

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

SEP 19 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

HERMA BARBARA MEDINA REYNA,

No. 21-15666

Plaintiff-Appellant,

D.C. No. 1:19-cv-00248-LEK-RT

v.

MEMORANDUM*

PNC BANK, N.A.; et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Hawaii

Leslie E. Kobayashi, District Judge, Presiding

Submitted September 14, 2022**

Before: O'SCANNLAIN, RAWLINSON, and OWENS, Circuit Judges.

Herma Barbara Medina Reyna appeals pro se from the district court's judgment in her action alleging federal and state law claims arising out of foreclosure proceedings. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Daewoo Elecs. Am. Inc. v. Opta Corp.*, 875 F.3d 1241, 1246 (9th

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Cir. 2017) (judgment on the pleadings); *Guatay Christian Fellowship v. County of San Diego*, 670 F.3d 957, 970 (9th Cir. 2011) (cross-motions for summary judgment). We may affirm on any basis supported by the record, *Thompson v. Paul*, 547 F.3d 1055, 1058-59 (9th Cir. 2008), and we affirm.

Summary judgment for defendants was proper on Reyna's fraud claim to the extent it concerned defendants' actions taken prior to the state court foreclosure action, and on Reyna's quiet title, slander of title, and wrongful foreclosure claims because these claims are barred by claim preclusion. *See Brewer v. Weeks*, 85 P.3d 150, 159-60 (Haw. 2004) (elements of claim preclusion under Hawaii law).

Judgment on the pleadings was proper on Reyna's Racketeer Influenced and Corrupt Organizations ("RICO") Act claim, and fraud claim to the extent it concerned defendants' filings in this action and state court filings, because Reyna failed to state a plausible claim. *See Eclectic Props. E., LLC v. Marcus & Millichap Co.*, 751 F.3d 990, 997 (9th Cir. 2014) (elements of a RICO claim); *Shoppe v. Gucci Am., Inc.*, 14 P.3d 1049, 1067 (Haw. 2000) (elements of a fraud claim under Hawaii law).

The district court did not abuse its discretion in denying Reyna's motion for reconsideration because Reyna failed to establish any basis for relief. *See Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1262-63 (9th Cir. 1993) (standard of review and grounds for reconsideration).

The district court did not abuse its discretion in denying Reyna's motions for injunctive relief because Reyna failed to demonstrate that such relief is warranted. *See Arc of Cal. v. Douglas*, 757 F.3d 975, 983 (9th Cir. 2014) (standard of review and requirements for injunctive relief).

We reject as meritless Reyna's contention that she was entitled to a jury trial.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)

Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - ▶ A material point of fact or law was overlooked in the decision;
 - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- A response, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

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- The petition or response must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send an email or letter **in writing within 10 days** to:
 - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Maria Evangelista (maria.b.evangelista@tr.com));
 - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

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

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UNITED STATES DISTRICT COURT

DISTRICT OF HAWAII

HERMA BARBARA MEDINA REYNA,

Plaintiff,

vs.

PNC BANK, N.A.; ET AL.,

Defendants.

CIV. NO. 19-00248 LEK-RT

**ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION OF
COURT ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT;
AND GRANTING IN PART AND DENYING IN PART DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT ON THE PLEADINGS OR,
IN THE ALTERNATIVE FOR SUMMARY JUDGMENT**

On February 3, 2021, the Order: Denying Plaintiff's Motion for Summary Judgment; and Granting in Part and Denying in Part Defendants' Motions for Judgment on the Pleadings or, in the Alternative for Summary Judgment ("2/3/21 Order") was issued.¹ [Dkt. no. 149.] On February 9, 2021, *pro se* Plaintiff Herma Barbara Medina Reyna ("Reyna") filed a motion for reconsideration of the 2/3/21 Order ("Motion for

¹ The 2/3/21 Order addressed: Reyna's Motion for Summary Judgment, filed on September 9, 2020; Defendant PNC Bank, National Association's ("PNC") Motion for Judgment on the Pleadings or, in the Alternative, for Summary Judgment ("PNC Motion"), filed on September 16, 2020; and Defendant Mortgage Electronic Registration Systems, Inc.'s ("MERS") Motion for Judgment on the Pleadings or, in the Alternative, for Summary Judgment ("MERS Motion"), filed on September 16, 2020. [Dkt. nos. 115, 121, 123.]

