

**United States Court of Appeals**  
**For the Eighth Circuit**

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No. 22-2460

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Theresa Marshall

*Plaintiff - Appellant*

v.

Educational Credit Management Group; Educational Credit Management  
Corporation, ECMC; Kimberly Wood Tucker, Attorney

*Defendants - Appellees*

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No. 22-2470

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Theresa Marshall

*Plaintiff - Appellant*

v.

Wells Fargo & Company; Wells Fargo Bank NA; Deutsche Bank National Trust  
Company, as Trustee for Vendee Mortgage Trust 1993-1, United States  
Department of Veterans Administration's Guaranteed Pass-Through Certificate

*Defendants - Appellees*

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Appeals from United States District Court  
for the Eastern District of Arkansas - Central

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A

Submitted: January 19, 2023

Filed: January 24, 2023

[Unpublished]

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Before SHEPHERD, GRASZ, and KOBES, Circuit Judges.

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PER CURIAM.

In these back-to-back appeals, Arkansas resident Theresa Marshall appeals the district court's<sup>1</sup> dismissal of her pro se complaints. Upon careful review, we conclude that the district court did not err in dismissing the cases. See Laclede Gas Co. v. St. Charles Cnty., Mo., 713 F.3d 413, 417 (8th Cir. 2013) (de novo review of dismissal for lack of subject matter jurisdiction); Moore v. Sims, 200 F.3d 1170, 1171 (8th Cir. 2000) (per curiam) (28 U.S.C. § 1915(e) dismissal for failure to state a claim is reviewed de novo). Accordingly, we affirm in both appeals, see 8th Cir. R. 47B, and we deny Marshall's pending motions as moot.

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<sup>1</sup>The Honorable D.P. Marshall Jr., Chief Judge, United States District Court for the Eastern District of Arkansas.

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

No: 22-2460

Theresa Marshall

Appellant

v.

Educational Credit Management Group, et al.

Appellees

No: 22-2470

Theresa Marshall

Appellant

v.

Wells Fargo & Company, et al.

Appellees

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Appeal from U.S. District Court for the Eastern District of Arkansas - Central  
(4:21-cv-00751-DPM)  
(4:21-cv-01091-DPM)

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**ORDER**

The petition for en banc rehearing and the amended petition for en banc rehearing are denied. The petition for panel rehearing and the amended petition for panel rehearing are also denied.

Judge Benton did not participate in the consideration or decision of this matter.

February 28, 2023

Order Entered at the Direction of the Court:  
Clerk, U.S. Court of Appeals, Eighth Circuit.

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/s/ Michael E. Gans

**B**

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION

THERESA MARSHALL

PLAINTIFF

v.

No. 4:21-cv-1091-DPM

WELLS FARGO & COMPANY;  
WELLS FARGO BANK NA; and  
DEUTSCHE BANK NATIONAL  
TRUST COMPANY, as Trustee  
for Vendee Mortgage Trust 1993-1,  
United States Department of Veterans  
Administration's Guaranteed  
Pass-Through Certificate

DEFENDANTS

ORDER

1. Marshall's application to proceed *in forma pauperis*, Doc. 1, is granted. She reports no ability to pay the filing fee. Her second IFP motion, Doc. 8, is moot and therefore denied without prejudice.

2. Marshall's notice of related cases, Doc. 3, is approved. This case is related to both *Marshall v. United States Trustee*, No. 4:20-cv-1373-DPM, and *Marshall v. Taylor*, 4:19-cv-913-DPM, and was properly assigned. Through the years Marshall has pursued many bankruptcies. *In re Theresa Marshall*, 4:95-bk-43532 (E.D. Ark.); *Marshall v. AFSA Data Corp., et al.* 4:99-ap-04055 (E.D. Ark.); *In re Theresa Marshall*, 4:02-bk-11804 (E.D. Ark.); *In re Theresa Marshall*, 4:05-bk-20492 (E.D. Ark.); *In re Theresa Marshall*, 4:08-bk-13441 (E.D. Ark.), *aff'd*, 407 B.R. 359 (B.A.P. 8th

Cir. 2009); *In re Theresa Marshall*, 4:16-bk-15651 (E.D. Ark.), *appeal dismissed*, No. 18-6008 (B.A.P. 8th Cir. 2018), *appeal dismissed*, No. 18-3142 (8th Cir. 2018), *appeal untimely*, No. 18-6009 (B.A.P. 8th Cir. 2018), *appeal untimely*, No. 18-6010 (B.A.P. 8th Cir. 2018), *aff'd*, 723 Fed. App'x 384 (8th Cir. 2018), *appeal dismissed*, No. 18-6016 (B.A.P. 8th Cir. 2018), *appeal dismissed*, No. 18-2791 (8th Cir. 2019), *appeal dismissed*, No. 19-6014 (B.A.P. 8th Cir. 2019), *appeal dismissed*, No. 19-6024 (B.A.P. 2020); *In re Theresa Marshall*, 4:18-bk-12478 (E.D. Ark.), *appeal dismissed*, No. 18-6021 (B.A.P. 2018), *appeal dismissed*, No. 18-6022 (B.A.P. 8th Cir. 2018), *aff'd*, 595 B.R. 269 (B.A.P. 8th Cir. 2019); *appeal dismissed*, No. 18-6024 (B.A.P. 8th Cir. 2018), *aff'd* 596 B.R. 366 (B.A.P. 8th Cir. 2019), *appeal dismissed*, No. 18-6025 (B.A.P. 8th Cir. 2018), *appeal dismissed*, No. 19-6042, (B.A.P. 8th Cir. 2020). And she has another pending case, which involves related issues. *Marshall v. Educational Credit Management Group*, No. 4:21-cv-751-DPM.

