

**UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

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No: 22-1448

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Filed: February 16, 2023

JOHN L. ROSEMAN, SR.

Plaintiff – Appellant

v.

WELLS FARGO BANK, N.A.

Defendants - Appellees

**MANDATE**

Pursuant to the court's disposition that was filed  
1/25/2023 the mandate for this case hereby issues today.

COSTS: None

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UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

No. 22-1448

JOHN L. ROSEMAN, SR.,

Plaintiff Appellant,

v.

WELLS FARGO BANK, N.A.,

Defendant Appellee.

Before: GUY, SUHRHEINFICH, and STRANCH,  
Circuit Judges.

**JUDGMENT**

On Appeal from the United States District Court  
For the Eastern District of Michigan at Flint.

THIS CAUSE was heard on the record from the  
district court and was submitted on the briefs without  
oral argument.

IN CONSIDRATION THEREOF, it is ORDERED  
that the judgment of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

[Signed] \_\_\_\_\_

Deborah S. Hunt, Clerk

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**ORDER DENYING PLAINTIFF'S MOTION FOR  
TEMPORARY RESTRAINING ORDER OR  
PRELIMINARY INJUNCTION [ECF NO. 2] AND  
ORDERING PLAINTIFF TO SHOW CAUSE**

Before the Court is Plaintiff John L. Roseman's motion for a temporary restraining order or preliminary injunction against Defendant Wells Fargo Bank, N.A. ("Wells Fargo"). ECF No. 2. Mr. Roseman seeks to prevent Wells Fargo from foreclosing on his home. Id. Wells Fargo filed a response opposing Plaintiff's motion, and asking the Court to consider dismissing the case sua sponte under Federal Rule of Civil Procedure 12(b)(1). ECF No. 11. Mr. Roseman then filed a reply. ECF No. 12. For the reasons stated below, after considering the parties' arguments and available facts, the Court **DENIES** Plaintiff's motion for a

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temporary restraining order or preliminary injunction (ECF No. 2). The Court further **ORDERS** Plaintiff to show cause as to why his complaint should not be dismissed for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).

### **I. FACTUAL BACKGROUND**

Plaintiff John L. Roseman is the primary provider for a family of seven and owner of the real property at issue, 4823 Cobblestone Court, Farmington Hills, MI 48336 (“the Property”), where he resides with his family.

Compl. ¶ 4; ECF No. 11- 1, PageID.218. Mr. Roseman obtained title to the Property on July 12, 2016 from sellers Patricia A. Adams and Patrick C. Burgess (“the sellers”). ECF No. 11-1, PageID.218. The warranty deed was recorded by the sellers on August 22, 2016 with Oakland County. *Id.* Also on July 12, 2016, Mr. Roseman granted a purchase money mortgage to

Mortgage Electronic Registration Systems, Inc. (“MERS”) (as the nominee for the originating lender) to secure a loan for \$369,555.00. ECF No. 11-2, PageID.220. The mortgage was recorded on August 22, 2016 in Oakland County. ECF No. 11-3, PageID.224. MERS later assigned the mortgage to Defendant Wells Fargo. ECF No. 11-4, PageID.234. The assignment was recorded on April 18, 2019. *Id.*

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The agreement Mr. Roseman signed with MERS (“the Note”) provided that Mr. Roseman must repay the amount borrowed and would be in default if he did not timely submit full monthly installments. ECF No. 11-2, PageID.220. It further stated that in the case of a default, the lender could invoke the remedies provided for in the security agreement, including the power to

accelerate the Note and sell the Property. *Id.*; ECF No. 11-2, PageID.220-32. The lender was required to provide Mr. Roseman notice of default and an opportunity to cure before accelerating the Note and selling the Property. *Id.* Mr. Roseman does not dispute that he borrowed the money subject to these terms.

In 2017, Mr. Roseman sued the sellers and their real estate agents in Oakland County Circuit Court. See ECF No. 11-8, PageID.2451. He alleged the sellers and their agents violated Michigan's Seller Disclosure Act, Mich. Comp. Laws § 565.951 et seq. by failing to adequately disclose the condition of a geothermal heating system on the Property, the existence of homeowner association fees, and the fact that the Property was situated on a private road. *See id.* The Circuit Court granted defendants' motion for summary disposition, concluding that the claims against the agents were barred by a valid release contained in the

purchase agreement, and the claims against the sellers were required to be resolved in arbitration because they fell within the scope of the

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arbitration clause in the purchase agreement. *See id.*

The Michigan Court of Appeals affirmed. *Roseman v.*

*Weiger*, 2019 WL 2711291 (Mich. Ct. App. June 27,

2019), appeal denied, 933 N.W.2d 288 (Mich. 2019).

Arbitration between Mr. Roseman and the sellers

commenced. In June of 2020, the arbitration panel ruled

in the sellers' favor and ordered Mr. Roseman to pay

fees. See ECF No. 1, PageID.51-57 (arbitration award in

American Arbitration Association Case No. 01-19-0003-

1869). Mr. Roseman filed a motion to vacate the

arbitration award in this Court; his motion was denied

and his case dismissed for lack of subject matter

jurisdiction. *Roseman v. Adams*, 2020 U.S. Dist. LEXIS 138142, at \*1 (E.D. Mich. Aug. 4, 2020).

Defendant Wells Fargo was not involved in Mr. Roseman's 2017 lawsuit, the subsequent arbitration proceedings, nor his effort to vacate the arbitration award in this Court.

While Mr. Roseman was engaged in these disputes with the sellers, he also fell behind on his mortgage payments. Compl. ¶ 4. Mr. Roseman explains this is because he lost his job in November 2018, and despite his efforts, has not been able to secure full-time employment. *Id.* In July of 2019, Wells Fargo sent Mr. Roseman a default notice, which stated the amount overdue, and warned that

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failure to pay could lead to Defendant accelerating the



loan and foreclosing on the Property. ECF No. 1, PageID.82. Plaintiff does not dispute that he received this notice (it is included in his complaint), nor that he failed to cure the default after receiving it.

In August of 2019, Mr. Roseman brought an action in the Michigan Supreme Court seeking to enjoin Wells Fargo from foreclosing on the Property. See ECF No. 1, PageID.78-80. Plaintiff's loan was \$87,000.00 past due at that time. See ECF No. 1, PageID.82. Mr. Roseman's motion was denied on September 30, 2019. *Roseman v. Weiger*, 933 N.W.2d 288 (Mich. 2019); *see also* ECF No. 11-5, PageID.236.

