep't of Health*, 944 A.2d 1098, 1104 (D.C. 2008)). Nowhere in any of the ten counts of the complaint is Jenkins mentioned, nor specifically does it allege any injury suffered by him as a result of the appellees' conduct.

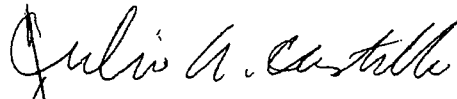
Jenkins nevertheless claims standing, as he did below in a motion to alter or amend, by pointing to an alleged 2004 oral contract between himself and Lowther giving him a 50% interest in the property in question. But even assuming the existence of that contract, it merely puts Jenkins in the same untenable position as Lowther, *i.e.*, pursuing an untimely lawsuit. The discovery rule applicable to statute-of-limitations analysis begins to run when a plaintiff has "either actual or inquiry notice of (1) the existence of the alleged injury, (2) its cause in fact, and (3) some evidence of wrongdoing." *Drake*, 993 A.2d at 617. As the trial court explained, Jenkins' "assertion that he entered into an agreement with Plaintiff

Lowther” demonstrates that he had “knowledge of the 2007 litigation between Plaintiff Lowther and Defendant WMC,” and Jenkins was certainly on inquiry notice of the underlying cause well before the 2014 action was filed. Accordingly, even if Jenkins had standing based on the putative oral contract, his claims were barred by the statute of limitations.¹

Finally, the trial court did not err in dismissing defendant Helfer from the suit without prejudice because he had not been served with process. Appellants assert, without supporting argument, that Helfer “conceal[ed] himself” to avoid service, but also note that they have since “learned [his] current location.” Even assuming their claims could withstand the same defense of untimeliness as to Helfer, the trial court did not abuse its discretion in requiring appellants to properly serve him.

Affirmed.

ENTERED BY DIRECTION OF THE COURT:



JULIO A. CASTILLO
Clerk of the Court

¹ Appellants further argue that the trial court abused its discretion in denying their post-dismissal motion to supplement the record with documents, chiefly an unexecuted Settlement Statement, they obtained during the course of discovery proceedings in 2014. As the trial court pointed out, however, appellants did not explain why “these documents could not have been disclosed [to the court] prior to the” March 2015 dismissal order. “[N]either Rule 59(e) nor Rule 60(b) is designed ‘to enable a party to complete presenting its case after the court has ruled against it.’” *District No. 1–Pacific Coast Dist. v. Travelers Cas. & Sur. Co.*, 782 A.2d 269, 278 (D.C. 2001) (quoting *Frietsch v. Refco, Inc.*, 56 F.3d 825, 828 (7th Cir. 1995)) (brackets omitted). The trial court did not abuse its discretion in denying the motion to supplement.

(No. 16-CV-586)

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APPENDIX B

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

ALBERT JENKINS, <i>et al.</i> ,	:	
	:	
Plaintiffs,	:	
	:	Case No. 2014 CA 3723 B
v.	:	Calendar 12
	:	Judge Brian F. Holeman
WMC MORTGAGE, LLC., <i>et al.</i> ,	:	Closed Case
	:	
Defendants.	:	

OMNIBUS ORDER

This matter comes before the Court upon consideration of (1) Plaintiffs' Motion to Alter or Amend the Court's Order of March 20, 2016 ("Motion to Alter"), filed on April 1, 2016, and (2) Plaintiffs' Motion to Supplement the Record, filed on April 27, 2016. On April 14, 2016, Defendant WMC Mortgage, LLC ("WMC") filed the Opposition to Plaintiffs' Motion to Alter.

A. Plaintiffs' Motion to Alter

Plaintiffs request that the Court alter or amend the Order of March 20, 2016 that, *inter alia*, granted WMC's Motion to Dismiss. (Ps' Mot. to Alter at 1; Order Mar. 20, 2016 at 6.) The governing provisions are the Superior Court Rules of Civil Procedure, Rules 59(e) and 60(b).

Rule 59(e) reads:

Motion to Alter or Amend Judgment. Any motion to alter or amend a judgment shall be filed no later than 10 days after entry of the judgment.

Rule 60(b) reads, in pertinent part:

Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have

been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

Plaintiffs' Motion to Alter is timely filed under Rule 59(e).