3. In this case, Marshall has filed a complaint, an amended complaint, and three motions to amend her amended complaint. These motions, *Doc. 5, 7, & 9*, are granted. The Court must screen her pleadings, 28 U.S.C. § 1915(e)(2), and regrets its delay in doing so.

The core of this November 2021 case is Marshall's loss of her home through a state foreclosure proceeding that culminated in September and October of 2018. Marshall has sued two Wells Fargo entities (who supposedly bought and serviced her mortgage loan) and Deutsche

Bank (who was a trustee involved with this VA-backed loan). She alleges these entities conspired with each other and others, committed fraud, engaged in deceptive trade practices, plus violated VA and bankruptcy rules. She says their efforts were aimed at increasing her indebtedness, prolonging her bankruptcies, and securing the foreclosure illegally. Marshall contends that Wells Fargo and Deutsche Bank accomplished all their aims. Her claims, however, face two insurmountable legal hurdles.

First, the statute of limitations. Marshall filed her complaint in November 2021. She alleges wrongful actions from 2002 through September 2018. All the torts alleged are subject to Arkansas's three year statute of limitations, ARK. CODE ANN. § 16-56-105. These claims are therefore untimely.

Marshall's deceptive trade practices claim is not barred by limitations. A five-year statute applies. ARK. CODE ANN. § 4-88-115. This claim, however, cannot get over the second hurdle facing this lawsuit—preclusion.

Marshall pleads that she knew about all her current claims years ago. *Doc. 4 at 20*. And she pressed these arguments in her 2016 and 2018 bankruptcies. *Doc. 53 in In re Theresa Marshall, 4:16-bk-15651* (6 March 2017 Motion to Show Fraud); *Doc. 58 in In re Theresa Marshall, 4:18-bk-12478* (27 June 2018 Motion to Dismiss for Fraud on the Court). In the 2016 case, her motion to show fraud was denied in the wake of

the Bankruptcy Court's dismissal of her case for not complying with various orders. *Doc. 273 in In re Theresa Marshall*, 4:16-bk-15651 (7 December 2017). This probably was not a decision on the merits. In the 2018 case, though, the Bankruptcy Court rejected all her fraud-related arguments on the merits. *Doc. 177 in In re Theresa Marshall*, 4:18-bk-12478 (6 September 2018). She could have pursued these matters further in those cases through adversarial actions or otherwise, and on appeal. The final orders of the Bankruptcy Court preclude relitigation now of the issues actually decided against her on the merits, the claims that were made and rejected or abandoned, and the claims that could have been made and were not. *Vibo Corp., Inc. v. State ex rel. McDaniel*, 2011 Ark. 124, \*25, 380 S.W.3d 411, 427 (issue preclusion); *Hardy v. Hardy*, 2011 Ark. 82, \*5-6, 380 S.W.3d 354, 357-58 (claim preclusion).

Marshall also litigated her deceptive trade practices claim against Deutsche Bank and a related Wells Fargo entity in this Court some years ago. *Marshall v. Deutsche Bank*, 4:10-cv-754-BRW. She lost. See *Doc. 22* in that case. She appealed, and the Court of Appeals affirmed Judge Wilson's decision. 445 F. App'x 900 (8th Cir. 2011) (unpublished). The law precludes her from relitigating this ADTPA claim. *Hardy, supra*.

At screening, the Court must and does accept the pleaded facts as true. *Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004). Marshall and the dockets are clear about when things happened and what matters were

litigated. Her pleading as amended fails as a matter of law based on — limitations and preclusion. — The dismissal will therefore be with — prejudice because she cannot state a claim.

4. — Marshall's motion for temporary injunction, *Doc. 6*, is denied as moot.

So Ordered.

*D.P. Marshall Jr.*  
D.P. Marshall Jr.  
United States District Judge

*26 May 2022*



IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION

THERESA MARSHALL

PLAINTIFF

v.

No. 4:21-cv-1091-DPM

WELLS FARGO & COMPANY;  
WELLS FARGO BANK NA; and  
DEUTSCHE BANK NATIONAL  
TRUST COMPANY, as Trustee  
for Vendee Mortgage Trust 1993-1,  
United States Department of Veterans  
Administration's Guaranteed  
Pass-Through Certificate

DEFENDANTS

ORDER

Marshall moves for reconsideration of this Court's screening Order and Judgment under Rule 60(b) of the Federal Rules of Civil Procedure. The Court has revisited the issues.