On November 16, 2021, Plaintiff received another default notice from Wells Fargo, informing him that he owed over \$103,000 and his loan was delinquent by 1,019 days. ECF No. 1, PageID.27. Again, Plaintiff does not dispute that he received this notice, nor that he

failed to cure the default after receiving it.

Wells Fargo subsequently commenced foreclosure by advertisement proceedings and notified Mr. Roseman. Plaintiff received notice of the foreclosure sale by mail on December 21, 2021. ECF No. 1, PageID.21-27. Plaintiff was personally served notice of the sale by the sheriff's department. Compl. ¶ 3.

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Plaintiff also saw the sale publication notice Wells Fargo issued regarding the foreclosure of his Property. *See* ECF No. 11, PageID.204. After receiving the foreclosure notices by mail, Mr. Roseman disputed the debt with the law firm handling the foreclosure on Wells Fargo's behalf. ECF No. 1, PageID.29-31. Wells Fargo states Mr. Roseman's dispute letter did not contain any valid basis for nullifying or rescinding the mortgage or halting the

sale, and it therefore continued with foreclosure proceedings. ECF No. 11, PageID.204.

On January 10, 2022, Mr. Roseman brought this lawsuit and moved for a temporary restraining order or preliminary injunction to block Wells Fargo from foreclosing on the Property. ECF Nos. 1, 2. Mr. Roseman's motion is now before the Court.

## **II. ANALYSIS**

### **A. Temporary Restraining Order or Preliminary Injunction**

Mr. Roseman seeks a temporary restraining order ("TRO") or a preliminary injunction ("PI") under Federal Rule of Civil Procedure 65. ECF No. 2. He wishes to restrain or enjoin Wells Fargo from foreclosing on his home. *Id.* Because the same general analytical framework applies to both temporary restraining orders and preliminary injunctions, the Court's analysis, although explicitly referencing

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the preliminary injunction, will pertain to both forms of injunctive relief sought by Plaintiff.

When considering whether to grant a preliminary injunction, a district court weighs the following factors: "(1) whether the plaintiff has established a substantial likelihood or probability of success on the merits; (2) whether there is a threat of irreparable harm to the plaintiff; (3) whether issuance of the injunction would cause substantial harm to others; and (4) whether the public interest would be served by granting injunctive relief." *Hamilton's Bogarts, Inc. v. Michigan*, 501 F.3d 644, 649 (6th Cir. 2007) (internal citation omitted).

Generally, "these factors are not prerequisites that must be met, but are interrelated considerations that must be balanced together." *Mich. Coal. of Radioactive Material*

*Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991). “[A] finding that there is simply no likelihood of success on the merits is usually fatal.” *Gonzales v. Nat’l Bd. of Med. Examiners*, 225 F.3d 620, 625 (6th Cir. 2000).

Pleadings filed by *pro se* litigants are entitled to a more liberal reading than would be afforded to formal pleadings drafted by lawyers. *Thomas v. Eby*, 481 F.3d 434, 437 (6th Cir. 2008). However, this leniency “is not boundless.” *Martin v. Overton*, 391 F.3d 710, 714 (6th Cir. 2004). *Pro se* litigants must still adhere to basic requirements in their filings. *Wells v. Brown*, 891 F.2d 591, 594 (6th Cir. 1989).

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### **1. Plaintiff’s Likelihood of Success on the Merits**

While the Court sympathizes with Mr. Roseman’s

wish to prevent the foreclosure of his family's home, Mr. Roseman has no chance of success on the merits of his claims.

Mr. Roseman brings three sets of claims; the Court will address each set in turn. Mr. Roseman's first set of claims involves alleged misconduct by the sellers and the real estate agents who sold him the Property. Mr. Roseman alleges the sellers and their agents made false and misleading statements regarding the condition of the geothermal heating system on the Property. Compl. ¶ 7. He further alleges the sellers and their agents failed to disclose that the Property was located on a private road, in violation of M.C.L. 560.261. Compl. ¶¶ 8-9. Mr. Roseman also alleges the sellers and their agents falsely stated the Property was not subject to any homeowners association fees. Compl. ¶ 10. And finally, he alleges the sellers and real estate agency made these false

statements to him because he is an African American, in violation of anti-discrimination law. Compl. ¶¶ 12, 23.

These claims all relate to the alleged actions of third parties who are not named as defendants in this lawsuit. Mr. Roseman does not allege that Wells Fargo was aware of nor involved in the conduct he complains of by the sellers and real

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estate agents. Mr. Roseman offers no explanation, legal or otherwise, for why Defendant Wells Fargo should be held responsible for the actions of unrelated third parties. He similarly provides no legal basis for nullifying or rescinding an otherwise legitimate mortgage agreement on those grounds. It is unclear whether Mr. Roseman has any valid claims against the seller and real estate agency, but those parties are not

before this Court. Mr. Roseman has failed to allege any facts that could form the basis of fraud, false statements, failure to disclose, or discrimination claims against the actual Defendant in this case, Wells Fargo. Accordingly, these claims have no chance of success as currently pleaded.

Mr. Roseman's second set of claims challenges the arbitration process he participated in as unconstitutional and disputes the resulting award. Compl. ¶¶ 13- 22. Again, Mr. Roseman has missed the mark. If Mr. Roseman wishes to vacate the arbitration award, he must apply to Oakland County Circuit Court, as that is the court that ordered the parties in this matter to arbitrate. *See Rozanski v. Findling*, 2017 WL 1011530, at \*6 (Mich. Ct. App. Mar. 14, 2017) (noting that Michigan law requires a party seeking to vacate an arbitration award to apply to the circuit court that ordered the arbitration to take place). If Mr. Roseman



wishes to challenge the constitutionality of the arbitration process, he must bring a lawsuit against the proper defendants. The arbitration Mr. Roseman complains of was

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between Mr. Roseman and the sellers, and was facilitated by the American Arbitration Association. Defendant Wells Fargo was not a party, and the matters at issue did not include the legitimacy of his mortgage. Wells Fargo is not the proper defendant in a suit to challenge the constitutionality of the arbitration process. And whether or not the arbitration process was constitutional, the Court finds no legal basis for voiding a valid mortgage agreement on the grounds that an arbitration between the homeowner and the seller, in which the lender was not involved and which did not

relate to the mortgage, was constitutionally infirm.