Defendant WMC persuasively asserts that Plaintiffs are inappropriately attempting to "complete presenting [their] case after the court has ruled against [them]." (WMC's Mem. of P&A at 1.); *see Dist. No. 1 -- Pac. Coast Dist., Marine Eng'rs' Ben. Ass'n v. Travelers Cas. & Sur. Co.*, 782 A.2d 269, 278 (D.C. 2001) ("*neither Rule 59(e) nor Rule 60(b) is designed to 'enable a party to complete presenting [their] case after the court has ruled against [it].'*") (emphasis added) (citation omitted). The District of Columbia Court of Appeals states that both Rule 59(e) and 60(b) "embody notions of due diligence" and "*may not be used to . . . raise arguments or present evidence that could have been raised prior to the entry of [an order].*" *Id.* (emphasis added) (citation omitted). Plaintiffs now present certain documents they received in 2014, not previously shown to the Court, and there is no valid explanation proffered that these documents could not have been disclosed prior to the Court's adjudication of Defendant MWC's Motion to Dismiss on March 20, 2015. (*See* Ps' Mot. to Alter at 4 ("[d]uring the course of discovery proceedings in 2014, Plaintiffs obtained for the first time, a copy of an unsigned, unexecuted Settlement Statement . . . [.]").)

Assuming, *arguendo*, that the Court could properly consider Plaintiffs' Motion to Alter on the merits, Plaintiffs erroneously interpret the Order of March 20, 2016 to apply the doctrine of *res judicata*. The Order of March 20, 2016 dismissed all claims asserted against Defendant

WMC on the grounds of expiration of the Statute of Limitations and lack of standing, *not res judicata*. (See Ps' Mot. to Alter at 5 (discussing *res judicata*); Compare Order Mar. 20, 2016 at 3-6 (noting that “‘when a suit is dismissed without prejudice, the statute of limitations is deemed *unaffected* by the filing of the suit, so that if the statute of limitations has run the dismissal is effectively with prejudice.’”) (citing *Stewart-Veal v. District of Columbia*, 896 A.2d 232, 237 (D.C. 2006) (citations omitted).) It is undisputed that the prior litigation between Plaintiff Theresa Lowther and Defendant WMC was dismissed without prejudice in 2010, which effectively operated as a dismissal with prejudice as to Plaintiff Lowther due to expiration of the Statute of Limitations. (Order Case No. 2007 CA 5398 B Dec. 2, 2007 (Ross, J.)); *Stewart-Veal*, 896 A.2d at 237; District of Columbia Code § 12-301.

In an attempt to cure lack of standing, Plaintiff Albert Jenkins asserts that he entered into an oral contractual agreement with Plaintiff Lowther on July 7, 2004. (Ps' Mot. to Alter at 5.) This assertion is unavailing and is fatal to any claim asserted by Plaintiff Jenkins. The Statute of Limitations accrues when “the plaintiff ‘knows’ or ‘by the exercise of reasonable diligence should know (1) of the injury, (2) its cause in fact, and (3) some evidence of wrongdoing’” for a period of three (3) years. *Beard v. Edmondson & Gallagher*, 790 A.2d 541, 546 (D.C. 2002) (citations omitted). Accepting Plaintiff Jenkins' assertion that he entered into an agreement with Plaintiff Lowther, the knowledge of the 2007 litigation between Plaintiff Lowther and Defendant WMC is imputed to Plaintiff Jenkins with the result that his claims are barred under the Statute of Limitations. *Id.*; see also *Stewart-Veal*, 896 A.2d at 237.

Plaintiffs also assert that the Court erroneously deemed the remaining Defendant Adam Helfer to have not been served for a period of one (1) year and nine (9) months. (Ps' Mot. to Alter at 6; Order Mar. 20, 2016 at 6.) The record indicates that on March 25, 2015, Vikram

Kumar, Esquire, of the law firm Dorsey & Whitney LLP signed the Acknowledge of Receipt of Summons, Complaint, and Initial Order in his capacity as counsel for Defendant WMC. (Final Notice Mar. 25, 2015 at 1-2.) On March 30, 2015, Defendant WMC, through counsel, filed the Praecipe indicating that “Dorsey & Whitney LLP *only* represents WMC and not defendant Adam Helfer” and that “[counsel for Defendant WMC] has no knowledge as to whether [Defendant] Helfer has been served or if he has retained counsel.” (Praecipe Mar. 30, 2015 at 1 (emphasis added).)

Notably, the last page of the Final Notice indicates that the name of the party served was “WMC Mortgage Co.,” *not* “Adam Helfer.” (Final Notice at 3.) Consequently, the Final Notice was defective as to Defendant Helfer, which was confirmed by the Praecipe of March 30, 2015. (*Id.*; Praecipe Mar. 30, 2015 at 1.) Plaintiffs reliance on the Final Notice as proof of service on Defendant Helfer lacks merit.