First, since she moved for reconsideration, Marshall has filed a notice of appeal and a motion to proceed *in forma pauperis* on appeal. The notice of appeal, *Doc. 15*, will ripen into effectiveness when this Order addressing Marshall's Rule 60 motion is entered. FED. R. APP. P. 4(a)(4)(B)(i). And she may file a new notice or amend her notice if she chooses. FED. R. APP. P. 4(a)(4)(B)(ii). Her motion to appeal *in forma pauperis*, *Doc. 16*, is denied as moot. The Court has already granted her motion to proceed *in forma pauperis*. *Doc. 12*. She therefore does not

need this Court's approval to proceed *in forma pauperis* on appeal. FED. R. APP. P. 24(a)(3).

Second, the Court stands by its limitations analysis. Many of Marshall's claims are barred by the applicable statutes of limitation.

Third, Marshall is correct about preclusion arising from her 2018 bankruptcy and her 2010 case against Deutsche Bank. For various reasons, those adjudications were not on the merits. The Court's analysis on these issues was mistaken.

Finally, for the reason explained by several courts, this Court simply cannot provide the relief Marshall seeks. This Court can't undo what an Arkansas state court has done. There is a *Rooker-Feldman* bar. *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 284 (2005); *see also Skinner v. Switzer*, 562 U.S. 521, 531-32 (2011). All of Marshall's substantive claims center on her belief that the defendants in this case fraudulently pursued—and succeeded in—the foreclosure of her mortgage in 2015 and the sale of her home in 2018. The relief she seeks, if granted, would nullify a 2015 state court judgment in favor of Deutsche Bank in *Deutsche Bank National Trust Co. v. Marshall*, No. 60CV-12-3808 (Cir. Ct. Pulaski Cty. 9 Sep. 2015). That court concluded that Marshall was in default on her mortgage and that Deutsche Bank was entitled to a lien against the property that, if left unpaid, could be satisfied by public sale of the property. Her home was sold in due course, and the sale was approved by the state court.

After the 2015 state court order, Marshall fought hard for reversal. She asked for reconsideration twice, which was denied. She appealed to the Arkansas Supreme Court, but did not perfect her appeal and it was dismissed. She filed two separate bankruptcies (which were both dismissed). After the state court approved the September 2018 sale, she again filed a notice of appeal and three amended notices. She did not follow through though, and this appeal was dismissed. Now, Marshall asks this Court to decide the merits of her unperfected state appeals. She can only win if this Court explicitly or implicitly decides that the state court got her foreclosure proceedings wrong. This Court does not have jurisdiction to make that determination. *Skit Intern., Ltd. v. DAC Tech. of Ark., Inc.*, 487 F.3d 1154, 1156-57 (8th Cir. 2007).

Marshall's many cases indicate her unwavering conviction that the court proceedings involving her home were unfair. She has litigated her disagreements once in state court, twice in federal district court, and at least twice in bankruptcy court. Her remedy at this point is to appeal.

\* \* \*

The Court has reconsidered, but the result is the same: Marshall's claims are barred. Her motion to reinstate her case, *Doc. 14*, is therefore denied.

So Ordered.

D.P. Marshall Jr.  
D.P. Marshall Jr.  
United States District Judge

6e July 2022

**UNITED STATES BANKRUPTCY APPELLATE PANEL  
FOR THE EIGHTH CIRCUIT**

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No: 18-6025

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In re: Theresa Marshall

Debtor

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Theresa Marshall

Debtor - Appellant

v.

Wells Fargo Bank N.A.; Deutsche Bank National Trust Company; Educational Credit  
Management Corporation

Creditors - Appellees

Mark T. McCarty

Trustee - Appellee

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Appeal from U.S. Bankruptcy Court for the Eastern District of Arkansas - Little Rock  
(4:18-bk-12478)

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**JUDGMENT**

Appellant Theresa Marshall appeals the September 6, 2018 order of the bankruptcy court<sup>1</sup> denying the relief requested in the following pleadings: Emergency Motion for Recusal and the Emergency Addendum to Motion for Recusal; Emergency Objection to Hearings Set For August 30, 2018; Emergency Objections to Notice of Appearance and Request for Notice (docket nos. 96 and 97); Motion to Dismiss for Fraud on the Court; and Emergency Motion to Strike Order of July 16, 2018. For the reasons that follow, we dismiss the appeal.

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<sup>1</sup> The Honorable Richard D. Taylor, United States Bankruptcy Judge for the Eastern District of Arkansas, Little Rock Division.

This Panel has jurisdiction to hear appeals “from final judgments, orders, and decrees.” 28 U.S.C. §158(a)(1) and (b)(1). An order is considered final if “(1) [it] leaves the bankruptcy court nothing to do but execute the order, (2) delay in obtaining review would prevent the aggrieved party from obtaining effective relief, and (3) a later reversal on that issue would require recommencement of the entire proceeding.” *Nebraska v. Strong*, 293 B.R. 764, 767 (B.A.P. 8<sup>th</sup> Cir. 2003)(citing *First Nat’l Bank v. Allen*, 118 F.3d 1289, 1293 (8<sup>th</sup> Cir. 1997)).