Because this Court lacks subject matter jurisdiction to vacate Mr. Roseman's arbitration award, and Mr. Roseman has failed to allege any facts that could form the basis of a legitimate claim against Wells Fargo regarding the constitutionality of the arbitration process, these claims have no chance of success. *See Roseman v. Adams*, 2020 U.S. Dist. LEXIS 138142, at \*1 (E.D. Mich. Aug. 4, 2020) (finding the federal district court lacked subject matter jurisdiction over Mr. Roseman's prior attempt to vacate his arbitration award).

Finally, Mr. Roseman alleges that foreclosure by advertisement would violate his constitutional right to due process because of the other "pending lawsuit." Compl. ¶ 28. However, aside from this case, there is no other pending lawsuit of which the Court is aware. In

2019, the Michigan Supreme Court issued

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an order that (1) denied Mr. Roseman leave to appeal the Court of Appeals' decision in his lawsuit against the sellers and their agents, and (2) denied his motion to enjoin Wells Fargo from foreclosing on his home. See *Roseman v. Weiger*, 933 N.W.2d 288 (Mich. 2019). Those cases are not "pending", nor were they at the time Mr. Roseman filed his complaint with this Court. Those cases are closed. Furthermore, foreclosure by advertisement does not involve state action, and therefore constitutional due process requirements do not apply. *Cramer v. Metropolitan Sav. & Loan Ass'n*, 258 N.W.2d 20, 23 (Mich. 1977); *see also Cheff v. Edwards*, 513 N.W.2d 439, 441 (Mich. Ct. App. 1994).

The requirements for foreclosure by

advertisement are instead governed by statute. See Mich. Comp. Law Ann. §§ 600.3201-3285. Michigan law provides that a party may foreclose by advertisement if:

- (a) A default in a condition of the mortgage has occurred, by which the power to sell became operative.
- (b) An action or proceeding has not been instituted, at law, to recover the debt secured by the mortgage or any part of the mortgage or, if an action or proceeding has been instituted, either the action or proceeding has been discontinued or an execution on a judgment rendered in the action or proceeding has been returned unsatisfied, in whole or in part. For purposes of this subdivision, an action or proceeding for the appointment of a receiver is not an action or proceeding to recover a debt.

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(c) The mortgage containing the power of sale has been properly recorded.

(d) The party foreclosing the mortgage is either the owner of the indebtedness, or of an interest in the indebtedness secured by the mortgage or the servicing agent of the mortgage.

Mich. Comp. Law Ann. § 600.3204(1). Additionally, if the party foreclosing by advertisement is not the original mortgagee, “a record chain of title must exist before the date of sale under section 3216 evidencing the assignment of the mortgage to the party foreclosing the mortgage.” *Id.* § 600.3204(3).

These conditions have all been met here. Mr. Roseman does not dispute that he is in default, and there has been no action at law to recover the debt. The mortgage containing the power of sale was properly

recorded. ECF No. 11-2, PageID.220-22; ECF No. 11-3, PageID.224-32. While Mr. Roseman alleges Wells Fargo failed to establish chain of title, as required by Mich. Comp. Law Ann. § 600.3204(3), this is incorrect. Compl. ¶ 3. Wells Fargo has established it was assigned the mortgage and owns the debt. ECF No. 11-4, PageID.234. Because the statutory requirements have been met, Wells Fargo may use foreclosure by advertisement to collect its debt from Mr. Roseman.

Michigan law also imposes notice and other procedural requirements on foreclosures by advertisement. *See* Mich. Comp. Law Ann. §§ 600.3201-3285. Mr.

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Roseman does not dispute that he received adequate notice of the foreclosure sale. In fact, Mr. Roseman's own

complaint acknowledges that he received multiple notices of the foreclosure by advertisement by mail, was personally served notice of the foreclosure sale by the sheriff's department, and saw the sale publication notice Wells Fargo issued regarding his Property. *See* ECF No. 1, PageID.21-27; Compl. ¶ 3; ECF No. 11, PageID.204. Nor does Mr. Roseman allege Wells Fargo violated any procedural requirements of the foreclosure by advertisement law. Defendant Wells Fargo appears to have proceeded appropriately under the law to foreclose by advertisement on this Property.

As part of his due process claim, Plaintiff alleges that, in his lawsuit against the sellers and their agents, the Michigan Court of Appeals found the trial court's decision to grant summary disposition deprived Plaintiff of due process "because dismissal based on the release provision in the purchase agreement was not

appropriate for all defendants.” Compl. ¶ 29. This is false. The Court of Appeals made no such statement and affirmed the trial court’s decision to grant summary judgment in favor of all defendants. *See Roseman v. Weiger*, 2019 WL 2711291, at \*7 (Mich. Ct. App. June 27, 2019), appeal denied, 933 N.W.2d 288 (Mich. 2019).

In sum, Mr. Roseman’s claims regarding the use of foreclosure by advertisement have no chance of success on the merits, because constitutional due

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process requirements do not apply to such proceedings and Wells Fargo has followed all applicable statutory requirements.

Altogether, Mr. Roseman’s claims have no chance of success on the merits. This factor weighs heavily against granting the requested injunctive relief.



## 2. Threat of Irreparable Harm to Plaintiff

A plaintiff seeking a preliminary injunction must show they will likely suffer irreparable harm in the absence of injunctive relief. *Winter v. NRDC, Inc.*, 555 U.S. 7, 22 (2008). "Harm from the denial of a preliminary injunction is irreparable only if it is not fully compensable by monetary damages." *Overstreet v. LexingtonFayette Urban County Government*, 305 F.3d 566, 573 (6th Cir. 2002).

The Court finds Mr. Roseman has failed to demonstrate that he is likely to face irreparable harm without the injunctive relief requested. If the foreclosure sale of his home does occur, Mr. Roseman will have the applicable statutory redemption period within which to redeem his Property or make other living arrangements. See Mich. Comp. Law Ann. § 600.3240. This renders the potential harm reparable. See *Livonia Prop. Holdings, LLC v. 12840-12976 Farmington Road Holdings, LLC*,

399 F. App'x 97, 104 (6th Cir. 2010) (upholding district court ruling that plaintiff did not face a threat of irreparable harm from impending

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foreclosure sale where plaintiff still had the right to redeem); *Koole v. Wells Fargo Bank, NA*, 2015 U.S. Dist. LEXIS 67998, at \*10 (E.D. Mich. May 27, 2015) (harm was not irreparable where Plaintiff had right of redemption); *Sheldon v. Vilsack*, 2011 WL 611891, at \*3 (E.D. Mich. Feb. 11, 2011) ("Because Plaintiff is permitted to redeem the property after the sale, she has not shown that irreparable harm will occur at the time of the foreclosure sale.").

