APPENDIX (VEENA SHARMA V. SANTANDER BANK)

959. TEN-YEAR STATUTE OF LIMITATIONS

18 U.S.C. § 3293(2) provides for a ten-year statute of limitations for a violation of, or a conspiracy to violate, the mail or wire fraud statutes, if the offense affects a financial institution. Moreover, the ten-year statute applies to offenses committed prior to enactment of FIRREA, provided the previously applicable statute of limitations had not run as of the date of FIRREA's enactment. Pub.L. No. 101-73, Title IX, § 961(I)(3), 103 Stat. 501.

[cited in JM 9-43.100]

‹ 958. Fraud Affecting a Financial Institution up 960. More Severe Sanctions, Including Forfeiture ›

Updated January 21, 2020

TEN YEARS STATUE OF LIMITATIONS
FOR FINANCIAL INSTITUTIONS
FROM
DEPARTMENT OF JUSTICE

Sharma v. Cnty. Mortg., LLC.

Decided Jun 23, 2020

19-P-1028

06-23-2020

VEENA SHARMA v. COUNTY MORTGAGE, LLC.

By the Court (Rubin, Blake & Wendlandt, JJ.), Clerk

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

In December 2018, the pro se plaintiff brought this action for damages against the defendant, Stuart Cole, alleged to be the owner of County Mortgage LLC. The brief complaint states that the defendant "fraudulently, secretly and intentionally trapped [the plaintiff] in a [sic] unscrupulously, deceitful contract, called predatory lending." The complaint alleges, inter alia, that the defendant "secretly inflated the loan amount of approximately $72,000 to $150,000," "secretly added" -- apparently as collateral -- a valuable rental condominium in addition to the plaintiff's residence, and submitted "fabricated" and "altered" documents to the Massachusetts Commission Against Discrimination.

On March 18, 2019, the plaintiff filed "an emergency motion" to stop a foreclosure of her residence scheduled
2 for *2 March 20, 2019, at 10 A.M. A letter attached stated that the plaintiff was asking the court "to stop/postpone foreclosure until further directions from the honorable Superior Court."

On that same date, the motion judge issued a "memorandum and order on plaintiffs' motion for preliminary injunction." Finding that the plaintiff had not demonstrated any likelihood of success on the merits, the motion judge denied the emergency motion, which he characterized as one for a preliminary injunction.

In that same memorandum and order, the judge made reference to a number of facts not alleged in the complaint, referring to two earlier court cases filed by the plaintiff's husband and apparent coborrower, Tej Sharma. The judge said that the plaintiff "should have been included" in the prior cases, that the plaintiff and her husband had borrowed $150,000, and that the amount was borrowed at a fixed interest rate of 14.9 percent. The judge concluded that was not a sufficiently high interest rate to amount to predatory lending, and that "the

could be granted. See Mass. R. *3 Civ. P. 12 (b) (6), 365 Mass. 754 (1974). The plaintiff has appealed.[1]

[1] The appellee's brief in this case was filed by Stuart Cole, who asserts that he was named as appellee, but that the only defendant, and only proper appellee, is County Mortgage, LLC. For reasons that have not been explained to us, the caption of the case in the Superior Court was Veena Sharma vs. Stuart Cole as owner of County Mortgage LLC. We note that the civil cover sheet filed with the complaint listed Stuart Cole as a defendant and listed County Mortgage, LLC, on the line below that, apparently also as a defendant. The document that appears to be the complaint is captioned Verna Sharma vs. County Mortgage, LLC, though its allegations are all against Stuart Cole, who it describes as the "lender, owner, and manager of County Mortgage." The judge's order dismissing the case was captioned Verna Sharma vs. County Mortgage, LLC. The notice of appeal was docketed in the case below with the Superior Court caption. In any event, we think the pro se notice of appeal in this case can be read and understood to amount to an appeal against the defendant County Mortgage, LLC. We do not know why the defendant asserts that he alone was named as appellee. Nothing in the manner in which the appeal has been prosecuted affects our jurisdiction or the propriety of addressing its merits. The defendant's brief notes correctly that myriad facts asserted in the plaintiff's appellate brief and documents to which it refers are not contained in the record below. We do not rely on any of these factual assertions or documents in reaching our decision.

