NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 17-1836 & 17-2416

KENNETH J. TAGGART,
Appellant

v.

WELLS FARGO BANK, N.A.; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC., a/k/a MERS; MERSCORP, INC.; FEDERAL HOME LOAN MORTGAGE CORP., a/k/a FREDDIE MAC; JOHN DOES 1-10

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 5-16-cv-00063)
District Judge: Honorable Lawrence F. Stengel

Submitted Under Third Circuit L.A.R. 34.1(a)
on April 27, 2018

Before: JORDAN, BIBAS, and SCIRICA,
Circuit Judges

(Filed: May 15, 2018)

OPINION*

BIBAS, *Circuit Judge*

Acting on the maxim that the best defense is a good offense, Kenneth Taggart responded to Wells Fargo's foreclosure action by suing it and five others. He asserted claims of quiet title, slander of title, and "declaratory relief," claiming that his mortgage was void from the start. But he never alleged plausible facts to support these theories. So we will affirm the District Court's dismissal.

I.

Taggart took out a mortgage loan from Waterfield Bank. But the paperwork bore Waterfield's old name, American Partners Bank. All the same, Mortgage Electronic Registration Systems recorded the mortgage, and Lisa Roach notarized it. Then Waterfield, still using its old name, assigned the mortgage to Wells Fargo. Eugene Jaskiewicz notarized the assignment.

Wells Fargo filed a foreclosure action in the Court of Common Pleas for Montgomery County, Pennsylvania. Taggart responded by filing two lawsuits against Wells Fargo. Both were dismissed. Two months ago, the Court of Common Pleas granted Wells Fargo's motion

* This disposition is not an opinion of the full Court and, under I.O.P. 5.7, does not constitute binding precedent.

for summary judgment. While "the designation of the mortgagee in the mortgage as American Partners Bank was erroneous," it held "the error was not fatal." Order Granting Summ. J., No. 2010-08638, at 1 n.1 (Mar. 27, 2018). "[T]here is no dispute that the entity that provided the mortgage loan to [Taggart] was Waterfield Bank." *Id.*

While that action was pending, Taggart filed the complaint underlying this suit in the same court. Because he named Freddie Mac as a party, the defendants removed this case to federal court. Taggart claimed that the mortgage was void because American Partners Bank did not exist when the mortgage and note were created. He also alleged that Mortgage Electronic Registration System, MERSCORP, and Freddie Mac all claim an interest in his property in addition to Wells Fargo, so he charged them with slander of title and sought to quiet title. Finally, he included "declaratory relief" claims seeking discovery from Roach and Jaskiewicz. The District Court dismissed his amended complaint with prejudice.

II.

Taggart contests the District Court's jurisdiction. The District Court had jurisdiction under 12 U.S.C. § 1452(f), which lets Freddie Mac remove to federal court "any civil or other action" to which it "is a party." Taggart argues that *Lightfoot v. Cendant Mortgage Corp.* abrogated Freddie Mac's removal power. 137 S. Ct. 553 (2017). But *Lightfoot* dealt with Fannie Mae,

not Freddie Mac. And it directly contrasted the statutory scheme governing Fannie Mae with the "clear textual indications" that Congress gave Freddie Mac "fuller access to the federal courts." *Id.* at 564. So federal jurisdiction is proper.

We review the District Court's dismissal for failure to state a claim de novo. *Evancho v. Fisher*, 423 F.3d 347, 350 (3d Cir. 2005). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

III.

Taggart waived his claims against Roach and Jaskiewicz because his brief advances no arguments in support of them. *See Kost v. Kozakiewicz*, 1 F.3d 176, 182 (3d Cir. 1993). Taggart's claims against the corporations fail on the merits.

First, there is no cloud on his title. The Montgomery County Court of Common Pleas recently rejected Taggart's theory that the mortgage was void *ab initio*. Order Granting Summ. J., No. 2010-08638, at 1 n.1 (Mar. 27, 2018). The District Court correctly noted that Taggart "d[id] not dispute that he obtained the loan and that he executed and delivered the note and mortgage." *Taggart v. Wells Fargo Bank, N.A.*, No. 16-cv-00063, 2017 WL 2347186, at *3 (E.D. Pa. May 30, 2017). His complaint is conclusory, alleging no specific

facts suggesting that anyone besides Wells Fargo lays claim to his property.

Second, there is no slander because there was no malice. The District Court correctly found that Taggart alleged no facts to support a finding of malice, a necessary element of slander of title. *Reed Road Assocs. v. Campbell*, 582 A.2d 1373, 1374 n.2 (Pa. Super. Ct. 1990).

Finally, declaratory relief is not a claim. The District Court correctly explained that Taggart's "requests for declaratory judgments against the Mortgage Defendants do not identify a source of law giving rise to a cause of action that would provide such declaratory relief." *Taggart*, 2017 WL 2347186, at *3.

* * *

Taggart faces the unfortunate prospect of losing his house. But as the District Court correctly found, he pleaded no facts showing a genuine controversy about title or slander. So we will affirm. We deny all outstanding motions.

App. 6

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 17-1836 & 17-2416

KENNETH J. TAGGART,
Appellant

v.

WELLS FARGO BANK, N.A.; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC., a/k/a MERS; MERSCORP, INC.; FEDERAL HOME LOAN MORTGAGE CORP., a/k/a FREDDIE MAC; JOHN DOES 1-10

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. No. 5-16-cv-00063)
District Judge: Honorable Lawrence F. Stengel

Submitted Under Third Circuit L.A.R. 34.1(a)
on April 27, 2018

Before: JORDAN, BIBAS, and SCIRICA,
Circuit Judges

JUDGMENT

This cause came to be heard on the record from the United States District Court for the Eastern District of

Pennsylvania and was submitted under Third Circuit L.A.R. 34.1(a) on April 27, 2018.

On consideration whereof, it is now **ORDERED** and **ADJUDGED** by this Court that the orders of the District Court entered on April 12, 2017 and May 30, 2017 are hereby **AFFIRMED**. Costs will be taxed against Appellant. All of the above in accordance with the Opinion of this Court.

ATTEST:

Patricia S. Dodszuweit
Clerk

Dated: May 15, 2018

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF PENNSYLVANIA**

KENNETH J. TAGGART,	:	
Plaintiff,	:	CIVIL ACTION
v.	:	
WELLS FARGO BANK, N.A., et al.,	:	NO. 16-00063
Defendants.	:	

MEMORANDUM

Stengel, J. July 28, 2017

In yet another attempt to avoid the obligations of his mortgage, Kenneth Taggart filed a motion for reconsideration of my decision dismissing his amended complaint. For the following reasons, the motion for reconsideration is denied.

I. FACTUAL BACKGROUND

The factual background of this case is very familiar to the parties. I will therefore incorporate by reference the factual discussion from the opinions adjudicating the defendants' motions to dismiss the amended complaint and the complaint. *See Taggart v. Wells Fargo Bank, N.A.*, No. Civ.A 16-00063, 2017 WL 2347186, at *1 (E.D. Pa. May 30, 2017); *Taggart v. Wells Fargo Bank, N.A.*, No. Civ.A. 16-00063, 2016 WL 5661736, at *1 (E.D. Pa. Sept. 30, 2016).