Reconsideration"). [Dkt. no. 150.] The Court has considered the Motion as a non-hearing matter pursuant to Rule LR7.1(d) of the Local Rules of Practice for the United States District Court for the District of Hawaii ("Local Rules"). Reyna's Motion for Reconsideration is hereby denied for the reasons set forth below.

BACKGROUND

The factual and procedural background of this case is set forth in the 11/30/20 Order and will not be repeated here. In the 11/30/20 Order, this Court granted summary judgment in favor of Defendants as to all of Plaintiff's claims in the Second Amended Complaint for: (1) Fraud, (2) Quiet Title, and (3) Slander of Title ("Second Amended Complaint"), [filed 6/3/20 (dkt. no. 75)].

The crux of the Motion for Reconsideration is that the 2/3/21 Order is based on this Court's mistaken belief that this case seeks to reverse the state court's decision in the underlying foreclosure action brought by PNC ("Foreclosure Action").² According to Reyna, she is merely seeking punitive damages for the fraud that was committed during the Foreclosure Action. Reyna also argues her fraud claim in this case is sufficiently pled. See Second Amended Complaint at pgs. 7-12.

² See the 2/3/21 Order at 5 for additional information regarding the Foreclosure Action.

She urges this Court to consider the merits of her claims and she argues that she has been denied due process because she has not been given a hearing or a trial.

After Reyna filed the Motion for Reconsideration, this Court received a letter from her objecting to the fact that all of her claims were decided without a trial. [Letter, filed 2/12/21 (dkt. no. 152).] She argues this was particularly unfair in light of this Court's order directing the parties to meet and confer regarding a proposed new trial date after July 31, 2021. See Minute Order - EO: Order Vacating Jury Trial Date in a Civil Matter, filed 12/17/20 (dkt. no. 146) ("12/17/20 EO").³ Reyna's letter is liberally construed as a supplement to her due process argument in the Motion for Reconsideration. See Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam) ("A document filed **pro se** is to be liberally construed[.]" (citation and internal quotation marks omitted)).

STANDARD

The 2/3/21 Order is a case-dispositive order, and therefore Plaintiff's Motion for Reconsideration is "governed by

³ The 12/17/20 EO was issued to address issues related to the COVID-19 emergency and accompanying health and safety concerns. [12/17/20 EO at 1.] There was nothing in the 12/17/20 EO which constituted a ruling on the merits of the case. Thus, the order that the parties were to meet and confer regarding a proposed new trial date was not an indication or a guarantee that the case was going to proceed to trial.

Fed. R. Civ. P. 59 or 60, as applicable." See Local Rule LR60.1. Because no judgment has been issued in this case, Fed. R. Civ. P. 60 applies. See Fed. R. Civ. P. 59(e) ("A motion to alter or amend a judgment must be filed no later than 28 days after the entry of the judgment."). Rule 60(b) states, in pertinent part: "On motion and just terms, the court may relieve a party or its legal representative from a final . . . order, or proceeding for the following reasons: . . . (6) any other reason that justifies relief." The Ninth Circuit has stated:

We use Rule 60(b)(6) "sparingly as an equitable remedy to prevent manifest injustice." United States v. Alpine Land & Reservoir Co., 984 F.2d 1047, 1049 (9th Cir. 1993). To receive relief under Rule 60(b)(6), a party must demonstrate "extraordinary circumstances which prevented or rendered him unable to prosecute [his case]." [Community Dental Services v.] Tani, 282 F.3d [1164,] 1168 [(9th Cir. 2002)] (citing Martella v. Marine Cooks & Stewards Union, 448 F.2d 729, 730 (9th Cir. 1971) (per curiam)).

Lal v. California, 610 F.3d 518, 524 (9th Cir. 2010) (some alterations in Lal).

As to motions for reconsideration in general, this district court has stated:

A motion for reconsideration must:
(1) demonstrate reasons that the court should reconsider its prior decision; and (2) must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision. Fisher v. Kealoha, 49 F. Supp. 3d 727, 734 (D. Haw. 2014). The Ninth Circuit has said

that reconsideration may be appropriate if: (1) the district court is presented with newly discovered evidence; (2) the district court committed clear error or the initial decision was manifestly unjust; or (3) if there is an intervening change in controlling law. See Sch. Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993).

Mere disagreement with a previous order is an insufficient basis for reconsideration. Fisher, 49 F. Supp. 3d at 735. This court “enjoys considerable discretion in granting or denying the motion.” Allstate Ins. Co. v. Herron, 634 F.3d 1101, 1111 (9th Cir. 2011) (quoting McDowell v. Calderon, 197 F.3d 1253, 1255 n.1 (9th Cir. 1999) (en banc)).