B. Plaintiffs’ Motion to Supplement the Record

Plaintiffs’ Motion to Supplement the Record seeks to add publicly available filings in Case No. 2007 CA 5398 B already available to the Court. (*See generally* Ps’ Mot. to Supplement the Record.) In any event, the ruling on Plaintiffs’ Motion to Alter renders the remaining motion moot.

WHEREFORE, it is this 29th day of May 2016, hereby

ORDERED, that Plaintiffs’ Motion to Alter or Amend the Court’s Order of March 20, 2016 is **DENIED**; and it is further

ORDERED, that Plaintiffs' Motion to Supplement the Record is **DENIED AS MOOT**.



BRIAN F. HOLEMAN
JUDGE

Copy e-served to

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Defendant

APPENDIX C

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

ALBERT JENKINS, <i>et al.</i>,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	Case No. 2014 CA 3723 B
	:	Calendar 12
WMC MORTGAGE, LLC., <i>et al.</i>,	:	Judge Brian F. Holeman
	:	
Defendants.	:	

ORDER

This matter comes before the Court upon consideration of the Motion to Dismiss, filed by Defendant WMC Mortgage, LLC ("WMC") on February 22, 2016. On March 3, 2016, Plaintiffs filed the Opposition.

I. PROCEDURAL HISTORY

On June 17, 2014, Plaintiff Albert Jenkins filed the Complaint for Breach of Contract. The Complaint listed Theresa Lowther as a Defendant. On that same day, Plaintiff Jenkins filed the Motion to Proceed In Forma Pauperis, which was granted. On August 22, 2014, Plaintiff Jenkins filed the Amended Complaint. Plaintiff Jenkins asserts that Defendants "forged the title on [Property]" located at 11 Rhode Island Avenue, NE, Washington, DC 20002 (the "Property"). On November 19, 2014, the Court issued an Order dismissing Theresa Lowther as a party Defendant.

On March 14, 2014, Theresa Lowther filed the Motion of Amended Complaint, which requested that the Court add her as a party Plaintiff. On January 22, 2015, the Court issued an Order denying the Motion of Amended Complaint, holding that Theresa Lowther needed to follow the proper procedures to intervene as stated in the Superior Court Rules of Civil Procedure, Rule 24. On February 20, 2015, the Court convened the Scheduling Conference

Hearing and ruled from the bench that it was proper for Theresa Lowther to intervene as a party Plaintiff to this action.

On April 7, 2015, WMC filed the Motion to Dismiss, which sought dismissal of this action under Rules 12(b)(1), 12(b)(6), 8(a), and 9(b). Notably, the Motion to Dismiss raised the defenses of statute of limitations and res judicata. On June 17, 2015, the Court issued an Order denying WMC's Motion to Dismiss.

On June 25, 2015, WMC filed the Motion for Reconsideration. On August 31, 2015, WMC filed the Motion for Summary Judgment. In the interim, all parties filed numerous motions. (Omnibus Order Oct. 12, 2015 at 1-2.) On October 12, 2015, the Court entered the Omnibus Order ruling, *inter alia*, that WMC's Motion for Summary Judgment was denied without prejudice. (Omnibus Order Oct. 12, 2015 at 9.)

The Court noted that WMC was merely dismissed *without prejudice* as a named Defendant in a prior action initiated in 2007 by Theresa Lowther against WMC, which prevented the prior action from having preclusive effect on the ground of res judicata. (*Id.* at 6 (citing Order Case No. 2007 CA 5398 B Dec. 2, 2007 (Ross, J.)).) In addition, the Court explained that a dispositive consideration was that "it is unknown how Plaintiff Jenkins came into ownership, if at all, or otherwise developed his interest in the [Property]." (Omnibus Order Oct. 12, 2015 at 6.) On November 2, 2015, Plaintiffs filed the Amended Complaint. On February 1, 2016, Plaintiffs filed the document styled as the "First Amended Complaint," which in effect operates as the Third Amended Complaint.

II. PROCEDURAL HISTORY

WMC requests dismissal for lack of subject matter jurisdiction and failure to state a claim under Rule 12(b)(1) and 12(b)(6), respectively. (WMC's Mot. at 1.) WMC raises the jurisdictional issue of the Statute of Limitations.