The orders on which Appellant’s appeal is based are not final on the specific grounds set forth below. In general terms, none of the orders disposed of a concrete dispute or conclusively determined a material issue in the bankruptcy case.

1. Order denying Emergency Motion for Recusal (and its Addendum) – An order denying a motion to recuse is not final. *Moix-McNutt v. Coop (In re Moix-McNutt)*, 215 B.R. 405, 407-08 (B.A.P. 8<sup>th</sup> Cir. 1997).
2. Order overruling Emergency Objection to Hearings Set for August 30, 2018 – In her Objection, Appellant requested that the hearing set for certain motions be rescheduled. This is analogous to a motion for continuance. “Typically, a bankruptcy court order on a motion for continuance or a request for discovery is regarded as an interlocutory order that can be merged with the final order for appeal purposes.” *In re Miles*, 2005 WL 1981040, at \*4 (N.D. Tex. Aug. 17, 2005).
3. Orders overruling Objections to Notice of Appearance – Appellant asserted that neither Wells Fargo Bank nor Deutsche Bank authorized two attorneys from the law firm of Wilson & Associates to represent their interests in the bankruptcy case, and requested an order denying those attorneys permission to act on the banks’ behalf. An order entered in the midst of an ongoing bankruptcy proceeding is not appealable unless it finally resolves a discrete segment of the proceeding. *In re Kasden*, 141 F. 3d 1288, 1290 (8<sup>th</sup> Cir. 1998). Here, the orders overruling Appellant’s objection did not conclusively determine the banks’ claims in the bankruptcy case did not finally resolve

the merits of the controversy between the banks and the Appellant and therefore, are not final orders.

4. Order denying Motion to Dismiss for Fraud on the Court – Denial of a motion to dismiss, ordinarily, is the “antithesis” of a final order because, instead of terminating the case or any aspect of it, it allows the matter to proceed. *First Sec. Bank & Tr. Co. v. Vegt*, 511 B.R. 567, 576 (D.N.D. Iowa 2014).
5. Order denying Emergency Motion to Strike Order of July 16, 2018 – Appellant complained in this Emergency Motion that the attorney who prepared the July 16<sup>th</sup> order and a proof of claim filed a Notice of Appearance in the name of Wells Fargo Bank but was not authorized by the Bank to represent its interests. Appellant requested that both documents be stricken from the record. This is essentially the same relief requested in the Emergency Objection to Notice of Appearance and is denied on the ~~\*~~ same grounds (*i.e.*, that the order denying the relief did not conclusively determine a separable issue in the bankruptcy case).

Consequently, Appellant’s Notice of Appeal is dismissed.

September 27, 2018

Order Entered at the Direction of the Court:  
Clerk, U.S. Bankruptcy Appellate Panel, Eighth Circuit.

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/s/ Michael E. Gans

**IN THE UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF ARKANSAS  
LITTLE ROCK DIVISION**

**IN RE: THERESA MARSHALL, DEBTOR**

**CASE NO.: 4:18-bk-12478  
CHAPTER 13**

**ORDER**

Presently pending before the court are the pleadings outlined below.

- *Emergency Motion For Recusal* Filed by Theresa Marshall at docket entry 130.
- *Emergency Addendum to Motion For Recusal* Filed by Theresa Marshall at docket entry 139.
- *Motion to Quash Subpoena* Filed by Samuel High on behalf of Wells Fargo Bank, N.A. at docket entry 135.
- *Motion to Quash Subpoena* Filed by Jacob Post Fair on behalf of Educational Credit Management Corporation at docket entry 137.
- *Emergency Objection to Hearings Set For August 30, 2018* Filed by Theresa Marshall at docket entry 122.
- *Emergency Objection to Notice of Appearance and Request for Notice* Filed by Theresa Marshall at docket entry 96.
- *Emergency Objection to Notice of Appearance and Request for Notice* Filed by Theresa Marshall at docket entry 97.
- *Response to Emergency Objection of Notice(s) of Appearance and Emergency Motion to Strike Order of July 16, 2018* Filed by Samuel High on behalf of Creditor Wells Fargo Bank, N.A. at docket entry 108.
- *Motion to Dismiss for Fraud on the Court* Filed by Theresa Marshall at docket entry 58.
- *Emergency Motion to Strike Order of July 16, 2018* Filed by Theresa Marshall at docket entry 95.
- *Motion to Withdraw Certification about a Financial Management Course* Filed by Theresa Marshall at docket entry 121.