As to the emergency motion, regardless of whether what was sought was properly described as "preliminary injunctive relief" or not,[2] we see no abuse of discretion or other error of law in the judge's denial of the motion
4 in light of the plaintiff's failure to show entitlement to the injunctive relief she sought. *4

[2] The plaintiff asserts that this is a mischaracterization as the lawsuit itself was one for money damages and not one to prevent foreclosure. As described in the text, the characterization is irrelevant to our decision.

The judge's sua sponte dismissal for failure to state a claim, however, stands on less solid ground. The defendant has pointed us to no published Massachusetts appellate case permitting dismissal of a complaint on the basis of a judge's sua sponte motion to dismiss under rule 12 (b) (6). The one published case he does cite, Chute v. Walker, 281 F.3d 314, 319 (1st Cir. 2002), states that, although "in limited circumstances, sua sponte dismissals of complaints under Rule 12(b)(6) . . . are appropriate . . . such dismissals are erroneous unless the parties have been afforded notice and an opportunity to amend the complaint or otherwise respond." Id., quoting Futera Dev. of P.R., Inc. v. Estado Libre Asociado de P.R., 144 F.3d 7, 13-14 (1st Cir. 1998). In Chute, the United States Court of Appeals for the First Circuit went on to say that a sua sponte dismissal entered without prior notice, like the one in this case, might be affirmed but only "if it is crystal clear that the plaintiff cannot prevail and that amending the complaint will be futile." Chute, 281 F.3d at 319, quoting Gonzalez-Gonzalez v. United States, 257 F.3d 31, 37 (1st Cir. 2001). In order to obtain affirmance in such circumstances, in the First Circuit "the party defending the dismissal must show that 'the allegations contained in the
5 complaint, taken in the light most favorable to the plaintiff, *5 are patently meritless and beyond all hope of redemption.'" Id., quoting Gonzalez-Gonzalez, supra.

This, the defendant does not even attempt here. Moreover, the dismissal by the motion judge was based not on the allegations of the complaint, which of course must be taken as true for purposes of any such motion under rule 12 (b) (6), but apparently based upon the facts recited in the judge's decision, which may or may not have been taken from findings made in other cases relating to the loan at issue in this case. The order dismissing the complaint in this matter was error and the judgment therefore must be reversed.[3]

[3] We express no opinion on the question whether the facts alleged in the complaint and the reasonable inferences that may be drawn therefrom taken in the light most favorable to the plaintiff state a claim upon which relief may be granted.

So ordered.

By the Court (Rubin, Blake & Wendlandt, JJ.[4]),

[4] The panelists are listed in order of seniority. --------

/s/

Clerk Entered: June 23, 2020.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

VEENA SHARMA, **Plaintiff,** **v.** **SANTANDER BANK,** **Defendant.**	**Civil Action No. 19-12184-FDS**
VEENA SHARMA, **Plaintiff,** **v.** **FIDELITY INVESTMENTS,** **Defendant.**	**Civil Action No. 19-12186-FDS**
VEENA SHARMA, **Plaintiff,** **v.** **ATTORNEY DOMENIC S. TERRANOVA, et al.,** **Defendants.**	**Civil Action No. 19-12220-FDS**

MEMORANDUM AND ORDER

SAYLOR, J.

In October 2019, plaintiff Veena Sharma filed these three civil actions, all of which are related to three earlier actions in Essex Superior Court to which she was a party. She is

proceeding *pro se* and *in forma pauperis*.