The Statute of Limitations, codified under District of Columbia Code § 12-301, sets the deadline for an aggrieved party to bring a civil action for relief. Here, Plaintiffs assert the following claims: (1) fraud; (2) conspiracy to defraud; (3) breach of fiduciary duty; (4) set aside deed and deed of trust, quiet title, and declaratory relief; (5) injunctive relief; (6) violations of the District of Columbia Consumer Protection Procedures Act ("CPPA"); (7) violation of D.C. Code § 28-3301; (8) violation of the District of Columbia Home Loan Protection Act ("HLPa"), codified under D.C. Code § 26-1151.01, *et seq.*; (9) rescission of agreements; and (10) negligence and gross negligence. (Third Am. Compl. at 7-20.) The Third Amended Complaint is substantially similar and appears to be a direct copy of the Complaint filed in *Theresa Lowther v. Adam Helfer, et al.*, Case No. 2007 CA 5398 B. (*See id.* at 7 ("Adam Helfer and WMC Mortgage, LLC made false representations to Plaintiff concerning material facts regarding the transaction[.]"); *accord* Compl. Case No. 2007 CA 5398 B at ¶ 63 ("Defendants made false representations to the Plaintiff concerning material facts regarding the transaction[.]").)

A. Effect of the Prior 2007 Litigation on Plaintiff Lowther

Plaintiff Lowther previously filed suit on August 6, 2007 against WMC and Defendant Adam Helfer and asserted the same ten (10) claims currently reasserted in the instant action. (*See generally* Compl. 2007 CA 5398 B; Third Am. Compl. at 7-20.) WMC was previously dismissed, without prejudice, from the prior action. (Order Case No. 2007 CA 5398 B Dec. 2, 2007 (Ross, J.).)

The District of Columbia Court of Appeals, adopting federal precedent, states that “once a suit is dismissed, *even if without prejudice*, the ‘tolling effect of the filing of the suit is wiped out and the statute of limitations is deemed to have continued running from whenever the cause of action accrued, *without interruption by that filing.*’” *Stewart-Veal v. District of Columbia*, 896 A.2d 232, 237 (D.C. 2006) (citing *Ciralsky v. Central Intelligence Agency*, 355 F.3d 661 (D.C. Cir. 2004)) (citation omitted) (emphasis added). As noted by the Court of Appeals, ““when a suit is dismissed without prejudice, the statute of limitations is deemed unaffected by the filing of the suit, so that if the statute of limitations has run the dismissal is effectively with prejudice.”” *Stewart-Veal*, 896 A.2d at 237 (citations omitted).

The Statute of Limitations for a claim on a simple contract, express or implied, runs for three (3) years. D.C. Code § 12-301(7). The Statute of Limitations for a claim for which a limitation is not specifically prescribed under D.C. Code § 12-301, including a claim for fraud and claims under other statutes, is three (3) years. D.C. Code § 12-301(8). Here, it is plainly evident that Plaintiff Lowther’s claims for fraud, conspiracy to defraud, breach of fiduciary duty, violations of the CPPA, violation of D.C. Code § 28-3301, violation of the HLPa, rescission, negligence, and gross negligence expired, at best, three (3) years after she initiated Case No. 2007 CA 5398 B. (*See generally* Compl. 2007 CA 5398 B (asserting the aforementioned claims).) That deadline expired on August 6, 2010, approximately *four (4) years* prior to the filing of the instant action.

Plaintiff Lowther’s claims to set aside the deed, quiet title, and for declaratory relief are similarly barred. The factual allegations in support of Plaintiff Lowther’s claim to quiet title are fraud and a defective contract between herself and WMC. (*See* Compl. at 10 (“WMC Mortgage, LLC [] unlawfully claim title to or interest in the Property by virtue of a deed obtained through

fraud, without the stated consideration, for grossly inadequate consideration[.]”)) In this scenario, the Statute of Limitations accrues when “the plaintiff ‘knows’ or ‘by the exercise of reasonable diligence should know (1) of the injury, (2) its cause in fact, and (3) some evidence of wrongdoing’” for a period of three (3) years. *Beard v. Edmondson & Gallagher*, 790 A.2d 541, 546 (D.C. 2002) (citations omitted). At best, analogous to the facts presented in *Beard*, the Statute of Limitations accrued on these claims when Plaintiff Lowther filed Case No. 2007 CA 5398 B approximately *seven (7) years* prior to filing the instant action. *See id.* at 545 (applying the Statute of Limitations where plaintiffs were charged with knowledge of a prior related action to quiet title).)

Because all of Plaintiff Lowther’s claims are barred by the Statute of Limitations, Plaintiff Lowther does not have any basis to support a claim for injunctive relief predicated on a claim to the deed of the Property. *See Ifill v. District of Columbia*, 665 A.2d 185, 187-88 (D.C. 1995) (requiring that the party seeking injunctive relief demonstrate a “substantial likelihood” of prevailing on the merits).