The court set the above defined pleadings for hearing on August 30, 2018. Theresa Marshall appeared *pro se*; Ainsley Skokos appeared on behalf of Mark T. McCarty, the Chapter 13 Standing Trustee; Samuel High appeared on behalf of Wells Fargo Bank, N.A. and Deutsche Bank National Trust Company; and Kimberly Wood Tucker appeared on behalf of Educational Credit Management Corporation. At the hearing, the court cumulatively considered the



testimony and evidence presented as to all pending matters. Based upon the findings of fact and conclusions of law stated in court and incorporated by reference herein pursuant to Federal Rules of Bankruptcy Procedure 7052 and 9014, the relief requested in the following pleadings is denied:

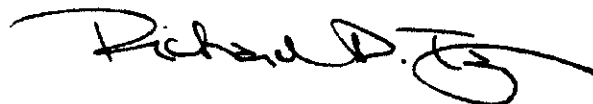
- *Emergency Motion For Recusal* Filed by Theresa Marshall at docket entry 130.
- *Emergency Addendum to Motion For Recusal* Filed by Theresa Marshall at docket entry 139.
- *Emergency Objection to Hearings Set For August 30, 2018* Filed by Theresa Marshall at docket entry 122.
- *Emergency Objection to Notice of Appearance and Request for Notice* Filed by Theresa Marshall at docket entry 96.
- *Emergency Objection to Notice of Appearance and Request for Notice* Filed by Theresa Marshall at docket entry 97.
- *Motion to Dismiss for Fraud on the Court* Filed by Theresa Marshall at docket entry 58.
- *Emergency Motion to Strike Order of July 16, 2018* Filed by Theresa Marshall at docket entry 95.

The relief requested in the following pleadings is granted:

- *Motion to Quash Subpoena* Filed by Samuel High on behalf of Wells Fargo Bank, N.A. at docket entry 135.
- *Motion to Quash Subpoena* Filed by Jacob Post Fair on behalf of Educational Credit Management Corporation at docket entry 137.
- *Motion to Withdraw Certification about a Financial Management Course* Filed by Theresa Marshall at docket entry 121.

IT IS SO ORDERED.

Dated this 6th day of September, 2018.



HONORABLE RICHARD D. TAYLOR  
UNITED STATES BANKRUPTCY JUDGE

**United States Court of Appeals  
FOR THE EIGHTH CIRCUIT**

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No. 11-1843

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Theresa Marshall,

Appellant,

v.

Deutsche Bank National Trust  
Company; Wells Fargo Home  
Mortgage, a division of Wells  
Fargo Bank, N.A.,

Appellees.

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\* Appeal from the United States  
\* District Court for the Eastern  
\* District of Arkansas.

\* [UNPUBLISHED]  
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Submitted: December 16, 2011

Filed: December 21, 2011

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Before MELLOY, BOWMAN, and SHEPHERD, Circuit Judges.

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PER CURIAM.

Theresa Marshall appeals from the order of the District Court<sup>1</sup> dismissing with prejudice her claims alleging that Deutsche Bank National Trust Company and Wells Fargo Home Mortgage violated the Fair Debt Collection Practices Act (FDCPA), 15

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<sup>1</sup>The Honorable Billy Roy Wilson, United States District Judge for the Eastern District of Arkansas.

U.S.C. §§ 1692–1692p, and Arkansas state law in connection with the foreclosure of a mortgage.

Following careful de novo review, we conclude that dismissal of the FDCPA claims was appropriate for the reasons discussed in the District Court's order. See Poehl v. Countrywide Home Loans, Inc., 528 F.3d 1093, 1096 (8th Cir. 2008) (standard of review); 15 U.S.C. § 1692a(6)(A) (noting that the term “debt collector” “does not include . . . any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor”); Perry v. Stewart Title Co., 756 F.2d 1197, 1208 (5th Cir. 1985) (“The legislative history of section 1692a(6) indicates conclusively that a debt collector does not include the consumer's creditors, a mortgage servicing company, or an assignee of a debt, as long as the debt was not in default at the time it was assigned.”); Adair v. Sherman, 230 F.3d 890, 895 (7th Cir. 2000) (“[T]he FDCPA is an improper vehicle for challenging the amount of a debt established by the bankruptcy court.”). As to the state-law claim, it appears that the District Court had intended to dismiss that claim without prejudice, and in fact the court did not fully dispose of the claim on the merits. Accordingly, we modify the judgment to reflect that the dismissal of the state-law claim is without prejudice, and we affirm the judgment as modified. See 28 U.S.C. § 1367(c)(3) (giving district courts discretion to decline supplemental jurisdiction where all original-jurisdiction claims have been dismissed). We also deny appellees' motion to strike the reply brief.

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IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
5th DIVISION

DEUTSCHE BANK NATIONAL TRUST COMPANY,  
AS TRUSTEE FOR VENDEE MORTGAGE TRUST 1993-1

PLAINTIFF

CASE NO.: 60CV-12-3808

vs.

THERESA MARSHALL

DEFENDANT

**MOTION FOR RECONSIDERATION OF PARTIAL SUMMARY JUDGMENT**  
**MOTION TO DISMISS SUMMARY JUDGMENT**  
**AND NEWLY DISCOVERED EVIDENCE**

Defendant, Theresa Marshall for her Motion for Reconsideration of Partial Summary  
Judgment granted to Plaintiff at Hearing on December 2, 2014 for the following reasons:

***FRCP Rule 56***

- I. Legal Ownership Of Defendant Marshall's Mortgage Is Still In Question
- II. Material Breach Of Contract
- III. Statue Of Limitation Has Expired
- IV. Newly Discovered Evidence and (I)