II. STANDARD OF REVIEW

"'The scope of a motion for reconsideration . . . is extremely limited.'" *OR v. Hutner*, 576 F. App'x 106, 110 (3d Cir. 2014) (quoting *Blystone v. Horn,* 664 F.3d 397, 415–16 (3d Cir. 2011)). "'Such motions are not to be used as an opportunity to relitigate the case; rather, they may be used only to correct manifest errors of law or fact or to present newly discovered evidence.'" *Id.* A motion for reconsideration filed pursuant to Rule 59(e) of the Federal Rules of Civil Procedure may be granted if the moving party shows: "(1) an intervening change in controlling law; (2) the availability of new evidence that was not available when the court initially issued its order; or (3) the need to correct a clear error of law or fact or to prevent manifest injustice." *Max's Seafood Café v. Quinteros*, 176 F.3d 669, 677 (3d Cir. 1999).[1]

---

[1] As the defendants point out, the plaintiff does not specify whether his motion is pursuant to Rule 59(e) or Rule 60(b). Assuming that the plaintiff intends to assert a claim for relief under Rule 60(b), it fails. Rule 60(b) provides relief where there is

> (1) mistake, inadvertence, surprise, or excusable neglect;
>
> (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
>
> (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
>
> (4) the judgment is void;
>
> (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has

Motions for reconsideration are granted sparingly. *Cont'l Cas. Co. v. Diversified Indus., Inc.*, 884 F. Supp. 937, 943 (E.D. Pa. 1995). The grant of a motion for reconsideration is improper where it simply asks the court to "rethink what [it] had already thought through—rightly or wrongly." *Glendon Energy Co. v. Borough of Glendon,* 836 F. Supp. 1109, 1122 (E.D. Pa. 1993) (internal quotations omitted). Moreover, motions for reconsideration may not be used "as a means to argue new facts or issues that inexcusably were not presented to the court in the matter previously decided." *Brambles USA, Inc. v. Blocker*, 735 F. Supp. 1239, 1240 (D. Del. 1990). "Nor may a motion for reconsideration be used to revisit or raise new issues with the benefit of 'the hindsight provided by the court's analysis'" or to advance arguments that would not change the result of the court's initial ruling. *Marshak v. Treadwell*, No. Civ.A.95-3794, 2008 WL 413312, at *7 (D.N.J. Feb. 13, 2008), *aff'd in part & remanded by* 595 F.3d 478 (3d Cir. 2009) (quoting *United States v. Jones*, 158 F.R.D. 309, 314 (D.N.J. 1994)).

---

been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

Fed. R. Civ. P. 60. None of these circumstances is present here. The plaintiff asserts that American Partners Bank is committing fraud and fraud on the court (Pl.'s Mot. Reconsideration 10), but the fact that a bank changed its name at a certain point in time does not constitute fraud. Accordingly, to the extent that the plaintiff seeks relief pursuant to Rule 60(b), it is denied.

III. DISCUSSION

The plaintiff's motion for reconsideration is based on the same inaccurate assertions and erroneous conclusions that he relied on in responding to the motions to dismiss his complaint and amended complaint. Although the plaintiff characterizes his assertions as "fact" and "uncontroverted evidence," they are more accurately described as conclusory allegations that cannot withstand a motion to dismiss. More importantly, for purposes of considering a motion for reconsideration, he does not set forth any assertions that there has been a change in the controlling law or that there is new evidence in support of his claims, and his disagreement with my decision dismissing his amended complaint does not demonstrate the need to correct a clear error of law or fact or to prevent manifest injustice. He has therefore failed to establish any of the grounds that would warrant reconsideration of the dismissal of his amended complaint.

IV. CONCLUSION

Based on the above discussion, I decline to reconsider the holding of my May 30, 2017 decision dismissing the amended complaint. The motion for reconsideration is therefore denied.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF PENNSYLVANIA

KENNETH J. TAGGART,	:	
Plaintiff,	:	CIVIL ACTION
v.	:	
WELLS FARGO BANK, N.A., et al.,	:	NO. 16-0063 [sic]
Defendants.	:	

ORDER

AND NOW, this *28th* day of July, 2017, upon consideration of the plaintiff's motion for reconsideration (Docket No. 51) and the defendants' response in opposition (Docket No. 54), it is hereby **ORDERED** that the plaintiff's motion for reconsideration is **DENIED**.

It is so **ORDERED**.

BY THE COURT:

/s/ Lawrence F. Stengel
LAWRENCE F. STENGEL, J.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH J. TAGGART,	:	
Plaintiff,	:	CIVIL ACTION
v.	:	
WELLS FARGO BANK, N.A., et al.,	:	NO. 16-00063
Defendants.	:	

MEMORANDUM

STENGEL, J. May 30, 2017

Defendants Wells Fargo Bank, N.A., Mortgage Electronic Registration Systems Inc., MERSCORP Holdings, Inc., and Federal Home Loan Mortgage Company have filed a motion to dismiss the amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). For the following reasons, the motion to dismiss is granted.

I. FACTUAL BACKGROUND

Plaintiff Kenneth J. Taggart filed an amended complaint[1] against Wells Fargo Bank, N.A., Mortgage

[1] The plaintiff's original complaint was dismissed with prejudice as to the individual defendants, and was dismissed without prejudice as to the Mortgage Defendants. *See Taggart v. Wells Fargo Bank, N.A.,* No. Civ.A. 16-00063, 2016 WL 5661736, at *6 (E.D. Pa. Sept. 30, 2016).

Electronic Registration Systems Inc. ("MERS"), MERSCORP, Inc., and Federal Home Loan Mortgage Corp. ("Freddie Mac"), for various claims in connection with the property he owns at 709 Schwab Road, Hatfield, Pennsylvania 19440 ("the Property"). (Am. Compl. at 2.)[2] Plaintiff seeks generally to (1) determine the validity of the note and mortgage contract; (2) determine whether the note and mortgage were ever perfected under Pennsylvania law, and if any subsequent parties may make legal claims to enforce the note pursuant to the Pennsylvania Uniform Commercial Code; and (3) obtain declaratory relief, "contract relief," quiet title relief, and injunctive relief "to strike or vacate all recordings and claims, and all claims from any parties who assert claims to mortgage and note now, or at any time in the future which were simply, void ab initio." (Am. Compl. at 2-3.) The plaintiff believes that (1) the note and mortgage were never perfected; (2) the original lender was not a legal entity on the date they were created; and (3) no party can make claims under Pennsylvania law to enforce either the mortgage or the note. (*Id.* at 4-6.)