Plaintiff is, understandably, concerned about losing his home to foreclosure. The Court takes note that Plaintiff provides for a family of seven living in the

home and is enduring financial difficulties. Compl. ¶ 4; ECF No. 11-1, PageID.218. This is a difficult situation for Plaintiff and his family. However, while "in certain circumstances, the threat of eviction and the realistic prospect of homelessness constitute a threat of irreparable harm and satisfy the first prong of the test for preliminary injunctive relief," Mr. Roseman has presented no such evidence in this case. *Compare Smith v. State Farm Fire and Cas. Co.*, 737 F. Supp. 2d 702, 714 (E.D. Mich. 2010) (Plaintiffs presented evidence they and their four children would need to vacate their home in two weeks and could not afford alternate housing; this was sufficient to establish the irreparable harm prong of the injunctive relief analysis). As such, Mr. Roseman has failed to establish that this factor weighs in his favor.

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### **3. Harm to Others**

At its essence, this is a dispute between private parties regarding their respective contractual obligations. The requested injunction would have no impact beyond the two private parties involved. The potential harm to Defendant is minimal, as Defendant is a well-resourced corporation that would not be meaningfully impacted by delaying the foreclosure. The injunctive relief requested by Mr. Roseman would cause no significant harm to others. This factor is neutral.

### **4. Public Interest**

As noted above, this is a dispute between private parties regarding their respective contractual obligations, despite Mr. Roseman's efforts to frame it as something more. Plaintiff's only argument that a preliminary injunction would serve the public interest is

one conclusory line in his Reply. ECF No. 12, PageID.266. Plaintiff states, “clearly, upholding pertinent consumer protection law in this case serves public interest for obvious reasons.” *Id.* While it is generally true that enforcing consumer protection law serves the public interest, it is neither clear nor obvious to the Court how this applies to the issue at hand. The Court will assume Mr. Roseman is referring to his claims of fraud and failure to disclose against the sellers of the house, and means to argue that granting him this

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injunction will discourage other sellers from behaving similarly. The Court fails to see how enjoining a bank from foreclosing on a valid mortgage would influence the behavior of unrelated third parties selling property. Mr. Roseman has not established that this factor weighs in

his favor.

In conclusion, Mr. Roseman has failed to establish that any of the four factors weigh in favor of granting the requested relief. *Hamilton's Bogarts*, 501 F.3d at 649. Further, Mr. Roseman has no chance of success on the merits of his claims, and a finding that plaintiff has no chance of success on the merits is "usually fatal." *Gonzales*, 225 F.3d at 625. Accordingly, Mr. Roseman's motion for a temporary restraining order or a preliminary injunction (ECF No. 2) is **DENIED**.

### **B. Failure to State a Claim**

In its response to Plaintiff's preliminary injunction motion, Defendant also urges the Court to dismiss Plaintiff's claims *sua sponte* for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). ECF No. 11, PageID.208. Defendant argues the claims are so frivolous as to divest the Court of jurisdiction. *Id.* The Court concurs that Plaintiff's

claims against this Defendant have serious, and likely fatal, shortcomings. (These flaws are discussed in Section

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II(A)(1) of this Order.) Dismissal for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) is the most appropriate response to these shortcomings.

In this Circuit, the Court must give a plaintiff notice and opportunity to be heard before dismissing a case sua sponte for failure to state a claim. *See Nichols v. Cty. of Wayne*, 2018 WL 6505360, at \*3 (E.D. Mich. Dec. 11, 2018) (citing *Tingler v. Marshall*, 716 F.2d 1109 (6th Cir. 1983)), *aff'd sub nom. Nichols v. Wayne County*, 822 F. App'x 445 (6th Cir. 2020).

This Order shall serve as notice to the Plaintiff that the Court intends to dismiss his case for failure to

state a claim unless Plaintiff can articulate a legitimate legal basis for challenging his mortgage, as against this Defendant. If Plaintiff does not do so, the Court will dismiss his case with prejudice under Federal Rule of Civil Procedure 12(b)(6).

Accordingly,

**IT IS ORDERED** that Plaintiff's Motion for Emergency Temporary Restraining Order and/or Preliminary Injunction (ECF No. 2) is **DENIED**.

**IT IS FURTHER ORDERED** that Plaintiff must show cause as to why this case should not be dismissed for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). This means the case will be dismissed unless Plaintiff provides

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the Court with a valid legal basis for challenging his



mortgage, as against Defendant Wells Fargo. Plaintiff must file this response within fourteen days of the entry of this Order.

**SO ORDERED.**

	<u>s/Shalina D. Kumar</u>
	Shalina D. Kumar
Dated: April 4, 2022	United States District Judge

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JOHN L. ROSEMAN,

Case No. 22-10054

Plaintiff,

v.

SHALINA D. KUMAR  
U. S. DISTRICT  
JUDGE

WELLS FARGO BANK,  
Defendant.

ELIZABETH A.  
STAFFORD  
U.S. MAGISTRATE  
JUDGE

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**ORDER GRANTING DEFENDANT'S MOTION FOR  
EXTENSION OF TIME TO FILE AN  
ANSWER [14]**

Before the Court is Defendant's motion for an  
extension of time to file an answer. ECF No. 14.

Separately, the Court is also considering Plaintiff's  
motion for a temporary restraining order or preliminary

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injunction. ECF No. 2. Defendant has requested that its answer be due fourteen days after the Court issues its decision on Plaintiff's motion for a temporary restraining order or preliminary injunction. ECF No. 14.

Under Federal Rule of Civil Procedure 6(b)(1)(A), the Court may grant an extension for good cause if the request is made before the original time to file an

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answer has expired. The Court finds that granting this extension would promote judicial efficiency. Thus, good cause exists to support Defendant's motion. Defendant's motion is timely, as Defendant's answer was due on February 14, 2022, and Defendant filed its motion for an extension on that day, before the original time to file an answer had expired. ECF No. 9; ECF No. 14.

Defendant's motion for an extension of time to file an

answer is therefore granted.

Accordingly,

**IT IS ORDERED** that Defendant's Motion for Extension of Time to File Answer [14] is **GRANTED**.

**IT IS FURTHER ORDERED** that Defendant's deadline to answer the complaint will be fourteen days after the Court issues its decision on Plaintiff's motion for a temporary restraining order or preliminary injunction (ECF No. 2).