As set forth below, in 2010, the Trustees of the Andover Gardens Condominium Trust procured a judgment in Essex Superior Court against plaintiff for unpaid condominium fees. Shortly thereafter, the Trustees commenced a second action against her for the appointment of a receiver. In February 2011, the court appointed a receiver, and, on January 26, 2012, he filed a final account and asked to be discharged. Plaintiff (who was represented by counsel) and the Trustees assented to the motion and the case was dismissed.

On November 13, 2018, plaintiff commenced an action in Superior Court against the Trustees. That action alleged that in June 2011 she had learned that the Trustees had unlawfully withdrawn funds totaling $192,000 from her accounts at Sovereign Bank (now known as Santander Bank) and Fidelity Investments. Applying the Massachusetts three-year tort statute of limitations, the court dismissed the action as time-barred.

In these three federal actions, plaintiff now seeks damages based on claims that Santander, Fidelity, the Trust, the Trust's attorney, the receiver, and her own attorney committed the federal crimes of bank embezzlement, mail fraud, wire fraud, and bank fraud.

Summonses have not issued pending the court's review of the complaints. The court may dismiss any complaint brought by a party proceeding *in forma pauperis* if it is malicious, frivolous, seeks damages against a party immune from such relief, or fails to state a claim upon which relief can be granted. *See* 28 U.S.C. § 1915(e)(2). In conducting its review, the court must construe the complaint liberally because plaintiff is proceeding *pro se*. A federal court also has an obligation to inquire *sua sponte* into its own jurisdiction. *See United States v. Univ. of Mass., Worcester*, 812 F.3d 35, 44 (1st Cir. 2016).

For the reasons stated below, it is at least doubtful that the court has subject-matter

jurisdiction, because the claims are "insubstantial, implausible, . . . [and] otherwise completely devoid of merit." *Oneida Indian Nation of N.Y. v. County of Oneida*, 414 U.S. 661, 666 (1974). But because such jurisdiction appears to exist, the cases will be dismissed for failure to state a claim because they are barred by the statute of limitations and principles of claim preclusion.

I. Factual Background

A. Prior State Actions

On October 9, 2008, the Trustees initiated an action against plaintiff in Essex Superior Court seeking unpaid condominium common charges. *See Trustees of Andover Gardens Condo Trust v. Sharma*, 0877CV02005 (Essex Superior Ct., Mass.) (*Trustees of Andover Gardens Condo Trust v. Sharma I*").[1] On the docket, the lawsuit is characterized as one for "Condominium Lien & Charges." Domenic S. Terranova was the attorney for the Trustees. Plaintiff appeared *pro se*. In June 2010, the Superior Court granted the Trustees' motion for summary judgment and entered judgment in its favor for $18,059 in unpaid common expenses.

On September 2, 2010, the Trustees commenced a second action against plaintiff, seeking the appointment of a receiver. *See Trustees of Andover Gardens Condo Trust v. Sharma*, 1077CV01869 (Essex Superior Ct., Mass.) ("*Trustees of Andover Gardens Condo Trust v. Sharma II*"). Attorney Terranova again represented the Trustees. On January 19, 2011, after plaintiff had defaulted on the complaint, attorney Peter J. Caruso entered an appearance on their behalf. On February 10, 2011, the court appointed Michael B. Feinman, Esq., as a receiver. Attorney Feinman filed an Amended Final Account and Request for Dismissal on January 26, 2012. The following day, the court allowed the motion, noting that the parties had assented to it.

[1] The court takes judicial notice of the three prior state cases between plaintiff and the Trustees, including the proceedings and orders on the public docket. With one exception, the quotations in this section are taken from the dockets of the state-court actions. These dockets are available to the public through www.masscourts.org (last visited Feb. 10, 2020).

The docket text does not provide any specifics of the amended final account.