On February 6, 2009, a mortgage was recorded for the Property in the Montgomery County Recorder of Deeds Office, indicating that the mortgage was originated by American Partners Bank, N.A. as the grantor and that the plaintiff is the grantee. (*Id*. at 1668.) The

---

[2] Due to the unique numbering system the plaintiff utilized in drafting the paragraphs of his amended complaint, citations to the amended complaint will use both the page number and paragraph number where possible and/or necessary.

mortgage was originated on December 16, 2008. (*Id*. at 1669.) The plaintiff alleges that Freddie Mac never recorded the note and mortgage that Wells Fargo claims to hold. (*Id*. at 16-17.) The mortgage was assigned to Wells Fargo, N.A. on April 5, 2010. (*Id*. at 17 ¶ 73.) The plaintiff alleges that the note was never recorded, but that one "Assignments [sic] of Mortgage" was recorded in Montgomery County, Pennsylvania.[3] (Am. Compl. at 17 ¶ 75.) The plaintiff alleges numerous failures and defects in connection with the mortgage and note and their creation, recording, and assignment. (*See* Am. Compl. at 1-28.) All of the claims set forth in the amended complaint stem from these purported failures and defects.

II. STANDARD OF REVIEW

Under Rule 12(b)(6), a defendant bears the burden of demonstrating that the plaintiff has not stated a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6); *see also Hedges v. United States*, 404 F.3d 744, 750 (3d Cir. 2005). In *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), the United States Supreme Court recognized that "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id*. at 555. Subsequently, in *Ashcroft v. Iqbal*, 556 U.S. 662

[3] The plaintiff previously alleged in the complaint that the assignment was recorded with the Recorder of Deeds in Montgomery County on May 18, 2010. (*See* Compl. at 8 ¶ 8, 8 ¶ 9(a).)

(2009), the Supreme Court defined a two-pronged approach to a court's review of a motion to dismiss. "First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id*. at 678. Thus, while "Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era . . . it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." *Id.* at 678-79.

Second, the Supreme Court emphasized that "only a complaint that states a plausible claim for relief survives a motion to dismiss." *Id*. at 679. "Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id*. A complaint does not show an entitlement to relief when the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct. *Id*.; *see also Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 232-34 (3d Cir. 2008) (holding that: (1) factual allegations of complaint must provide notice to defendant; (2) complaint must allege facts suggestive of the proscribed conduct; and (3) the complaint's "'factual allegations must be enough to raise a right to relief above the speculative level.'" (quoting *Twombly,* 550 U.S. at 555)).

The basic tenets of the Rule 12(b)(6) standard of review have remained static. *Spence v. Brownsville*

Area Sch. Dist., No. Civ.A.08-626, 2008 WL 2779079, at *2 (W.D. Pa. July 15, 2008). The general rules of pleading still require only a short and plain statement of the claim showing that the pleader is entitled to relief and need not contain detailed factual allegations. *Phillips*, 515 F.3d at 233. Further, the court must "accept all factual allegations in the complaint as true and view them in the light most favorable to the plaintiff." *Buck v. Hampton Twp. Sch. Dist*., 452 F.3d 256, 260 (3d Cir. 2006). Finally, the court must "determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Pinkerton v. Roche Holdings Ltd*., 292 F.3d 361, 374 n.7 (3d Cir. 2002).

III. DISCUSSION

The defendants move to dismiss the amended complaint in its entirety for failure to state a claim under Rule 12(b)(6) and to dismiss the claims against Wells Fargo because they are barred pursuant to *res judicata*. Having considered the amended complaint and the parties' briefs, I find that the plaintiff's claims against the defendants fail as a matter of law. I will therefore grant the motion to dismiss on that basis. I previously granted the defendants' motion to dismiss the complaint without prejudice, but I will grant the motion to dismiss the amended complaint with prejudice for the reasons discussed below.

A. Quiet Title, Slander of Title, and Petition to Quiet Title Claims Against Wells Fargo, MERS, MERSCORP, and Freddie Mac

In counts one, two, and three of the amended complaint, the plaintiff sets forth claims for quiet title, slander of title, and declaratory relief against Wells Fargo, Freddie Mac, and MERS and MERSCORP, seeking admissions, the surrender of documents, and declaratory relief in connection with the mortgage, note, and assignment. (*See* Am. Compl. 28–37.) In support, the plaintiff alleges that Freddie Mac purports to be the owner of the note and mortgage, that American Partners Bank did not exist the day the mortgage and note were created, that the note was not notarized or recorded, and that "[t]here have been claims by several parties to have an interest in the mortgage that was recorded." (*Id*. at 4–5, 16–17.) He further alleges numerous procedural and legal defects in connection with the mortgage, note, and assignment. (*Id*. at 16–28.)

1. Grounds for Dismissal Pursuant to Rule 12(b)(6)

a. Quiet Title

The defendants assert that the plaintiff has failed to state a plausible quiet title claim against them due to numerous factual and legal insufficiencies in the amended complaint with regard to both the mortgage and the assignment. First, the defendants argue that a duly recorded mortgage is presumed valid, and that

the plaintiff does not dispute that he obtained the loan and that he executed and delivered the note and mortgage. (Defs.' Mem. Supp. Mot. Dismiss 10 (citing *Pitti v. Pocono Bus. Furniture, Inc.*, 859 A.2d 523, 525 n.3 (Pa. Commw. Ct. 2004).) Second, they argue that because Wells Fargo is the current mortgagee of record, it is a real party in interest and therefore has standing to enforce the mortgage, and that the note follows the mortgage. (*Id.* at 10–11 (citations omitted).) Third, the defendants point out that the plaintiff has not included facts to support his allegations that other parties have made claims to have an interest in the mortgage, that Wells Fargo asserted that Freddie Mac is the owner of the mortgage, or that Freddie Mac has represented to the plaintiff that it owns the note and mortgage. (*Id*. at 11.) The defendants next point out the flaws in the plaintiff's contentions regarding American Partners Bank's name change, his unsupported theory concerning notarization of promissory notes, his assertion that he was not provided with a conformed copy of the note and mortgage at the closing, his belief that any noncompliance with the Pennsylvania recording statutes means that he no longer has obligations under the mortgage, his theories regarding what is required for a mortgage to be perfected, his belief regarding the consequences of "splitting" a note and mortgage, and his conclusions regarding the validity of the assignment of the mortgage. (*Id*. at 13–19.)

Having reviewed the conclusory allegations and inaccurate factual assertions in the amended complaint, I find that the failings that the defendants

identified require dismissal of the quiet title claims against them. Simply put, the facts and arguments that the plaintiff sets forth do not show a need to quiet title. Accordingly, counts one, two, and three are dismissed.

b. Slander of Title

The defendants argue that, as with the original complaint, the plaintiff has failed to state a plausible claim for slander of title in the amended complaint

> The Pennsylvania Superior Court, describing the tort of slander of title, has stated: "Slander of title is the false and malicious statement, oral or written, made in disparagement of a person's title to real property. . . . The element of malice, express or implied, in making slanderous statements respecting the title of another's property, is essential to the recovery of damages, and in the absence of proof of such malice the action will fail. While the statement may be false, or made without right, there can be no legal malice and no action will lie, if it is made in good faith and with probable cause."