**SO ORDERED.**

s/Shalina D. Kumar  
Shalina D. Kumar  
Dated: March 3, 2022      United States District Judge

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION1

JOHN L. ROSEMAN,

Plaintiff, Case No. 22-10054

v. HON. GEORGE CARAM  
STEEH

WELLS FARGO BANK, N.A.,

Defendants.

\_\_\_\_\_/

ORDER REGARDING PLAINTIFF'S MOTION FOR  
EMERGENCY TEMPORARY RESTRAINING ORDER  
AND/OR PRELIMINARY INJUNCTION (ECF NO. 2)

This matter comes before the Court on plaintiff  
John L. Roseman's complaint and motion for emergency  
temporary restraining order and/or preliminary  
injunction filed January 10, 2022. Plaintiff alleges due  
process violations related to the notice of foreclosure of

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the mortgage on his residence. Plaintiff's motion for injunctive relief seeks to stop the foreclosure sale which is scheduled to take place in the Oakland County Circuit Court on February 1, 2022.

Plaintiff is instructed to serve defendant Wells Fargo Bank, N.A. with the summons and complaint, the motion for emergency temporary restraining order and/or preliminary injunction, and a copy of this Order. Defendant will have seven (7) days from the date of service to file a

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response to the emergency motion. Upon receipt of defendant's response, the Court will make a determination whether a hearing is necessary or whether the matter can be determined on the written submissions.

It is so ordered.

Dated: January 12, 2022

s/George Caram Steeh  
GEORGE CARAM STEEH  
UNITED STATES DISTRICT  
JUDGE

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JOHN L. ROSEMAN,

Plaintiff,  
vs.

Civil Action No. 20-CV-12072

HON. BERNARD A. FRIEDMAN

PATRICIA A. ADAMS, et al.,

Defendants.  
\_\_\_\_\_ /

**JUDGMENT**

The Court has issued an order dismissing this  
matter for lack of subject matter jurisdiction.

Accordingly,

IT IS ORDERED AND ADJUDGED that  
judgment be and is hereby granted for defendants and  
against plaintiff.

**Appendix H Begins at - This Page**



DAVID J. WEAVER  
CLERK OF COURT

By: Johnetta M. Curry-  
Williams  
Deputy Clerk

Approved:

Approved: s/Bernard A. Friedman  
BERNARD A. FRIEDMAN  
SENIOR U.S. DISTRICT JUDGE

Dated: August 4, 2020

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JOHN L. ROSEMAN,

Plaintiff,

Civil Action No. 20-CV-12072

vs.

HON. BERNARD A.  
FRIEDMAN

PATRICIA A. ADAMS, et al.,

Defendants.

OPINION AND ORDER DENYING PLAINTIFF'S  
MOTION TO VACATE ARBITRATION AWARD

Plaintiff has filed a motion with this Court entitled "motion to vacate arbitration award" [docket entry 1]. Plaintiff seeks an order, pursuant to § 10 of the Federal Arbitration Act ("FAA"), 9 U.S.C. § 10, vacating the award in an arbitration that was compelled by Oakland County Circuit Court to resolve disputes between plaintiff and the sellers of residential property

**Appendix I Begins at - This Page**

he purchased. The Court shall deny the motion and dismiss the matter for lack of subject matter jurisdiction.

After purchasing a home in Farmington Hills, Michigan, in 2016, plaintiff sued the sellers and their real estate agents in Oakland County Circuit Court for violating Michigan's Seller Disclosure Act, Mich. Comp. Laws § 565.951 et seq. by failing to make certain disclosures regarding the property, *e.g.*, the condition of the geothermal heating system, the existence of homeowner association fees, and the fact that the home was situated on a private road. On defendants' motion, the court enforced a clause in the purchase agreement requiring such disputes to be arbitrated, and the Michigan Court of Appeals affirmed that order. *See Roseman v. Weiger*, No. 344677, 2019 WL 2711291, at \*7 (Mich. Ct. App. June 27, 2019),

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*appeal denied*, 933 N.W.2d 288 (Mich. 2019). In May 2020 the arbitrators issued an interim award, and in June 2020 they issued a final award, both fully adverse to plaintiff. *See* Pl.'s Mot. Ex. A. Plaintiff now seeks to have these awards vacated.

This Court has no jurisdiction to entertain plaintiff's motion. If plaintiff seeks an order vacating the arbitration award, he must apply to Oakland County Circuit Court, as that is the court that ordered the parties in this matter to arbitrate. *See Rozanski v. Findling*, No. 330962, 2017 WL 1011530, at \*6 (Mich. Ct. App. Mar. 14, 2017) (noting that Michigan law requires a party seeking to vacate an arbitration award to apply to the circuit court that ordered the arbitration to take place). The FAA, which plaintiff purports to invoke, *see, e.g.*, Pl.'s Mot. at 1 ("COME NOW Plaintiff,

John L. Roseman, Sr., pursuant to 9 U.S.C. § 10 of the 18 Act”), does not by itself provide a jurisdictional basis. As the Supreme Court has noted, “the Act does nothing [to bestow] federal jurisdiction but rather requir[es] an independent jurisdictional basis.” *Hall St. Assocs., L.L.C. v. Mattel, Inc.*, 552 U.S. 576, 581-82 (2008) (quoting *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 25 n.32 (1983)). *Accord Ford v. Hamilton Invs., Inc.*, 29 F.3d 255, 257 (6th Cir. 1994) (noting that “[i]t is well established . . . that § 10 of the Arbitration Act does not constitute a grant of subject matter jurisdiction”). That is to say, the mere fact that a dispute has been arbitrated and that a party seeks to have the arbitration award vacated pursuant to § 10 of the Act does not in itself confer federal subject matter jurisdiction. Rather, the federal district court where the motion to vacate has been filed

must have jurisdiction over the underlying subject matter, which is not the case here because this is a local property dispute between Michigan residents that involves no federal question. Accordingly,

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IT IS ORDERED that plaintiff's motion to vacate arbitration award is denied for lack of subject matter jurisdiction.