**I. Legal ownership of Defendant Marshall's Mortgage Is Still In Question**

***FRCP 26 (a)(1)(A) . . . party must, without awaiting a discovery request, provide. . . .***

***U.S. Bank v. Ibanez, 106794, U.S. Bank National Association v. Ibanez,***

***08-Misc-384283, and Wells Fargo Bank NA v. LaRae, 08-Misc-386755,***

***8th Circuit No. 11-1843 - Reply Brief filed 10/25/11 and pg, 28.***

1) Attached is a copy of letter received by Attorney Generals' office from Wells Fargo Home Mortgage dated April 1, 2004 in reply to Complaint made by Defendant, "Marshall". *(Exhibit I)*

2) Above mentioned letter is attached in an effort to further explain why Deutsche - formerly known as Bankers Trust Bank do not have legal standing to foreclose and/or *should not have been able to proceed in above mentioned Hearing.*

3) Which states in part: "On October 27, 1992, Ms. Marshall closed on a 30 year, fixed amortized, Veterans Administration (VA) mortgage loan with the first payment due on December 1, 1992.

4) Loan records indicate the VA transferred the servicing of Ms. Marshall's mortgage account to Banker's Trust Company of California, effective with February 1, 1993 mortgage installment.

5) "Banker's Trust Company of California subsequently transferred the servicing of Ms. Marshall's mortgage account to G.E. Capital Mortgage Services Inc.

6) "In October 2000, Wells Fargo Home Mortgage entered into agreement with GE Capital Mortgage Services to sub-service their loan.

7) Wells Fargo Home Mortgage began accepting payments and disbursing property taxes and hazard Insurance effective with the January 1, 2001 mortgage installment."

8) At above mentioned Hearing "Marshall" *on the record* explained the above mentioned facts and mentioned that the years that she had spent in banking that no *legal assignment* for the transfer of ownership of (Marshall's) note, deed, etc., had ever been legally transferred to Deutsche formerly known as Bankers Trust Company of California.

9) In Complaint filed with this court August 10, 2012 it is unclear if Deutsche is owner of Note or Trustee, was legally Assigned the Note - or somehow given opportunity to endorse in blank.

*Defendants' Answer to Complaint filed September 21, 2012 - Case No. 60CV-12-3808*

*Plaintiff's Response To Defendants' Motion To Stay Discovery filed December 7, 2010 - 60CV-12-3808 - (Exhibit II)*

*Plaintiff's Rule 26(a)(1) Disclosures filed October 14, 2010 - Case No. 10CV-00754 WRW*

10) Wells Fargo letter to Attorney Generals' office dated August 20, 2011 states that "The investor for this loan is Deutsche Bank, and their address is: 1761 East St. Andrew Place, Santa Ana CA 92705." *Defendants Answer To Complaint filed September 21, 2012 - (Exhibit III)*  
*Case No.- 60CV-12-3808*

11) Wells Fargo states also in above mentioned letter:

"The original Note is stored in a vault managed by the document custodian for the investor on the loan."

12) Marshall questions if Summary Judgment is not overturned if Wilson & Associate will end up with Defendant, "Marshall's home and/or if Wells Fargo has already sold "Marshall's" mortgage to an investor. *Re: No mortgage filing with credit entities since 2002.*

*Wells Fargo Letter of October 10, 2006 - Credit Reporting - (Exhibit IV)*

*Substitution Of Trustee recorded September 15, 2008 & May 18, 2010 - (Exhibit V, VI)*

13) Also, Wells Fargo was aware of "Marshall's" discharge eligibility in bankruptcy Yet, to date shows per "Marshall's" permanent records in a student loan database owing a student loan debt that was discharged in 1995 Bankruptcy in excess of \$30,000.

14) To date Deutsche has not had to produce the *original* Deed of Trust, Note, and, or Assignment to any court - *including this court*.

15) Marshall made payments to VA Vendee prior to being serviced by G.E. Capital. *Attorney General letter of April 1, 2004 - (Exhibit I)*  
*VA Vendee records should show per MERS Register - Government Program Started in 1992. (Exhibit VII)*

16) Substitution of Trustee, recorded by Wilson & Associate September 15, 2008 was signed by China Brown - who is a serial robo-signer. *(See #12 above) - (Exhibit VIII)*

## **II. Material Breach of Contract**

1) Wells Fargo allowed Marshall a Trial Modification from October 1, 2009 thru April 2, 2010.

2) Wells Fargo accepted all "trial modification payments from Marshall from October 1, 2009 thru April 1, 2010. *(Exhibit IX)*

3) Foreclosure proceedings were filed against Marshall on April 15, 2010.

a) Trial Period Plan - Terms and Conditions  
*(Complaint filed May 17, 2010 by "Marshall" - pg 43- Part of Exhibit H) - Exhibit IV*  
*(8th Circuit Court of Appeals Ruling filed December 21, 2011) - Exhibit V*

b) Cover letter dated September 4, 2009 states: (2nd paragraph): *If you qualify under the program requirements and comply with the terms of the Trial Period Plan, we will modify your mortgage loan and you can avoid foreclosure.*