Kalian at Poconos, LLC v. Saw Creek Estates Cmty. Ass'n, Inc., 275 F. Supp. 2d 578, 591–92 (M.D. Pa. 2003) (quoting *Reed Road Assocs. v. Campbell*, 582 A.2d 1373, 1374 n.2 (1990) (internal citations and quotations omitted)). The plaintiff has again failed to allege the element of malice in connection with any of the defendants' statements concerning title to the Property.

In addition, the plaintiff does not set forth any plausible allegations regarding statements that could support a slander of title claim. Thus, counts four and nine must be dismissed.

c. Declaratory Relief

As with the original complaint, the defendants urge dismissal of "Plaintiff's requests for various declaratory judgments" because they are requests for a remedy, rather than the basis of a cause of action. (Defs.' Mem. Supp. Mot. Dismiss 20 (citing *Lorah v. SunTrust Mortgage, Inc.*, No. Civ.A. 08-0703, 2010 WL 5342738, at *6 (E.D. Pa. Dec. 17, 2010) (citing *Jones v. ABN AMRO Mortgage Grp., Inc.*, 551 F. Supp. 2d 400, 406 (E.D. Pa. 2008) (stating that a "[d]eclaratory judgment is a remedy, not a count."), *aff'd*, 606 F.3d 119 (3d Cir. 2010)).)

Because the requests for declaratory judgments against the Mortgage Defendants do not identify a source of law giving rise to a cause of action that would provide such declaratory relief under the circumstances alleged, they must be dismissed. *See Jones*, 551 F. Supp. 2d at 406 (finding that where a particular count "d[id] not identify the source of the alleged rights for which [the plaintiffs sought] declaratory relief [it] therefore fail[ed] to state a claim upon which relief may be granted."). Additionally, as the defendants point out, the plaintiff's requests for declaratory relief do not satisfy the requirements under Pennsylvania law to state such claims, which is yet another ground

for their dismissal.[4] (*See* Defs.' Mem. Supp. Mot. Dismiss 21 (quoting *Chester Cmty. Charter Sch. v. Com., Dep't of Educ.*, 996 A.2d 68, 80 (Pa. Commw. Ct. 2010) (internal citation omitted)).) For these reasons, counts five, six, seven, eight, and ten must be dismissed.

2. Dismissal of Claims Against Wells Fargo Pursuant to *Res Judicata*

The defendants also assert that the claims against Wells Fargo are barred by *res judicata* because they could have been raised in his prior cases against Wells Fargo. (Defs.' Mem. Supp. Mot. Dismiss 21, 23.) Because I am granting the defendants' motion to dismiss the amended complaint in its entirety, I do not address the merits of their arguments in favor of dismissing

[4] "To state a claim for declaratory judgment, a party must allege facts that establish a direct, immediate and substantial injury, and it must demonstrate the existence of an actual controversy related to the invasion or threatened invasion of one's legal rights." *Chester Cmty. Charter Sch. v. Com., Dep't of Educ.*, 996 A.2d 68, 80 (Pa. Commw. Ct. 2010) (citing *Bowen v. Mount Joy Township*, 644 A.2d 818, 821 (1994)). The speculative and barebones allegations in the amended complaint regarding the "several parties" making claims of ownership for the mortgage do not demonstrate the existence of an actual controversy. The plaintiff does not address this problem, and instead argues that there is a "case controversy" because the defendants' [sic] have not produced evidence that American Partners Bank existed on December 16, 2008, or that it existed after January 2008. (Pl.'s Resp. Opp'n Mot. Dismiss 1–4, 5.) This argument is based on the fact that the bank changed names, and accordingly does not demonstrate the existence of a controversy.

the claims against Wells Fargo pursuant to *res judicata.*

B. Plaintiff's Motion to Stay

The plaintiff argues that this case should be stayed pending resolution of the mortgage foreclosure proceedings against him, having incorrectly interpreted the defendants' argument that his claims should instead be litigated as defenses in that action as a proposal to stay this case. (Pl.'s Resp. Opp'n to Mot. Dismiss 5–6.) As discussed above, the plaintiff has failed to allege factually and legally sufficient claims in this matter. Such failings require dismissal of the amended complaint in its entirety. Thus, even if a stay were appropriate, it is unnecessary. Accordingly, the plaintiff's motion to stay is denied.

C. Leave to Amend

The United States Court of Appeals for the Third Circuit has made clear that if a complaint is subject to Rule 12(b)(6) dismissal, a district court must ordinarily permit a curative amendment unless such an amendment would be inequitable or futile. *Alston v. Parker,* 363 F.3d 229, 235 (3d Cir. 2004). Dismissal without leave to amend is justified only on grounds of bad faith, undue delay, prejudice, and futility. *Id.* at 236.

"A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully

pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (internal citations and quotations omitted). Nonetheless, "[t]o survive a motion to dismiss, a complaint—*even a* pro se *complaint*—'must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Maxberry v. Sallie Mae Educ. Loans*, 532 F. App'x 73, 75 (3d Cir. 2013) (emphasis added) (quoting *Iqbal*, 556 U.S. at 663 (quoting *Twombly*, 550 U.S. at 570)).

In this case, the plaintiff filed a *pro se* complaint prior to obtaining counsel, but he now has counsel and is himself an experienced federal court litigant. *See*, *e.g.*, *Taggart v. Wells Fargo Home Bank N.A.*, No. Civ.A. 12-3177, 2013 WL 3009732, at *3 (E.D. Pa. June 18, 2013) ("Although Plaintiff is *pro se,* his experience with the court system has provided him with far greater knowledge than a typical unrepresented party, and he should be aware that his numerous cases against Wells Fargo and Blank Rome are an abuse of the judicial process.") Indeed, as of 2013, Plaintiff had already initiated seventeen lawsuits concerning his properties. *Id.* at *1 n.1 (collecting cases).

The amended complaint does not address the failings identified in the original complaint which led to its dismissal. Thus, the allegations in the amended complaint, the arguments in the plaintiff's brief, and the plaintiff's litigation history—both in this case and more generally—support a finding that further amendment to the plaintiff's claims would be futile. *Cf.* *Maxberry*, 532 F. App'x at 75–76 (affirming dismissal

with prejudice where "[n]either the complaint nor the brief adduce[d] any evidence" supporting the plaintiff's claims and stating that the court "ha[d] no reason to believe that an amended complaint would survive a motion to dismiss" where the plaintiff's "past litigation practices indicate that he is prone to making incomprehensible and unsubstantial filings. . . ."). The amended complaint is therefore dismissed with prejudice.