IT IS FURTHER ORDERED that this matter is dismissed for lack of subject matter jurisdiction.

s/Bernard A. Friedman  
BERNARD A. FRIEDMAN  
SENIOR UNITED STATES  
DISTRICT JUDGE

Dated: August 4, 2020  
Detroit, Michigan

NOT RECOMMENDED FOR PUBLICATION

No. 22-1448

UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

JOHN L. ROSEMAN, SR.,	) ON APPEAL FROM
	) THE UNITED
Plaintiff-Appellant,	) STATES DISTRICT
v.	) COURT FOR THE
WELLS FARGO BANK, N.A.,	) EASTERN DISTRICT
Defendant-Appellee.	) OF MICHIGAN

O R D E R

Before: GUY, SUHRHEINRICH, and STRANCH,  
Circuit Judges.

John L. Roseman, Sr., a pro se Michigan resident, appeals the district court's dismissal of his complaint under Federal Rule of Civil Procedure 12(b)(6). This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. See Fed. R. App. P. 34(a).

**Appendix C Begins at - This Page**

In January 2022, Roseman filed a motion for a temporary restraining order and a preliminary injunction to stop Wells Fargo Bank, N.A. from foreclosing on his house in Farmington Hills, Michigan. See Fed. R. Civ. P. 65. He also handwrote the word "Complaint near the top of the typewritten document, and he initialed that change. Wells Fargo filed a response, arguing Roseman was not entitled to a restraining order or injunction and suggesting that the court should sua sponte dismiss the case for lack of subject matter jurisdiction under the rule of *Apple v. Glenn*, 183 F.3d 477 (6th Cir. 1999) (per curiam). The district court construed Roseman's motion as a complaint, denied his request for injunctive relief, and ordered him to show cause as to why his lawsuit should not be dismissed under Rule 12(b)(6) for failure to state a claim upon which relief may be granted. Noting that Roseman had entered the mortgage contract in



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2016 and that defendant Wells Fargo was not assigned the mortgage until 2019, the district court reasoned that Roseman had failed to explain how Wells Fargo was involved with the alleged misrepresentations made by the sellers and real estate agency that sold him the home. Roseman responded to the order to show cause by filing a motion for leave to amend his pleading to assert six new claims against Wells Fargo. The district court denied Roseman leave to amend, concluding that his proposed amendments would be futile because they failed to state a plausible claim for relief. It then dismissed Roseman's complaint, with prejudice, pursuant to Rule 12(b)(6).

On appeal, Roseman argues that the district court erred by dismissing his complaint and denying him leave to amend.

We review de novo a district court's dismissal of a complaint for failure to state a claim under Rule 12(b)(6). *Theile v Michigan*, 891 F.3d 240, 243 (6th Cir. 2018). To avoid dismissal, "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)). When considering a Rule 12(b)(6) motion to dismiss, we must "construe the plaintiff's complaint liberally, in [the] plaintiff's favor, accepting all factual allegations as true and drawing all reasonable inferences in favor of the plaintiff." *Logsdon v. Hains*, 492 F.3d 334, 340 (6th Cir. 2007).

As a preliminary matter, the district court did not err in sua sponte dismissing Roseman's claims under Rule 12(b)(6), pursuant to *Tingler v. Marshall*, 716 F.2d

1109 (6th Cir. 1983). It is true "[a]s a general rule" that "a district court may not sua sponte dismiss a complaint where the filing fee has been paid unless the court gives the plaintiff opportunity to amend the complaint."

*Wagenknecht v United States*, 533 F.3d 412, 417 (6th cir. 2008) (quoting *Apple*, 183 F.3d at 479). But sua sponte dismissal is permissible where: (1) the defendant is served; (2) all parties are notified of the court's intent to dismiss the complaint; (3) the plaintiff has a chance to either amend the complaint or respond to the reasons stated by the district court in its notice of intended dismissal; (4) the defendant has a chance to respond; and (5) the district court ultimately states its reasons for dismissal. *Id.* (citing *Tingler*, 716 F.2d at 1112). All these requirements were met here. Wells Fargo was served with the complaint (R. 5). The court ordered Roseman to show

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cause as to why his complaint should not be dismissed for failure to state a claim; it gave Roseman an opportunity to respond to that order (although Roseman instead sought to amend his complaint); and it stated its reasons for denying Roseman leave to amend and for dismissing his case. The district court's sua sponte dismissal complied with *Tigler's* requirements.

Roseman has filed several pages of argument concerning the district court's actions below, some of which is irrelevant to the proceedings in this case. Although Roseman's brief details the alleged wrongdoings committed by the sellers and real estate agency that sold him the property at issue, it does not challenge the district court's reasoning that Roseman failed to make any allegations connecting defendant Wells Fargo to any of those alleged actions. And to the extent that Roseman seeks review of judicial rulings

that were issued in his prior lawsuits against the sellers and the real estate agency, those issues are not properly before us in this separate lawsuit.

We review de novo the district court's denial of Roseman's motion for leave to amend his complaint because the district court denied the motion on the legal basis that the proposed amendments would be futile. *See Parry v. Mohawk Motors of Mich., Inc.*, 236 F.3d 299, 306 (6th Cir. 2000). "A proposed amendment is futile if the amendment could not withstand a Rule 12(b)(6) motion to dismiss." *Riverview Health Inst. LLC v. Med. Mut. Of Ohio*, 601 F.3d 505, 512 (6th Cir. 2010) (quoting *Rose v. Hartford Underwriters Ins.*, 205 F.3d 417, 420 (6th Cir. 2000)).

Roseman's motion sought to assert claims against Wells Fargo for wrongful foreclosure, unjust enrichment, race discrimination, breach of contract, slander of title, and civil conspiracy. The district court correctly

concluded that Roseman's proposed amended complaint failed to allege sufficient facts showing either that there was "fraud or irregularity in the foreclosure procedure" or that Wells Fargo breached the mortgage contract. *See v. Sallie Mae Home Loans, Inc.*, 859 N.W.2d 238, 242 (Mich. Ct. App. 2014) (stating the elements of a wrongful-foreclosure claim). The district court also correctly concluded that Roseman failed to allege that Wells Fargo unjustly enriched itself during the foreclosure process, *see Boulevard & Trumbull Towing, Inc. v City of Detroit*, No. 352503, 2021 WL 5405759, at \*7 (Mich. Ct. App. Nov. 18, 2021) (per curiam); racially discriminated against him, *see Lea v. Tracy Lanston Ford, Inc.*, No. 19-5706, 2019 WL 9171095, at \*4 (6<sup>th</sup> Cir. Dec. 20, 2019); made a false and malicious statement that

disparaged his title, *see Brown v. Gallagher*, No. 358541, 2022 WL 2760445, at \*3-4 (Mich. Ct. App. July 14, 2022) (per curiam); or conspired with others to injure him, *see Levitt v. Bloem*, No. 343299, 2019 WL 2194568, at \*7 (Mich. Ct. App. May 21, 2019) (per curiam). *See Iqbal*, 556 U.S. at 678. Because Roseman's proposed amended complaint failed to state a claim upon which relief may be granted, amendment would have been futile, and the district court properly denied him leave to amend.