Smith v. Frink, Civil No. 20-00377 SOM-RT, 2020 WL 7130511, at *2 (D. Hawai‘i Dec. 4, 2020) (footnote omitted). There has been no intervening change in the controlling law at issue in the Motion for Reconsideration, and Reyna does not present any newly discovered evidence. Reyna asserts there were manifest errors of law and fact in the 2/3/21 Order. [Motion for Reconsideration at 1.]

DISCUSSION

I. Due Process Argument

The Court first turns to Reyna’s argument that she has been deprived of due process because this Court did not hold a hearing on the parties’ motions for summary judgment, and because there will not be a trial on the merits of her claims. In the 2/3/21 Order, this Court found the parties’ motions for summary judgment suitable for disposition without a hearing,

pursuant to Rule LR7.1(c) of the Local Rules of Practice for the United States District Court for the District of Hawaii ("Local Rules"). [2/3/21 Order at 2.] Local Rule 7.1(c) states, in relevant part: "Unless specifically required, the court may decide all matters, including motions, petitions, and appeals, without a hearing." This Court has also considered Reyna's Motion for Reconsideration without a hearing, pursuant to Local Rule 7.1(d), which states, in relevant part: "The following shall be decided without a hearing: motions to alter, amend, **reconsider**, set aside or vacate a judgment or order" (Emphasis added.)

[O]ne of due process's central and undisputed guarantees is that, before the government permanently deprives a person of a property interest, that person will receive – at a minimum – notice. Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 313, 70 S. Ct. 652, 94 L. Ed. 865 (1950).

Notice is so critical because it enables the opportunity to be heard. Mullane, 339 U.S. at 314, 70 S. Ct. 652

Wright v. Beck, 981 F.3d 719, 727 (9th Cir. 2020) (some citations omitted)). To the extent that Reyna has a property interest in her claims in this case, her opportunity to file written response memoranda in opposition to the PNC Motion and the MERS Motion and her opportunity to file a written Motion for Reconsideration were "sufficient to provide [her] with an opportunity to be heard for purposes of his due process rights

before this court.” See Hernando v. Hamamoto, Civil No. 13-00140 SOM/BMK, 2013 WL 6485247, at *2 (D. Hawai‘i Dec. 9, 2013).

Similarly, the Federal Rules of Civil Procedure require the entry of summary judgment where the non-moving party fails to establish that there is a triable issue of fact. See Fed. R. Civ. P. 56(a) (“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.”). Reyna had the opportunity to file written response memoranda to the motions for summary judgment. Although it is understandable that Reyna is disappointed that there will be no trial on the merits of her claims, there was no violation of Reyna’s due process rights. The Motion for Reconsideration is denied as to its argument that the 2/3/21 Order violated Reyna’s due process rights.

II. Reyna’s Other Arguments

Reyna also argues there are manifest errors of law and fact in the 2/3/21 Order, including: that this Court misunderstood her claims in this case because they do not seek to undo the Foreclosure Action; and that her fraud claims are sufficiently pled. These are all arguments that were considered in connection with the underlying motions for summary judgment. Ultimately, Plaintiff disagrees with the Court’s rulings on the motions, and her disagreement with the 2/3/21 Order is not a

basis to grant reconsideration. See Fisher, 49 F. Supp. 3d at 735. Plaintiff has therefore failed to identify any ground that warrants reconsideration of the 2/3/21 Order.

CONCLUSION

For the foregoing reasons, Plaintiff's Motion for Reconsideration of Court Order Denying Plaintiff's Motion for Summary Judgment; and Granting in Part and Denying in Part Defendant's Motion for Summary Judgment on the Pleadings or, in the Alternative for Summary Judgment, filed February 9, 2021, is HEREBY DENIED. The Clerk's Office is DIRECTED to enter final judgment and close the case immediately, pursuant to the February 3, 2021 Order: Denying Plaintiff's Motion for Summary Judgment; and Granting in Part and Denying in Part Defendants' Motions for Judgment on the Pleadings or, in the Alternative for Summary Judgment.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, March 29, 2021.



/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

HERMA BARBARA MEDINA REYNA VS. PNC BANK, N.A., ET AL; CV 29-00248 LEK-RT; ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION OF COURT ORDER DENYING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT; AND GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION FOR SUMMARY JUDGMENT ON THE PLEADINGS OR, IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

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from this filing is
available in the
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