IV. CONCLUSION

In light of the foregoing, the defendants' motion to dismiss is granted and the amended complaint is dismissed with prejudice. The plaintiff's motion to stay is also denied.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH J. TAGGART, Plaintiff,	:	
v.	:	CIVIL ACTION
WELLS FARGO BANK, N.A., et al.,	:	NO. 16-00063
Defendants.	:	

ORDER

AND NOW, this 30th day of May, 2017, upon consideration of the Motion to Dismiss the Amended Complaint by Defendants Wells Fargo, N.A., Mortgage Electronic Registration Systems, Inc., MERSCORP Holdings, Inc., and Federal Home Loan Mortgage Company (Docket No. 32), and Plaintiff Kenneth Taggart's Response in Opposition and Motion to Stay (Docket No. 35), it is hereby **ORDERED** that:

1. The Defendants' Motion to Dismiss is **GRANTED** in its entirety;
2. The Plaintiff's Amended Complaint is **DISMISSED WITH PREJUDICE**; and
3. The Plaintiff's Motion to Stay is **DENIED**.
4. The Clerk of Court is directed to mark this case as closed.

It is so **ORDERED**.

BY THE COURT:

/s/ Lawrence F. Stengel
LAWRENCE F. STENGEL, J.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH J. TAGGART, Plaintiff,	:	
v.	:	CIVIL ACTION
WELLS FARGO BANK, N.A., et al.,	:	NO. 16-00063
Defendants.	:	

MEMORANDUM

STENGEL, J. September 30, 2016

Currently pending before the Court are the Motions to Dismiss by (1) Defendants Wells Fargo Bank, N.A., Mortgage Electronic Registration Systems Inc., MERSCORP Holdings, Inc., and Federal Home Loan Mortgage Company (collectively, the "Mortgage Defendants") pursuant to Federal Rule of Civil Procedure 12(b)(6); (2) Defendant Lisa Roach ("Roach") pursuant to Federal Rule of Civil Procedure 12(b)(6); and (3) Defendant Eugene Jaskiewicz ("Jaskiewicz") pursuant to Federal Rules of Civil Procedure 12(b)(6) and 12(b)(2). For the following reasons, the Motions to Dismiss are granted.[1]

[1] For the reasons discussed below, the claims against the Mortgage Defendants will be dismissed without prejudice, but the claims against Roach and Jaskiewicz will be dismissed with prejudice.

I. FACTUAL BACKGROUND

Plaintiff Kenneth J. Taggart ("Plaintiff") filed a Complaint against Wells Fargo Bank, N.A., Mortgage Electronic Registration Systems Inc. ("MERS"), MERSCORP, Inc., Federal Home Loan Mortgage Corp. ("Freddie Mac"), American Partners Bank, Eugene Jaskiewicz, Lisa Roach, and John Doe Defendants, for various claims in connection with the property he owns at 709 Schwab Road, Hatfield, Pennsylvania 19440 ("the Property"). (Compl. at 2 ¶ 1.)[2] Plaintiff seeks (1) to determine whether the note and mortgage "were ever perfected by the original lender under Pennsylvania law, or even if purported original lender had a legal existence;" (2) to determine "all claims made by purported subsequent, or claimed subsequent, or claimed successor's [sic] in interest to the mortgage and note under Pennsylvania Law;" (3) to determine "the validity of the mortgage, note, and any subsequent assignments of mortgage, or any interest in the Mortgage or Note;" and (4) "to have the court validate, or invalidate, any interest in the Mortgage and Note." (Compl. at 2 ¶ 1.) Plaintiff believes that (a) the note and mortgage were never perfected; (b) the original lender was not a legal entity on the date they were created; and (c) no party can make claims under Pennsylvania law to enforce either the mortgage or the note. (*Id.*) Plaintiff alleges that "[s]everal parties" have made claims of ownership to the mortgage and note, and he therefore

[2] Due to the numbering system Plaintiff utilized in drafting the paragraphs of his Complaint, citations to the Complaint will use both the page number and paragraph number.

seeks "to 'Quiet Title' & [obtain] 'Declaratory Relief' against all claims of ownership, and rights associated with the mortgage and note." (*Id.* at 3 ¶ 2.) Plaintiff believes he "is entitled to declaratory relief as to the validity of the mortgage, note and any assignments." (*Id.*)

On February 6, 2009, a mortgage was recorded for the Property in the Montgomery County Recorder of Deeds Office, indicating that the mortgage was originated by American Partners Bank, N.A. as the grantor and that Plaintiff is the grantee. (*Id.* at 6 ¶ 2.) The mortgage was originated on December 16, 2008. (*Id.*) Plaintiff alleges that the Note was never recorded. (*Id.* at 9 ¶ 9(k).) The mortgage was assigned to Wells Fargo, N.A. on April 5, 2010. (*Id.* at 6 ¶6.) On May 18, 2010, that assignment was recorded with the Recorder of Deeds in Montgomery County, Pennsylvania. (*Id.* at 8 ¶ 8, 8 ¶ 9(a).) Plaintiff alleges numerous failures and defects in connection with the mortgage and note and their creation, recording, and assignment. (*See* Complaint at 1–18.) All of the claims set forth in the Complaint stem from these purported failures and defects.

II. STANDARD OF REVIEW

Under Rule 12(b)(6), a defendant bears the burden of demonstrating that the plaintiff has not stated a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6); *see also Hedges v. United States*, 404 F.3d 744, 750 (3d Cir. 2005). In *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), the United States Supreme Court

recognized that "a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Id.* at 555. Subsequently, in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the Supreme Court defined a two-pronged approach to a court's review of a motion to dismiss. "First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* at 678. Thus, while "Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era . . . it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." *Id.* at 678–79.

Second, the Supreme Court emphasized that "only a complaint that states a plausible claim for relief survives a motion to dismiss." *Id.* at 679. "Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* A complaint does not show an entitlement to relief when the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct. *Id.*; *see also Phillips v. Cnty. of Allegheny*, 515 F.3d 224, 232–34 (3d Cir. 2008) (holding that: (1) factual allegations of complaint must provide notice to defendant; (2) complaint must allege facts suggestive of the proscribed

conduct; and (3) the complaint's "'factual allegations must be enough to raise a right to relief above the speculative level.'" (quoting *Twombly*, 550 U.S. at 555)).

The basic tenets of the Rule 12(b)(6) standard of review have remained static. *Spence v. Brownsville Area Sch. Dist.*, No. Civ.A.08-626, 2008 WL 2779079, at *2 (W.D. Pa. July 15, 2008). The general rules of pleading still require only a short and plain statement of the claim showing that the pleader is entitled to relief and need not contain detailed factual allegations. *Phillips*, 515 F.3d at 233. Further, the court must "accept all factual allegations in the complaint as true and view them in the light most favorable to the plaintiff." *Buck v. Hampton Twp. Sch. Dist.*, 452 F.3d 256, 260 (3d Cir. 2006). Finally, the court must "determine whether, under any reasonable reading of the complaint, the plaintiff may be entitled to relief." *Pinkerton v. Roche Holdings Ltd.*, 292 F.3d 361, 374 n.7 (3d Cir. 2002).