*(Complaint - pg 39) - Part of Exhibit H*

*(Complaint filed May 17, 2010 - 60CV-10-2696 (No. 22, 23))*

*Letter dated March 31, 2010 to Ben Windust, Sr. Vice President Wells Fargo Home Mortgage  
Part of - Exhibit H*

c) Attorney High stated at above mentioned Hearing: That was not brought up in Marshall's pleadings, so Marshall could not bring into above mentioned Hearing, which is incorrect. *Defendant Response To Plaintiffs Reply To Amended Opposition To Motion For Summary Judgment filed February 27, 2014. (Pg. 9).*

**III. Statute of Limitation has ran as pleaded at above mention Hearing.**

1) Deutsche states in their Motion for Summary Judgment filed with this court December 27, 2013 that "Theresa Marshall, defaulted on the terms of the loan by failing to make the scheduled payments due May 1, 2007 and thereafter."

2) A.C.A. 18-49-101 - An action to foreclose or enforce a deed of trust must have been brought within the time period "prescribed by law for a suit on the debt or liability for the security of which they were given."

3) A.C.A. 18-49-101(a) - Arkansas has a five-year statute of limitation for written contracts, including notes.

4) A.C.A. 16-56-111 - An action to enforce a note would have needed to be brought within five years of default, as would the action to enforce deed of trust.

5) Attorney High stated: that was not brought up in Marshall's pleadings so Marshall cannot bring into above mentioned Hearing, which is incorrect. *Defendant Response To Plaintiffs Reply To Amended Opposition To Motion For Summary Judgment filed February 27, 2014. (Pg. 8).*



6) Statements made in Affidavit in Support of Motion For Summary Judgment by Alissa Doepp should also be made *void as to hearsay. Ark. R. Civ. P. 56(h)*  
*Violation of Best Evidence Rule. No evidence of documentation reviewed to make determination.*

7) Alissa Doepp is a robo-signer and has worn so many hats for the inappropriate, illegal actions of Deutsche/Wells Fargo Home Mortgage and Wilson & Associate. (*Defendant Response To Plaintiffs Reply To Amended Opposition To Motion For Summary Judgment filed January 23, 2014 - pg 8*)

8) Ms. Doepp states in her affidavit - (No 8) - that "Said Deed of Trust has been assigned to Bankers Trust Company of California, N.A., not in its individual capacity but *solely as trustee*, or it permitted successors and assigns, on behalf of Vendee Mortgage Trust 1993-1 herein by an Assignment of Deed of Trust recorded as Instrument No. 9313706."  
(Motion for Summary Judgment filed December 27, 2013 - Deutsche - Exhibit 2).

9) Ms. Doepp also states - (No 8) - "A true and correct copy of the *Assignment of Deed of Trust* is attached hereto and incorporated herein as Exhibit "C". - (*See Exhibit 1*)  
Deutsche Bank is formerly known as Bankers Trust Company of California, N.A."

#### IV. Newly Discovered Evidence:

##### *Exhibits I, IV, V, VI*

1) Further, Salvador Guterrez shows per August 11, 2005 and June 4, 2008 Affidavit of Mailing and Compliance with Statutory Notice, and proceeding Notices filings as "Marshall's current spouse. Marshall has never been married.

One would see Guterrez per Marshall's filings as a filing mistake with the exception that Guterrez filed a fire claim on August 31, 1999 against "Marshall."

This claim netted Guterrez \$18,838.28 in damages for a fire that was supposedly set by a minor child of Marshall. Marshall has no children.

*Case No. CV99-3410 filed August 31, 1999 - Exhibit VI*

2) For years above mentioned information showed per Marshall's record without her knowledge, and caused her many years of missed opportunity for *insurance, credit, etc.*

**THEREFORE**, I plead that this court review the above mentioned facts, void prior Partial Summary Judgment for Liability until an explanation is given to the court to why original Deed of Trust Note, Allonge, and all Assignments are being presented to this court as being *authentic* - the originals. *When clearly the original above mentioned documentations do not exist. Rule 56(f)(h)*

1) "Marshall" submitted Motion For An Order to Compel Discovery, with attachment Request For Production of Document filed with this court on November 14, 2012.

2) Motion was never heard by this court.

3) "Marshall" figured if former attorney Stephen Niswanger could not get below mentioned *assignment*, etc. in Discovery - What chance were there for her to get above mentioned information without the courts assistance. *Case No. 10CV-00754 - Motion To Stay Discovery filed Wells Fargo. - GRANTED - (Plaintiff's Response To Defendant's Motion To Stay Discovery filed December 7, 2010) - Exhibit VII*

4) Attorney High's letter of October 12, 2012 to "Marshall" threatening to get a Protection Order if I did not comply to his terms. - *Exhibit VIII*