On November 13, 2018, plaintiff, proceeding *pro* se, commenced an action against the Trustees. *See Sharma v. Trustees of Andover Gardens Condo Trust*, 1877CV01631 (Essex Superior Ct., Mass.). In that complaint, plaintiff alleged that "she came to know on June 3, 2011 that Trustees of Andover Garden Condominium Trust ha[d] unlawfully managed to withdraw approximately $192,000 dollars from [her] accounts at Sovereign Bank [now Santander] and Fidelity Investments for [the] unpaid condominium fee of approximately $18,059.33 without my permission." Compl. ¶ 2, *Sharma v. Andover Gardens Condo Trust.*[2]

On June 11, 2019, the Trustees, represented by attorney Terranova, filed a motion to dismiss. According to the docket, the Trustees argued that "part of this action alleging conversion of the plaintiffs' funds from Sovereign [now Santander] Bank and Fidelity Investments as the claim for conversion is time barred under [the] statute of limitations, MGL C. 260, sections 2A and 4." On September 20, 2019, in an endorsed order set forth on the docket of the case, the court granted the Trustees' motion to dismiss the complaint as time-barred.

B. Actions Pending in this Court

1. *Sharma v. Santander Bank*, C.A. No. 19-12184-FDS

The complaint in *Sharma v. Santander Bank*, C.A. No. 19-12184-FDS, alleges that in 2011, plaintiff discovered that all her funds in an account with Santander Bank were missing. Santander is the only defendant. The complaint alleges that despite her several inquiries to Santander concerning the disappearance of her funds, the bank was not able or refused to disclose to her what had happened to the funds in her account. It further alleges that in 2017, she

[2] Plaintiff's one-page complaint in *Sharma v. Andover Gardens Condo Trust*, 1877CV01631 (Essex Superior Ct., Mass.), was included as an exhibit to Santander Bank's memorandum in support of its motion to dismiss. *See Sharma v. Santander Bank*, C.A. No. 19-12184-FDS, Compl. Ex. 1, at 1.

discovered that Santander had issued a check from her account in the amount of $28,069.09 to attorney Michael Feinman, and that attorney Feinman had submitted a letter to the bank "with Falsified information and false pretense." Compl. at 6 (as in original). The complaint alleges that "Attorney Feinman and Santander Bank committed wire and mail fraud by intercepting [plaintiff's] mail to obtain information on my bank accounts and identify theft." *Id.* at 7.

The complaint invokes this court's federal-question jurisdiction. *Id.* at 3; *see* 28 U.S.C. § 1331 (providing that "[t]he [federal] district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States"). It purports to assert a claim under 18 U.S.C. § 656, which provides criminal penalties for theft, embezzlement, or misapplication of assets by a bank officer or employee, as the basis for that jurisdiction. It seeks $10.5 million in damages.

Although a summons has not issued in the case, on November 26, 2019, counsel for Santander appeared and filed a motion for dismiss for failure to state a claim upon which relief can be granted. Santander argues that plaintiff's claims are time-barred and barred by the doctrine of claim preclusion. Plaintiff did not file an opposition to the motion to dismiss.

2. ***Sharma v. Fidelity Investments*, C.A. No. 19-12186-FDS**

The complaint in *Sharma v. Fidelity Investments*, C.A. No. 19-12186-FDS, alleges that attorney Feinman and Fidelity "conspired and committed bank fraud by getting hold of [plaintiff's] account and conversion of [her] stocks at Fidelity Investments" without her knowledge or authorization. Compl. at 6. The complaint alleges that she called Fidelity in 2011 to check on the status of her stocks and was informed that she did not have any. Fidelity allegedly represented to plaintiff that it did not know what happened to her stocks. According to the complaint, after she reported the matter to the Andover Police Department, three detectives

worked with her on the matter for two weeks but were unable to make any progress.