III. DISCUSSION

The Mortgage Defendants move to dismiss Plaintiff's Complaint in its entirety for failure to state a claim under Rule 12(b)(6) and because Plaintiff's claims are barred pursuant to *res judicata*. Roach moves to dismiss the claims against her for failure to state a claim under Rule 12(b)(6) and because Plaintiff never properly served her with the Complaint. Jaskiewicz moves to dismiss the claims against him for failure to state a claim under Rule 12(b)(6); because they are barred by Pennsylvania's judicial privilege, the gist

of the action doctrine, and the economic loss doctrine; and for lack of personal jurisdiction pursuant to Rule 12(b)(2). Having considered the Complaint and the parties' briefs, I find Plaintiff's claims against each of the Defendants fail as a matter of law. I will therefore grant the Defendants' Motions to Dismiss.

A. Quiet Title, Slander of Title, and Petition to Quiet Title Claims Against Wells Fargo, MERS, MERSCORP, and Freddie Mac

In Counts One, Two, and Three of the Complaint, Plaintiff sets forth claims for quiet title, slander of title, and declaratory relief against Wells Fargo, MERS and MERSCORP, and Freddie Mac, seeking admissions, the surrender of documents, and declaratory relief in connection with the mortgage, note, and assignment. (*See* Compl. 19–28.) Plaintiff alleges that Freddie Mac purports to be the owner of the note and mortgage, that American Partners Bank did not exist the day the mortgage and note were created, that the note was not notarized or recorded, and that "[t]here have been claims by several parties to have an interest in the mortgage that was recorded." (*Id.* at 6–7.) Plaintiff further alleges numerous procedural and legal defects in connection with the mortgage, note, and assignment. (*Id.* at 7–19.)

1. Grounds for Dismissal Pursuant to Rule 12(b)(6)

a. Quiet Title

The Mortgage Defendants assert that Plaintiff has failed to state a plausible quiet title claim against them due to numerous factual and legal insufficiencies in the Complaint with regard to both the mortgage and the assignment. First, with respect to the mortgage, the Mortgage Defendants argue that Plaintiff did not allege specific facts regarding the "claims by several parties" purporting to have an interest in the mortgage, nor did he allege that any party other than Wells Fargo has tried to enforce the mortgage and note. (Mortgage Defs.' Mem. Supp. Mot. Dismiss 9–10 (citing *Orman v. MortgageIT*, No. Civ.A. 11-3196, 2012 WL 1071219, at *10 (E.D. Pa. Mar. 30, 2012) (dismissing a quiet title claim where the plaintiffs did not allege facts or law supporting a need to quiet title).) Second, with respect to the assignment, MERS is the assignor, not MERSCORP, and thus Plaintiff has no basis whatsoever for asserting a quiet title claim against MERSCORP. (Mortgage Defs.' Mem. Supp. Mot. Dismiss 10 (citing Compl. Ex. D).) Third, the Mortgage Defendants argue that Plaintiff does not provide any legitimate legal basis for his challenges to the validity of the note, mortgage, and assignment, or his assertions that they somehow violated Pennsylvania's recording statutes and thus invalidated the mortgage. (Mortgage Defs.' Mem. Supp. Mot. Dismiss 10–13.) Lastly, Plaintiff lacks standing to challenge the assignment. (*Id.* at 13 (citing *Rottmund v. Continental Assurance*

Co., 761 F. Supp. 1208, 1209 (E.D. Pa. 1990) (stating that under Pennsylvania law, those not in privity of contract or with some other common law or statutory right are "strangers to the Agreement with no standing to assert any rights thereunder.").) Having reviewed the Complaint, I find that the failings the Mortgage Defendants identified require dismissal of the quiet title claims against them.

b. Slander of Title

The Mortgage Defendants also argue that Plaintiff has failed to state a plausible claim for slander of title.

> The Pennsylvania Superior Court, describing the tort of slander of title, has stated: "Slander of title is the false and malicious statement, oral or written, made in disparagement of a person's title to real property. . . . The element of malice, express or implied, in making slanderous statements respecting the title of another's property, is essential to the recovery of damages, and in the absence of proof of such malice the action will fail. While the statement may be false, or made without right, there can be no legal malice and no action will lie, if it is made in good faith and with probable cause."

Kalian at Poconos, LLC v. Saw Creek Estates Cmty. Ass'n, Inc., 275 F. Supp. 2d 578, 591–92 (M.D. Pa. 2003) (quoting *Reed Road Assocs. v. Campbell*, 582 A.2d 1373, 1374 n.2 (1990) (internal citations and quotations

omitted)). In addition to the absence of plausible allegations regarding any statements that could give rise to a claim for slander of title, the Complaint does not contain any allegations of malice on the part of any of the Mortgage Defendants in connection with any such statements. Accordingly, the slander of title claims against the Mortgage Defendants must be dismissed.

c. Declaratory Relief

The Mortgage Defendants urge dismissal of "Plaintiff's requests for various declaratory judgments" because they are a request for a remedy, rather than the basis of a cause of action. (Mortgage Defs.' Mem. Supp. Mot. Dismiss 15 (citing *Lorah v. SunTrust Mortgage, Inc.*, No. Civ.A. 08-0703, 2010 WL 5342738, at *6 (E.D. Pa. Dec. 17, 2010) (citing *Jones v. ABN AMRO Mortgage Grp., Inc.*, 551 F. Supp. 2d 400, 406 (E.D. Pa. 2008) (stating that a "[d]eclaratory judgment is a remedy, not a count."), *aff'd*, 606 F.3d 119 (3d Cir. 2010)).) Because the requests for declaratory judgments against the Mortgage Defendants do not identify a source of law giving rise to a cause of action that would provide such declaratory relief under the circumstances alleged, they must be dismissed. *See Jones*, 551 F. Supp. 2d at 406 (finding that where a particular count "d[id] not identify the source of the alleged rights for which [the plaintiffs sought] declaratory relief [it] therefore fail[ed] to state a claim upon which relief may be granted."). Additionally, as the Mortgage Defendants point out, Plaintiff's requests for declaratory relief do not satisfy the requirements under Pennsylvania law

to state such claims, which is yet another ground for their dismissal.[3] (*See* Mortgage Defs.' Mem. Supp. Mot. Dismiss 15 (quoting *Chester Cmty. Charter Sch. v. Com., Dep't of Educ.*, 996 A.2d 68, 80 (Pa. Commw. Ct. 2010) (internal citation omitted)).)

2. Dismissal Pursuant to Res Judicata

The Mortgage Defendants also assert that Plaintiff's claims against Wells Fargo are barred by *res judicata* because they either were raised, or could have been raised, in his prior cases against Wells Fargo. (Mortgage Defs.' Mem. Supp. Mot. Dismiss 15.) Because I am granting the Mortgage Defendants' Motion to Dismiss the claims against them, I do not address the merits of their arguments in favor of dismissing the claims due to *res judicata*. Should Plaintiff file an amended complaint, the Mortgage Defendants may reassert their *res judicata* arguments.