For these reasons, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

[signed]  
Deborah S. Hunt, Clerk

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JOHN L. ROSEMAN,  
Plaintiff,

v.

WELLS FARGO BANK, N.A.,  
Defendant.

Case No. 22-10054  
Honorable Shalina D.  
Kumar  
Magistrate Judge  
Elizabeth A. Stafford

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**ORDER DENYING PLAINTIFF'S MOTION TO  
AMEND (ECF NO. 17) AND DISMISSING CASE**

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Plaintiff John Roseman seeks to have his mortgage rescinded and the foreclosure of his home enjoined. See ECF No. 1. On April 4, 2022, the Court issued an order denying Roseman's motion for a temporary restraining order or preliminary injunction and ordering him to show cause as to why his complaint should not be dismissed for failure to state a claim

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under Federal Rule of Civil Procedure 12(b)(6). ECF No. 16. In lieu of responding to the order to show cause, Roseman moved to amend his complaint. ECF No. 17. His proposed amended complaint includes allegations against Wells Fargo and others. *Id.* Because “[p]leadings filed by pro se litigants are entitled to a more liberal reading than would be afforded to formal pleadings drafted by lawyers[.]” (*Thomas v. Eby*, 481

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F.3d 434, 437 (6th Cir. 2008)) the Court will treat the proposed amended complaint as Roseman’s effort to respond to the show cause order and state a valid claim against Wells Fargo. Wells Fargo responded opposing Roseman’s motion on April 21, 2022. ECF No. 18. Roseman replied on April 29, 2022. ECF No. 19.

For the reasons stated below, Roseman’s motion

to amend his complaint (ECF No. 17) is **DENIED** and his complaint (ECF No. 1) is **DISMISSED** for failure to state a claim.

**I. Recusal**

As a preliminary matter, Roseman's Reply Brief argues this Judge should recuse herself from this case because she served as Chief Judge of the Oakland County Circuit Court while he was litigating claims against the sellers and real estate agency who sold him the house in that court. ECF No. 19, PageID.349. Though Roseman has not filed an actual motion for recusal, the Court will briefly address this concern.

A judge must recuse herself from any proceeding in which her "impartiality might reasonably be questioned." 28 U.S.C. § 455(a). This Judge played no role in the proceedings in Oakland County or the arbitration process that followed. Until she received

Roseman's complaint

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in this case, she was unaware of those matters and never expressed any opinion on them. She has no relationship to either party. There is no reasonable basis for concern regarding her impartiality in this case.

Judge Kumar will not recuse herself.

## **II. Motion to Amend Complaint**

This Court may grant leave to amend a complaint under Federal Rule of Civil Procedure 15. Courts are to grant such leave freely when justice so requires. Fed. R. Civ. P. 15(a)(2). A motion to amend may be denied where amendment would be futile. *Riverview Health Inst. LLC v. Med. Mut. of Ohio*, 601 F.3d 505, 520 (6th Cir. 2010). A proposed amendment is futile if it would not survive a motion to dismiss. *Id.*

Federal Rule of Civil Procedure 8(a)(2) requires a complaint set forth “a short and plain statement of the claim showing that the pleader is entitled to relief.” To survive a motion to dismiss, a complaint must contain sufficient factual matter to state a claim that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). While detailed factual allegations are not required, naked assertions, conclusory statements, or merely reciting of the elements of a claim will not suffice. *Id.*

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Although a pro se litigant’s complaint is given considerable latitude, “[t]he leniency granted to pro se [litigants] . . . is not boundless.” *Martin v. Overton*, 391 F.3d 710, 714 (6th Cir. 2004); see also *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

Roseman's proposed amendments are futile. The Court has already explained in detail why his original complaint failed to state any cognizable claim against Wells Fargo. *See* ECF No. 16. The proposed amended complaint fares no better. The changes Roseman proposes fail to address the deficiencies identified by the Court in its prior order and provide no new factual material to support the claims in his original complaint. These original claims remain incapable of surviving a motion to dismiss.

The proposed amended complaint includes at least five new claims against Wells Fargo, all of which also fail to state any cognizable claim against it. The proposed complaint lists five new captioned counts: (I) Wrongful Foreclosure; (II) Unjust Enrichment; (III) Race Discrimination; (IV) Breach of Contract; and (V) Slander of Title. ECF No. 17. The proposed amended complaint also asserts civil conspiracy allegations, but not as a

separately captioned claim. Reading this pleading leniently, as is

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appropriate for a *pro se* plaintiff, the Court will include this allegation and refer to it as Count VI.

#### **A. Wrongful Foreclosure**

Count I is futile because the proposed amended complaint does not allege facts that could support a wrongful foreclosure claim. Roseman contends the bank was negligent in failing to discover that the road on the property was a private road which would need to be maintained by the property owner, and that this negligence renders his mortgage unenforceable and Wells Fargo's efforts to do so unlawful. This is incorrect. Wells Fargo had no obligation to discover that fact and therefore breached no duty to Roseman by failing to do

so. Further, as discussed in this Court's prior order, Wells Fargo appears to have complied with the statutory requirements for foreclosure by advertisement; in other words, it acted appropriately upon the duties it did owe to Roseman. *See* ECF No. 16, PageID.298-300.

Roseman also alleges Wells Fargo was wrong to record the assignment of the mortgage after being aware of his dispute with the sellers. The Court is not aware of any law that prohibits a bank from recording a mortgage assignment under these circumstances. Plaintiff has

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alleged no wrongdoing by Wells Fargo that could support a wrongful foreclosure claim against the bank.

Roseman discusses his financial difficulties at length; although these difficulties are unfortunate, they

have no legal relevance to whether Wells Fargo is wrongfully foreclosing on his home. The proposed amended complaint fails to state a claim of wrongful foreclosure.