The complaint further alleges that in 2017 plaintiff made a complaint against attorney Feinman with the Board of Bar Overseers. It alleges that, in response to her complaint, "attorney Feinman provided 40-50 pages of document[s] to me which included copies of three checks issued by Fidelity Investments to attorney Feinman in the amounts of approximately $166,000." *Id.* at 7. It further alleges that attorney Feinman "got this money on the basis of falsified documents." *Id.*

As in the complaint against Santander, the complaint purports to assert claims under 18 U.S.C. § 656 and invokes federal-question jurisdiction. It seeks $11 million in damages "for participating in these federal crimes (mail, wire, and bank fraud)." *Id.* at 8. Fidelity is the only defendant.

3. ***Sharma v. Terranova, et al.*, C.A. No. 19-12220-FDS**

The third action is against attorney Feinman, attorney Terranova, attorney Peter Caruso, and the Andover Gardens Condominium Trust.[3] The complaint alleges that these parties "conspired and defrauded" Fidelity and Santander to steal a total of $206,000 of plaintiff's money from those institutions in 2011. Compl. at 6. It further alleges that the Trust and the three defendant attorneys "intercepted [her] mail to obtain information on [her] bank accounts, investments, real estate including [her] primary residence and rental properties, [her] goods in the house, and other personal information for more than a year." *Id.* It further alleges that

[3] The complaint identifies "Andover Gardens Condominium Trust" as a defendant. However, subject to an exception not applicable here, under Massachusetts law "a trust is not a legal entity which can be sued directly." *Morrison v. Lennett*, 415 Mass. 857, 859-60 & n.7 (1993); *see also Keefan v. Pellerin*, 76 Mass. App. Ct. 186, 187 n.2 (2010) (citing *Morrison* and noting that, in lawsuit brought against a condominium trust, "the trust was not the proper party to sue"); M.G.L. ch. 182, § 1 (defining "trust" for purposes of M.G.L. ch. 182 as a trust "operating under a written instrument or declaration of trust, the beneficial interest under which is divided into transferable certificates of participation or shares . . . ."); M.G.L. ch. 182, § 6 (providing that a "trust" may be sued).

attorney Terranova represented the Trustees in *Trustees of Andover Gardens Condo Trust v. Sharma II* without their authorization. According to plaintiff, attorney Terranova "created [sic] a counsel, attorney Peter Caruso," to represent plaintiff, and he "abused the legal process" by "[i]nitiating a trial without probable cause," engineering the appointment of his friend attorney Feinman as receiver, filing motions for default, and "fabricating" court judgments. *Id.* at 7. The complaint alleges that all the defendants conspired to commit bank fraud, and that the Trust "conspired in a silent way by not stopping" the three attorney defendants. *Id.* at 8. It concludes that "[a]ll four defendants conspired against [her] to commit bank fraud." *Id.*

The complaint purports to assert claims under 18 U.S.C. §§ 1341, 1343, and 1344, and again invokes federal-question jurisdiction. *See* Compl. at 3. It seeks $15 million in damages against each of the attorney defendants and $6 million in damages against the Trust.

II. Discussion

A. Subject-Matter Jurisdiction

Federal courts are of limited jurisdiction, "and the requirement of subject-matter jurisdiction 'functions as a restriction on federal power.'" *Fafel v. Dipaola*, 399 F.3d 403, 410 (1st Cir. 2005) (quoting *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982)). As a general matter, federal courts may exercise jurisdiction over civil actions arising under federal laws, *see* 28 U.S.C. § 1331, and over certain actions in which the parties are of diverse citizenship and the amount in controversy exceeds $75,000, *see* 28 U.S.C. § 1332.[4] All three complaints invoke the court's federal-question jurisdiction.