---

[3] "To state a claim for declaratory judgment, a party must allege facts that establish a direct, immediate and substantial injury, and it must demonstrate the existence of an actual controversy related to the invasion or threatened invasion of one's legal rights." *Chester Cmty. Charter Sch. v. Com., Dep't of Educ.*, 996 A.2d 68, 80 (Pa. Commw. Ct. 2010) (citing *Bowen v. Mount Joy Township*, 644 A.2d 818, 821 (1994)). The speculative allegations in the Complaint regarding the "several parties" making claims of ownership for the mortgage do not demonstrate the existence of an actual controversy.

B. Quiet Title, Slander of Title, and Petition to Quiet Title Claims Against Lisa Roach

In Count Four, Plaintiff (1) seeks to compel Roach to file, record, cancel, surrender or satisfy of record, or admit the validity, invalidity, or discharge of documents affecting the Property; (2) seeks numerous admissions from her related to the notarization of the mortgage and note for the Property pertaining to the December 16, 2008 closing; (3) seeks to have her surrender or satisfy of record various forms of documentation, or if any of the admissions Plaintiff seeks are denied, that she provide "evidence" in support of such denial; and (4) requests declaratory relief stating that the note and mortgage, as well as the notarization of the note and mortgage, are null and void and without value. (Compl. at 28–30.)

First, Roach asserts that she was never served with the Complaint. (Def. Roach's Mem. Supp. Mot. Dismiss 3.) Thus, Plaintiff's claims against Roach are dismissible for lack of personal jurisdiction. Second, they are subject to dismissal because they do not state legally cognizable claims. Specifically, Roach has no interest in the mortgage or the note; her involvement with the mortgage was simply to notarize Plaintiff's signature at settlement; and numerous of Plaintiff's "claims" against her appear to be discovery requests. *See Taggart v. Morgan Stanley ABS Capital I Inc.*, No. Civ.A 16-62, 2016 WL 4076818, at *4 (E.D. Pa. Aug. 1, 2016) (dismissing nearly identical claims against a notary sued by Plaintiff in another case) (internal

citations omitted). Plaintiff captions his claims against Roach as quiet title and slander of title claims, yet alleges no facts regarding any claim of title to the Property by Roach, nor any facts regarding any slanderous and malicious statements by Roach. Accordingly, all of Plaintiff's claims against Lisa Roach in Count Four will be dismissed.

C. Claims Against Eugene Jaskiewicz

In Count Five, Plaintiff asserts claims against Eugene Jaskiewicz in connection with the assignment of the mortgage, for which Jaskiewicz served as a notary. Specifically, Plaintiff (1) demands declaratory and injunctive relief against Jaskiewicz for "failure to produce notary log, failure to provide evidence of notarization or acknowledgment [and] failure to submit notary log to department of records," pursuant to various Pennsylvania statutes; (2) seeks to compel him to file certain documents, or admit the validity, invalidity, or discharge of any document with respect to the Property; (3) seeks to compel him to admit that he has not produced certain documents pertaining to the notarization of the assignment of the mortgage on April 5, 2010 and that he retained those documents and refuses to submit them as required by state law; (4) seeks to compel him to produce various other types of "evidence" in support of any denial of Plaintiff's claims; (5) seeks a declaration from the Court that the mortgage assignment is null and void and has no value; and (6) seeks an order from the Court requiring Jaskiewicz

to turn over various records so that they might be made public. (Compl. at 31–33.)

Plaintiff filed no response in opposition to Jaskiewicz's Motion to Dismiss, which urges dismissal of the Complaint for failure to set forth legally cognizable claims and for lack of personal jurisdiction due to Plaintiff's failure to serve Jaskiewicz with a copy of the Complaint. (Def. Jaskiewicz's Mem. Supp. Mot. Dismiss 7–10, 12.) As with the claims against Roach, the claims against Jaskiewicz are dismissible not only for lack of personal jurisdiction, but also because they consist only of vague allegations that Jaskiewicz violated various sources of law, and thus cannot withstand a motion to dismiss.

More importantly, Plaintiff does not have standing to challenge the provisions of the assignment because he is not a party to it. *See, e.g.*, *Taggart v. Morgan Stanley ABS Capital I Inc.*, No. Civ.A 16-0062, 2016 WL 4076818, at *4 (E.D. Pa. Aug. 1, 2016) (citing *Rottmund v. Cont'l Assur. Co.*, 761 F. Supp. 1203, 1208 (E.D. Pa. 1990) ("The validity of the Agreement and the effectiveness of any purported assignment are matters which are open to challenge or enforcement only by those in privity of contract or those with some legal right existing at common law or created by statute. All others must be deemed strangers to the Agreement with no standing to assert any rights thereunder.")). Accordingly, Count Five will be dismissed.[4]

---

[4] In addition, Jaskiewicz seeks to dismiss Plaintiff's tort claims against him because they are barred by Pennsylvania's judicial

D. Declaratory Judgment as to Wells Fargo, Freddie Mac, American Partners Bank, and All Doe Defendants

Count Six first seeks a declaratory judgment that (1) the mortgage is void and unenforceable; (2) the note is void and unenforceable; and (3) the mortgage and any subsequent assignments regarding the mortgage be vacated from the Recorder of Deeds Office in Montgomery County; second, requests "other and further relief available under all applicable state and federal laws and any relief the court deems just and appropriate;" and third, seeks a declaration that "all Defendants, shall refund all payments and monies received for the loan, note, or mortgage to Plaintiff" with pre- and post-judgment interest. (Compl. at 33 ¶ 1–34 ¶ 5.) For the same reasons discussed above in connection with the declaratory judgment claims in Counts One, Two, and Three, Plaintiff's claim for declaratory relief in Count Six must be dismissed.

E. Plaintiff's Motion to Remand

According to Plaintiff, (1) the Mortgage Defendants' removal of this case to federal court was improper; (2) the case must therefore be remanded to state court; and (3) he is entitled to attorney's fees and costs related to his Motion to Remand. (Pl.'s Resp.

---

privilege doctrine, as well as the gist of the action and economic loss doctrines. (*Def. Jaskiewicz's Mem. Supp. Mot. Dismiss* 10–11.) Having already found that Count Five must be dismissed on other grounds, I do not address Jaskiewicz's arguments regarding these Pennsylvania law doctrines.

Opp'n to Mortgage Defs.' Mot. Dismiss 4–7.) The Mortgage Defendants correctly note that, pursuant to 12 U.S.C. § 1452(f), Freddie Mac may remove a civil action to which it is a party to federal court.[5]

Accordingly, Plaintiff's Motion to Remand is denied.[6]

F. Plaintiff's Motion to Stay

Plaintiff moves to stay this case pending resolution of the mortgage foreclosure proceedings against him, apparently interpreting the Mortgage Defendants' argument that his claims should instead be litigated as defenses in that action as a proposal to stay this case. (Pl.'s Sur Reply and Mot. to Stay 3–4.) As

---

[5] 12 U.S.C § 1452 provides that "all civil actions to which [Freddie Mac] is a party shall be deemed to arise under the laws of the United States, and the district courts of the United States shall have original jurisdiction of all such actions, without regard to amount or value" and that "any civil or other action, case or controversy in a court of a State, or in any court other than a district court of the United States, to which [Freddie Mac] is a party may at any time before the trial thereof be removed by [Freddie Mac], without the giving of any bond or security, to the district court of the United States for the district and division embracing the place where the same is pending. . . ."