B. Effect of the Prior 2007 Litigation on Plaintiff Jenkins

The remaining Plaintiff, Albert Jenkins, was not a named party to the prior litigation. Facially, there remains the same defect cited by this Court in applying the Statute of Limitations to Plaintiff Jenkins: “based on the record currently available to the Court, there is nothing to indicate when Plaintiff Jenkins first initiated or otherwise engaged in discussions to purchase or acquire an interest in the Property.”¹ (Omnibus Order Oct. 12, 2015 at 5.) However, the Third

¹ The record indicates that Plaintiffs each engaged in dilatory and/or evasive conduct, which frustrated WMC’s ability to present its dispositive motions. (*See* Omnibus Order Oct. 12, 2015 at 8 (noting WMC’s assertion that Plaintiffs have failed to appear for deposition); *see also* Omnibus Order Jan. 19, 2016 at 2 (compelling each Plaintiff to appear for deposition).)

Amended Complaint presents a new jurisdictional issue cited by WMC: “Jenkins has [] failed to plead his standing to bring claims against WMC.” (WMC’s Mem. of P&A at 6.)

Standing is the “[making of] a case or controversy between [plaintiff] and the defendant within the meaning of Article III [of the Constitution].” *Grayson v. AT&T Corp.*, 15 A.3d 219, 233-234 (D.C. 2011) (citation omitted). Simply stated, a litigant must demonstrate that he or she has suffered “an injury in fact” that may be redressed by a favorable decision in a civil action. *Id.* (Citations omitted.) Here, WMC’s assertion that Plaintiff Jenkins “does not appear in the substantive part of the [Third] Amended Complaint at all” has merit; all factual allegations merely recite allegations solely made by Plaintiff *Lowther* against WMC in prior litigation. (WMC’s Mem. of P&A at 6-7.) Plaintiff Jenkins simply fails to make *any* allegation stating that he has personally suffered an injury. Insofar as Plaintiff Jenkins may attempt to stand in the shoes of Plaintiff *Lowther*, his claims are barred by the Statute of Limitations. *See supra* Part II(A) at 3-5.

Although Plaintiffs are proceeding *pro se*, *pro se* litigants “cannot generally be permitted to shift the burden of litigating [their] case to the courts, nor avoid the risks of failure that attend [their] decision to forego expert assistance.” *Macleod v. Georgetown Univ. Med. Ctr.*, 736 A.2d 977, 979 (D.C. 1999) (citations omitted). The Court cannot grant Plaintiffs unlimited opportunities to amend their pleading; a reason warranting denial of leave to amend is “futility of amendment.” *Miller-McGee v. Wash. Hosp. Ctr.*, 920 A.2d 430, 436 (D.C. 2007). After granting Plaintiffs *three (3)* opportunities to file an amended pleading, it is evident that further amendment is futile. *Id.*

C. Remaining Defendant Adam Helfer

The record indicates that the remaining Defendant Adam Helfer has not been served. Plaintiffs have had approximately one (1) *year and nine (9) months* to effect service on Defendant Helfer. Plaintiffs have not filed a motion to extend the time to effect service and any such motion would be futile. *See* Super. Ct. R. Civ. P. R. 4(m) (stating that the failure to effect service results in dismissal without prejudice).

WHEREFORE, it is this 20th day of March 2016, hereby

ORDERED, the Motion to Dismiss, filed by Defendant WMC Mortgage, LLC, is **GRANTED**; and it is further

ORDERED, that Defendant WMC Mortgage, LLC is **DISMISSED WITH PREJUDICE** from the instant action; and it is further

ORDERED, that Defendant Adam Helfer is **DISMISSED WITHOUT PREJUDICE**; and it is further

ORDERED, that the Status Hearing currently set for May 27, 2016 is **VACATED**; and it is further

ORDERED, that *Albert Jenkins, et al. v. WMC Mortgage, LLC, et al.*, Case No. 2014 CA 3723 B, is **CLOSED**.



BRIAN F. HOLEMAN
JUDGE

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ALBERT JENKINS, THERESA LOWTHER – PETITIONERS

vs.

WMC MORTGAGE CO. – RESPONDENTS

ON PETITION FOR A WRIT OF *CERTIORARI* TO
THE DISTRICT OF COLUMBIA
COURT OF APPEALS

PETITION FOR A WRIT OF *CERTIORARI*

STATEMENT: If the house was sold, what happened to the money? We didn't receive one dime.

If the house
was sold, what
happened to
the money.
I didn't receive
one dime.

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