The complaints purport to assert claims arising under various federal criminal statutes:

[4] Plaintiff here does not invoke the court's jurisdiction under § 1332, nor does she purport to assert any state-law claims. In any event, diversity of citizenship clearly does not exist between the parties in *Sharma v. Terranova*, and there are no allegations in the other two complaints as to the citizenship of either Santander or Fidelity; indeed, plaintiff left those portions of the form complaint blank.

those creating the crimes of bank embezzlement, mail fraud, wire fraud, and bank fraud. Those statutes do not, however, create a private right of action to bring a civil claim against an alleged wrongdoer. *See, e.g.*, *Wisdom v. First Midwest Bank, of Poplar Bluff*, 165 F.3d 402, 408 (8th Cir. 1999) (holding that no private right of action exists under 18 U.S.C. §§ 1341 or 1343); *Lowe v. ViewPoint Bank*, 972 F. Supp. 2d 947, 954-55 (N.D. Tex. 2013) (same, as to 18 U.S.C. § 656); *Milgrom v. Burstein*, 374 F. Supp. 2d 523, 529 (E.D. Ky. 2005) (same, as to 18 U.S.C. § 1344).

Plaintiff's attempted assertion of a civil right of action under federal criminal statutes is "so devoid of merit" as to call into question the existence of federal-question jurisdiction. *See Oneida Indian Nation of N.Y. v. County of Oneida*, 414 U.S. 661, 666 (1974) (stating that dismissal for lack of subject-matter jurisdiction based on the inadequacy of the federal claim is appropriate where the claim is "so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy"); *Bell v. Hood*, 327 U.S. 678, 682 (1946) (holding that dismissal for lack of jurisdiction is appropriate if it is not colorable, that is, "immaterial and made solely for the purpose of obtaining jurisdiction" or "wholly insubstantial and frivolous"); *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 89 (1998); *Merrell Dow Pharm Inc. v. Thompson*, 478 U.S. 804, 817 (1986).

Unfortunately, the case law as to the "dichotomy" between lack of subject-matter jurisdiction and failure to state a claim is often confused and inconsistent. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 511 (2006) (discussing how courts have been "less than meticulous" in addressing the issue). Moreover, the court can never assume the existence of subject-matter jurisdiction, but must make an affirmative decision as to its existence. Under the circumstances, the Court concludes that the claims here—which, again, purport to assert civil causes of action

arising out of federal criminal statutes—are sufficiently colorable to confer federal-question jurisdiction, even if only barely so. The Court will therefore address the merits of the claims.

B. Failure to State a Claim

The asserted claims present two obvious issues: the statute of limitations and claim preclusion.[5]

1. Statute of Limitations

Depending on how the claims are construed, they could be subject to a three, four, or six-year period of limitations under Massachusetts law, which applies in this context. *See* Mass. Gen. Laws ch. 260, §§ 2A (three-year statute of limitations for tort claims), 5A (four-year statute of limitations for action for consumer claims under chapter 93A), and 2 (six-year statute of limitations for breach of contract claims). Here, by her own representations, plaintiff knew at least seven years before filing three lawsuits that she had been harmed by the alleged misconduct. Thus, regardless of how her claims are construed, they are time-barred.

2. Claim Preclusion

All three cases involve claims that were, or should have been, raised in *Sharma v. Trustees of Andover Gardens Condo Trust*, her earlier state court proceeding (which itself was dismissed as time-barred). The new claims are therefore barred under principles of claim preclusion.

The doctrine of claim preclusion, or *res judicata*, prohibits parties from contesting issues that they have had a "full and fair opportunity to litigate." *Taylor v. Sturgell*, 553 U.S. 880, 892

[5] Although the statute of limitations and claim preclusion are affirmative defenses, and the Federal Rules of Civil Procedure do not require a plaintiff to plead facts to avoid potential affirmative defenses, a complaint can be dismissed for failure to state a claim if its allegations show that relief is barred by the defense. *See Bock v. Jones*, 549 U.S. 199, 215 (2007).