[6] In the Notice of Removal, the Mortgage Defendants also argued that Roach and Jaskiewicz were fraudulently joined in this matter and that, therefore, the requirements of diversity jurisdiction are satisfied. As discussed above, this case was appropriately removed on the grounds that Freddie Mac is a party. Accordingly, I need not address the parties' arguments regarding fraudulent joinder. (*See* Docket No. 1, Notice of Removal 4–6; Pl.'s Resp. Opp'n to Mortgage Defs.' Mot. Dismiss 4–7; Defs.' Reply 4 n.3.)

discussed above, Plaintiff has failed to allege factually and legally sufficient claims in this matter. Such failings require dismissal of the Complaint in its entirety. Thus, even if a stay were appropriate, it is unnecessary. Accordingly, Plaintiff's Motion to Stay is denied.

G. Leave to Amend

The United States Court of Appeals for the Third Circuit has made clear that if a complaint is subject to Rule 12(b)(6) dismissal, a district court must ordinarily permit a curative amendment unless such an amendment would be inequitable or futile. *Alston v. Parker*, 363 F.3d 229, 235 (3d Cir. 2004). Dismissal without leave to amend is justified only on grounds of bad faith, undue delay, prejudice, and futility. *Id.* at 236. This opportunity to amend must be offered, even if, as in this case, the plaintiff does not specifically make such a request. *Id.* at 235. "A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (internal citations and quotations omitted). Nonetheless, "[t]o survive a motion to dismiss, a complaint—*even a* pro se *complaint*—'must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Maxberry v. Sallie Mae Educ. Loans*, 532 F. App'x 73, 75 (3d Cir. 2013) (emphasis added) (quoting *Iqbal*, 556 U.S. at 663 (quoting *Twombly*, 550 U.S. at 570)).

In this case, Plaintiff filed a *pro se* complaint prior to obtaining counsel, but he is an experienced federal court litigant. *See, e.g.*, *Taggart v. Wells Fargo Home Bank N.A.*, No. Civ.A. 12-3177, 2013 WL 3009732, at *3 (E.D. Pa. June 18, 2013). ("Although Plaintiff is *pro se*, his experience with the court system has provided him with far greater knowledge than a typical unrepresented party, and he should be aware that his numerous cases against Wells Fargo and Blank Rome are an abuse of the judicial process.") Indeed, as of 2013, Plaintiff had already initiated seventeen lawsuits concerning his properties. *Id.* at *1 n.1 (collecting cases). The allegations in the Complaint, the arguments in Plaintiff's briefs, and Plaintiff's litigation history support a finding that amendment to Counts Four and Five would be futile. *Cf. Maxberry*, 532 F. App'x at 75–76 (affirming dismissal with prejudice where "[n]either the complaint nor the brief adduce[d] any evidence" supporting the plaintiff's claims and stating that the court "ha[d] no reason to believe that an amended complaint would survive a motion to dismiss" where the plaintiff's "past litigation practices indicate that he is prone to making incomprehensible and unsubstantial filings. . . ."). Plaintiff's claims against Roach and Jaskiewicz, therefore, are dismissed with prejudice.

With respect to Counts One, Two, Three, and Six, however, I find it is not necessarily futile for Plaintiff to attempt to re-structure the claims against the Mortgage Defendants into legally cognizable claims that are supported by sufficient factual allegations. Accordingly, I will grant Plaintiff twenty days in which to file

a second amended complaint properly setting forth a factual basis for the claims against the Mortgage Defendants. Plaintiff's failure or inability to do so will, upon proper motion by the Mortgage Defendants, result in dismissal with prejudice.

IV. CONCLUSION

In light of the foregoing, the Defendants' Motions to Dismiss are granted and the Complaint is dismissed in its entirety. The claims against the Mortgage Defendants in Counts One, Two, Three, and Six are dismissed without prejudice, whereas the claims against Lisa Roach and Eugene Jaskiewicz in Counts Four and Five are dismissed with prejudice. Plaintiff's Motion to Remand and Plaintiff's Motion to Stay are denied.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KENNETH J. TAGGART, Plaintiff,	:	
v.	:	CIVIL ACTION
WELLS FARGO BANK, N.A., et al.,	:	NO. 16-00063
Defendants.	:	

ORDER

AND NOW, this *30th* day of *September*, 2016, upon consideration of the Motions to Dismiss by Defendants Wells Fargo, N.A., Mortgage Electronic Registration Systems, Inc., MERSCORP Holdings, Inc., and Federal Home Loan Mortgage Company ("the Mortgage Defendants") (Docket No. 6), Lisa Roach (Docket No. 16), and Eugene Jaskiewicz (Docket No. 21); Plaintiff Kenneth Taggart's ("Plaintiff")'s Responses in Opposition and Motion to Remand (Docket Nos. 11 and 22); the Mortgage Defendants' Reply (Docket No. 13); and Plaintiff's Sur Reply and Motion to Stay (Docket No. 14), it is hereby **ORDERED** that:

1. Plaintiff's Motion to Remand is **DENIED**;
2. Plaintiff's Motion to Stay is **DENIED**;
3. Counts One, Two, Three, and Six of Plaintiff's Complaint are **DISMISSED WITHOUT PREJUDICE**; and

4. Counts Four and Five of Plaintiff's Complaint are **DISMISSED WITH PREJUDICE**.

5. Plaintiff has twenty (20) days in which to file an Amended Complaint. It is so **ORDERED**.

BY THE COURT:

/s/ Lawrence F. Stengel
LAWRENCE F. STENGEL, J.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 17-1836 & 17-2416

KENNETH J. TAGGART,
Appellant

v.

WELLS FARGO BANK, N.A.; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC., a/k/a MERS; MERSCORP, INC.; FEDERAL HOME LOAN MORTGAGE CORP., a/k/a FREDDIE MAC; JOHN DOES 1-10

(E.D. Pa. No. 5-16-cv-00063)

SUR PETITION FOR REHEARING

Present: SMITH, *Chief Judge*, McKEE, CHAGARES, JORDAN, VANASKIE, SHWARTZ, RESTREPO, and BIBAS, *Circuit Judges*, and SCIRICA,* *Senior Circuit Judge*

The petition for rehearing filed by appellant in the above-captioned case having been submitted to the judges who participated in the decision of this Court

---

* Judge Scirica's vote is limited to panel rehearing only.

and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc is denied.

By the Court,

s/Stephanos Bibas
Circuit Judge

Dated: June 21, 2018
cc:

Steven J. Adams, Esq.
Craig A. Hirneisen, Esq.
Joshua L. Thomas, Esq.