### **B. Unjust Enrichment**

Count II alleges unjust enrichment. Unjust enrichment is a quasi-contract remedy generally argued by plaintiffs seeking to enforce an agreement, not to invalidate an existing contract, as Roseman seeks to do here. A plaintiff cannot prevail on an unjust enrichment claim where an express contract governs the same subject matter, as is the case here. *Belle Isle Grille Corp. v. Detroit*, 666 N.W.2d 271 (Mich. 2003).

Moreover, a plaintiff claiming unjust enrichment must show "(1) receipt of a benefit by the defendant from the plaintiff and (2) an inequity resulting to plaintiff because of the retention of the benefit by the defendant."



*AFT Mich. V. Michigan*, 846 N.W.2d 583, 677-678 (Mich. 2014). Here, Wells Fargo loaned Roseman \$369,555.00 according to the

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parties' duly executed loan agreement.<sup>1</sup> ECF No. 11-2, PageID.220. Roseman does not dispute that he received this loan or used it to purchase his house. The payments he made to Wells Fargo were payments towards that debt. It is unclear how Roseman imagines the scale tips in his favor when he has undisputedly received and retained a much larger benefit than Wells Fargo has.

Further, when a Court finds a defendant has been unjustly enriched, the remedy is generally to imply the existence of a contract and enforce it. *See Belle Isle Grille Corp.*, 666 N.W.2d 271. Doing so here would make little sense, as Mr. Roseman is attempting to escape an

agreement with Wells Fargo, not demonstrate or enforce one.

Altogether, Plaintiff has failed to state a plausible claim for unjust enrichment.

### **C. Racial Discrimination**

Count III is futile because Roseman's racial discrimination allegation is unsupported by any facts. The proposed complaint merely states, "Defendant Wells Fargo and/or privies were predisposed to discriminate

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<sup>1</sup> The original lender was Mortgage Electronic Registration Systems, Inc. ("MERS"). ECF No. 11-2, PageID.220. MERS later assigned the mortgage to Wells Fargo. ECF No. 11-4, PageID.234.

against Plaintiff on the basis of his race and acted in accordance with that predisposition" and offers no further detail. This bare assertion lacks any factual

support and is precisely the kind of conclusory statement that cannot survive a motion to dismiss. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

#### **D. Breach of Contract**

Count IV is futile because Roseman has not pleaded sufficient facts to support a breach of contract claim. Roseman alleges Wells Fargo breached his mortgage contract but fails to state how. The proposed amended complaint does not cite a provision of the contract that was breached, nor does it identify any conduct by Wells Fargo which would constitute a breach. Surviving a motion to dismiss requires “more than an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678. Plaintiff has failed to plead sufficient factual matter to state a breach of contract claim that is “plausible on its face.” *See Id.* at 678.

#### **E. Slander of Title**

Count V alleges slander of title. The cause of action for slander of title occurs when a person makes a false and malicious statement to disparage another's title to real estate. *Glieberman v. Fine*, 226 N.W. 669 (Mich.

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1929). Roseman asserts Wells Fargo slandered his title by recording the mortgage assignment and advertising the foreclosure sale after being aware of Roseman's litigation against the sellers.

The elements of slander of title are (1) falsity of the statement made and (2) malice. *Stanton v. Dachille*, 463 N.W.2d 479, 486 (Mich. Ct. App. 1990). Roseman has not adequately pleaded these elements. He has not pleaded any plausible facts suggesting that the statements—the recording of a legitimate mortgage

assignment and the publication of a valid foreclosure by advertisement notice—were “false.” And far from acting with malice in recording and publishing these statements, respectively, Wells Fargo was statutorily obligated to do so in order to lawfully assume the mortgage and proceed with foreclosure by advertisement. *See Mich. Comp. Law Ann. §§ 600.3201-3285.* Roseman’s proposed complaint fails to state a slander of title claim against Wells Fargo.

#### F. Civil Conspiracy

Finally, Roseman’s proposed complaint raises general allegations of civil conspiracy, though it does not list this as a captioned claim. An essential element of a civil conspiracy claim is concerted action. *Admiral Insurance Co. v. Columbia Casualty Insurance Co.*, 486 N.W.2d 351 (Mich.

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1992). Roseman baldly alleges Wells Fargo conspired with the other financial institutions involved in the mortgage agreement and the real estate agency involved in the sale of the house to defraud him but provides no facts whatsoever to support that claim. Again, this kind of conclusory allegation cannot survive a motion to dismiss. *See Iqbal*, 556 U.S. at 678.

In sum, even treating Roseman's claims with the leniency afforded to *pro se* plaintiffs, his proposed amended complaint fails to save the claims in his original complaint or state any valid new claims against Wells Fargo. None of the original or proposed amended claims would survive a motion to dismiss, rendering his proposed amendments futile. *Riverview Health Institute LLC v. Medical Mut. Of Ohio*, 601 F.3d 505, 520 (6th Cir. 2010). Roseman's motion to amend his complaint

(ECF No. 17) is therefore denied.

### III. Dismissal for Failure to State a Claim

In this Circuit, a court may dismiss a complaint *sua sponte* for failure to state a claim after providing the plaintiff notice of its intent to do so and an opportunity to correct the shortcomings in their complaint. *See Nichols v. Cty. of Wayne*, 2018 WL 6505360, at \*3 (E.D. Mich. Dec. 11, 2018)

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(citing *Tingler v. Marshall*, 716 F.2d 1109 (6th Cir. 1983)), *aff'd sub nom. Nichols v. Wayne County*, 822 F. App'x 445 (6th Cir. 2020).

This Court's April 4, 2022 order to show cause discussed in detail the deficiencies of Roseman's complaint and provided notice of its intent to dismiss the complaint for failure to state a claim under Federal

Rule of Civil Procedure 12(b)(6) unless he could articulate a legitimate legal basis for challenging his mortgage as against the Defendant. ECF No. 16. As discussed above, Roseman's proposed amended complaint did not cure the fatal deficiencies of his original complaint.

Roseman has failed to state any valid claims against Defendant Wells Fargo and therefore his complaint will be dismissed, with prejudice, under Federal Rule of Civil Procedure 12(b)(6).

Accordingly,

**IT IS ORDERED** that Roseman's motion to amend his complaint (ECF No. 17) is **DENIED**.

**IT IS FURTHER ORDERED** that this case is **DISMISSED WITH PREJUDICE**.

Dated: May 5, 2022

/s Shalina D. Kumar  
SHALINA D. KUMAR  
United States District Judge



**Additional material  
from this filing is  
available in the  
Clerk's Office.**