

APPENDIX A

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals

Fifth Circuit

FILED

September 9, 2021

No. 21-20073
Summary Calendar

Lyle W. Cayce
Clerk

ANGELA CAO,

Plaintiff—Appellant,

versus

BSI FINANCIAL SERVICES, INCORPORATED; CHRISTIANA
TRUST, WILMINGTON SAVINGS FUND SOCIETY, STANWICH
MORTGAGE LOAN TRUST SERIES 2012-10; STANWICH
MORTGAGE ACQUISITION COMPANY, INCORPORATED;
CARRINGTON MORTGAGE SERVICES, L.L.C.,

Defendants—Appellees,

ANGELA CAO,

Plaintiff—Appellant,

versus

SELENE FINANCE, L.P.; MTGLQ INVESTORS, L.P.,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:17-CV-321

Before KING, COSTA, and HO, *Circuit Judges*.

PER CURIAM:*

After defaulting on her mortgage, Angela Cao filed lawsuits against BSI Financial Services, Selene Finance, L.P., and MTGLQ Investors, L.P., who were at different times the mortgage servicers for the loan. Cao sought to halt foreclosure on the property and asserted numerous claims. The district court consolidated the two matters into the present case.

The defendants filed a motion for judgment on the pleadings and both Cao and the defendants sought summary judgment. The magistrate judge issued her Memorandum and Recommendations (M&R), which recommended dismissal of all but four of Cao's claims against BSI, Selene, and MTGLQ. All parties objected. The district court, after reviewing the M&R, determined that all of Cao's claims should be dismissed with prejudice. Some of those claims—fraud, conspiracy, conversion, negligence, and fraudulent transfer—were dismissed based on the pleadings. Other claims—breach of contract, duress, usury, Texas Theft Liability Act, Texas Debt Collections Act, Federal Debt Collections Practices Act, quiet title, wrongful foreclosure, and money had and received—were dismissed based on the summary judgment record. Cao filed an unsuccessful motion for reconsideration.

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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On appeal, Cao asserts seven challenges to the district court's order. Although those include a merits challenge, she spends most of her brief arguing that the district court erred procedurally in dismissing her case. None of her arguments succeed.

First, Cao argues that the court erred in its review of the magistrate's M&R by reviewing some of the magistrate's findings *de novo*, which led to the district court's dismissals that the magistrate judge had not recommended. But the district court properly applied a *de novo* standard to the parts of the magistrate judge's opinion to which a party had objected and reviewed only for clear error those portions to which no party objected. FED. R. CIV. P. 72(b).

Second, Cao argues that the court relied on matters outside of the pleadings by considering an exhibit that was not mentioned in objections to the M&R. But it is well-settled that the district court may consider the entire record in its decision on a summary judgment motion. *Resolution Trust Corp. v. Starkey*, 41 F.3d 1018, 1023–24 (5th Cir. 1995).

Third, Cao argues that the district court improperly converted defendants' motions for dismissal on the pleadings into a motion for summary judgment. That is not what happened. The defendants filed separate motions for summary judgment. It is those separate motions that were the basis for the grant of summary judgment.

Fourth, the magistrate judge did not *sua sponte* reject Cao's argument that she was entitled to tolling the statute of limitations. Defendants addressed tolling argument in their response to Cao's motion for summary judgment.

Fifth, Cao argues that dismissal on the pleadings was not warranted because the M&R contained undisputed material facts that favored Cao's position. But she misunderstands what Defendants were challenging in their

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Rule 12(c) motions for dismissal on the pleadings: Cao's third amended complaint, not the M&R. Defendants raised their challenges to the M&R separately in their objections.

Sixth, Cao challenges the merits of the summary judgment order, primarily on the conspiracy claim, and argues that she is actually entitled to summary judgment. Her cursory challenge to the merits is difficult to follow. In any event, we agree with the district court's reasons for granting summary judgment in favor of the defendants on the conspiracy and other claims.

Finally, Cao's substantial rights were not violated nor was she denied due process based on procedural errors she alleges the district court committed that led to an unfair process. As we have said, we do not see any procedural improprieties.

* * *

We AFFIRM the judgment of the district court.

APPENDIX B

United States Court of Appeals
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No. 21-20073

ANGELA CAO,

Plaintiff—Appellant,

versus

BSI FINANCIAL SERVICES, INCORPORATED; CHRISTIANA
TRUST, WILMINGTON SAVINGS FUND SOCIETY, STANWICH
MORTGAGE LOAN TRUST SERIES 2012-10; STANWICH
MORTGAGE ACQUISITION COMPANY, INCORPORATED;
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SELENE FINANCE, L.P.; MTGLQ INVESTORS, L.P.,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:17-CV-321
USDC No. 4:19-CV-769

ON PETITION FOR REHEARING EN BANC

Before KING, COSTA, and HO, *Circuit Judges*.

PER CURIAM:

Treating the petition for rehearing en banc as a petition for panel rehearing (5TH CIR. R. 35 I.O.P.), the petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service having requested that the court be polled on rehearing en banc (FED. R. APP. P. 35 and 5TH CIR. R. 35), the petition for rehearing en banc is DENIED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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NEW ORLEANS, LA 70130

October 13, 2021

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 21-20073 Cao v. BSI Financial Services
USDC No. 4:17-CV-321
USDC No. 4:19-CV-769

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk



By: Shawn D. Henderson, Deputy Clerk
504-310-7668

Ms. Angela Cao
Mr. Richard Dwayne Danner
Mr. Michael F. Hord
Mr. Britton Lee Larison
Mr. Matt Delmore Manning
Mr. Jeffrey Alan Shadwick