(2008). Claim preclusion requires proof of three elements: "(1) the earlier suit resulted in a final judgment on the merits, (2) the causes of action asserted in the earlier and later suits are sufficiently identical or related, and (3) the parties in the two suits are sufficiently identical or closely related." *Airframe Sys., Inc. v. Raytheon Co.*, 601 F.3d 9, 14 (1st Cir. 2010). Those three elements are clearly satisfied here.

First, plaintiff brought an earlier suit, which was dismissed by the court and not appealed. That dismissal constitutes a final judgment on the merits for purposes of claim preclusion. *See Airframe*, 601 F.3d at 14 (citing *AVX Corp. v. Cabot Corp.*, 424 F.3d 28, 30 (1st Cir. 2005)) (holding that dismissal for failure to state a claim is "plainly a final judgment on the merits").

Second, plaintiff's claims all arise from the same basic allegation that the Trustees stole money from her accounts at Santander Bank and Fidelity. Those claims either were actually brought, or should have been brought, in the earlier action.

Third, the defendants in this suit are sufficiently identical or closely related to the defendant named in the earlier suit such that principles of claim preclusion should apply.

Accordingly, because all three elements are satisfied, plaintiff's claims are barred by principles of claim preclusion.

III. Conclusion

For the foregoing reasons:

1. Defendant's motion to dismiss in *Sharma v. Santander Bank*, C.A. No. 19-12184-FDS, is GRANTED and the action is DISMISSED.
2. *Sharma v. Fidelity Investments,* C.A. No. 19-12186-FDS, is DISMISSED.
3. *Sharma v. Terranova*, C.A. No. 19-12220-FDS, is DISMISSED.

So Ordered.

/s/ F. Dennis Saylor IV
F. Dennis Saylor IV
Chief Judge, United States District Court

Dated: February 25, 2020

United States Court of Appeals
For the First Circuit

No. 20-1317

VEENA SHARMA,

Plaintiff - Appellant,

v.

SANTANDER BANK,

Defendant - Appellee.

Before

Torruella, Lynch and Kayatta,
Circuit Judges.

JUDGMENT

Entered: September 25, 2020

Pro se plaintiff-appellant Veena Sharma appeals from a judgment of the district court dismissing her complaint against defendant Santander Bank on the grounds that the claims set out therein, even when construed in the light most favorable to appellant as a pro se litigant, failed to comply with the applicable statutes of limitations and were further barred under the doctrine of res judicata.

We assume, arguendo, that de novo review applies to the dismissal. Even so, after our own careful review of appellant's submissions and the record below, we affirm the judgment of dismissal, specifically on statute of limitations grounds. Appellant's contention that a ten-year statute of limitations applies to her claims per 18 U.S.C. §656 is unavailing. Section 656 is a criminal provision, and, before the district court and this court, appellant has failed to explain how that provision might create a right of action for a private civil litigant. As the district court correctly concluded, whether construed as sounding in tort, contract, or consumer protection, appellant's claims were clearly time-barred. See Mass. Gen. Laws ch. 260, §§ 2A (three-year statute of limitations for tort claims), 5A (four-year statute of limitations for action for consumer claims under chapter 93A), and 2 (six-year statute of limitations for breach of contract claims); see also Quality Cleaning Prod. R.C., Inc. v. SCA Tissue N. Am., LLC, 794 F.3d 200, 204 (1st Cir. 2015) ("Federal courts sitting in diversity apply the substantive law of the state and . . . State law includes the applicable state statute of limitations.").

Finally, we discern no error and no abuse of discretion in the district court's decision to grant appellees' motion to dismiss without first sua sponte providing appellant leave to amend her complaint; appellant did not seek such leave, despite having been placed on notice of the purported deficiencies in her complaint via the appellees' motion to dismiss. In any event, as the claims were clearly time-barred based on appellant's own factual allegations, amendment would have been futile.

Accordingly, the judgment of the district court is affirmed. See 1st Cir. R. 27.0(c).

By the Court:

Maria R. Hamilton, Clerk

cc:
Veena Sharma
Patrick S. Tracey

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