### CONCLUSION

- 1) Deutsche Bank has "unclean hands" and should not get equitable relief for their bad faith, wrongdoing and unfair conduct.
- 2) Wells Fargo's acceptance of moneys from Marshall for above mentioned Trial Modification waives any alleged past due default.
- 3) The material Breach of Contract affords Marshall the immediate right to all remedies for breach of the entire contract.
- 4) Authenticated Promissory Note Missing from Plaintiffs' Summary Judgment Evidence.
- 5) Failure to Include Admissible Evidence of Amount Owed.
- 6) Failure to Disprove All Affirmative Defenses.
- 7) This back and forth litigation has needlessly cost "Marshall" fourteen years of her life, reputation, employment, opportunity to continue education, and a lot of time and money wasted.
- 8) Defendant "Marshall" request this Honorable Court to enter its *Judgment* against Plaintiffs "Deutsche" declaring the Mortgage, null and void; canceling the Mortgage of record; quieting title to the property owned by "Marshall" and against "Wells Fargo" and/or "Deutsche" and all persons claiming under Plaintiffs; and granting costs of this action and such other relief as the Court may deem proper.
- 9) As such, the issue of material facts warrants not only the denial of Plaintiffs' Motion for Summary Judgment, but also supports the entry of Summary Judgment in favor of the Defendant "Marshall" along with recoupment damages determined by this court or jury. *Maxwell v. Fairbanks Capitol 281 B.R. 101, Bkrcty. D. Mass 2002, Ark Rule 56 (g), Violation of Rule 9011 (b), 5 Year Statue of Limitation A.C.A. 16-56-111.*
- 10) Also, I plead that this court deem "Marshall's" 1995 Bankruptcy

*Res Judicata, Collateral Estoppel and place into Discharge Order.*

*Bankruptcy - 11 USC - Sec. 349 Effect of Dismissal Hecker vs. Nathanson*

Respectfully submitted,

*Theresa Marshall*  
Theresa Marshall, Defendant  
1408 Hendrix  
Little Rock, AR 72204  
501-666-3923

**CERTIFICATE OF SERVICE**

I, Theresa Marshall, hereby certify that on the 15th day of January, 2015 a copy of the foregoing  
**MOTION FOR RECONSIDERATION OF PARTIAL SUMMARY JUDGMENT  
MOTION TO DISMISS SUMMARY JUDGMENT  
AND NEWLY DISCOVERED EVIDENCE**

will be sent by regular mail to the following:

Samuel S. High  
Wilson & Associates, PLLC  
1521 Merrill Drive, Suite D-220  
Little Rock, Arkansas 72211

/s/Theresa Marshall  
Theresa Marshall, Defendant, pro-se  
1408 Hendrix Avenue  
Little Rock, AR 72204  
501-666-3923

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS  
5<sup>TH</sup> DIVISION

DEUTSCHE BANK NATIONAL TRUST COMPANY,  
AS TRUSTEE FOR VENDEE MORTGAGE TRUST 1993-1

PLAINTIFF

v.

CASE NO. 60CV-12-3808

THERESA MARSHALL

DEFENDANTS

**ORDER FOR PARTIAL SUMMARY JUDGMENT**

On December 2, 2014, this matter came before the Court on Plaintiff's first and second Motion(s) for Summary Judgment. Plaintiff appeared by and through its attorney, Sammy High. Defendant Theresa Marshall, appeared, pro se. This Court, being well and sufficiently advised, doth hereby FIND, ORDER and ADJUDGE, as follows:

1. On August 10, 2012, Plaintiff filed a Complaint for foreclosure.
2. Before this Court are Plaintiffs Motions for Summary Judgment. This Court finds that Plaintiff has met the prima facie burden required under Ark. R. Civ. P. 56, thus requiring that Defendant Marshall meet "proof with proof" in order to avoid the award of Summary Judgment in Plaintiff's favor.
3. Except as otherwise set forth herein, Defendant has failed to meet "proof with proof" or otherwise present any genuine, material disputes of fact, sufficient to preclude summary judgment in part in favor of Plaintiff.
4. On October 27, 1992, Theresa Marshall executed in favor of and delivered to Secretary of Veterans Affairs, an Officer of the United States of America a Deed of Trust Note in the principal amount of \$38,550.00, with principal and interest payable as set forth therein. The Note requires monthly payments of principal of principal and interest continuing until the indebtedness is fully paid.

5. Contemporaneously with the execution of the note and to secure its payment, Theresa Marshall executed in favor of and delivered to Secretary of Veterans Affairs, an Officer of the United States of America a Deed of Trust. The deed of trust was duly acknowledged and filed for record with the Circuit Clerk and Ex-Officio Recorder for Pulaski County, Arkansas on October 28, 1992, as Instrument No. 92 69312.

6. The deed of trust contains a waiver of all right of redemption and provides that if there is a default, the lender has a right to declare the entire unpaid balance of the debt, plus interest thereon, to be immediately due and payable. The deed of trust and the note further provide for a collection of attorney's fees, title expenses, and costs upon default.

7. On February 25, 1993, the Note was endorsed by the Department of Veterans Affairs Regional Office, Little Rock, Arkansas, on behalf of the Secretary of Veteran Affairs, pursuant to the authority granted under 38 CFR 36.4342, as follows: "Pay to the Order of Bankers Trust Company of California, N.A., as Trustee for Vendee Mortgage Trust 1993-1, without recourse, except as provided in a Loan Sale Agreement Dated February 1, 1993." Deutsche Bank is formerly known as Bankers Trust Company of California.

8. The Note was subsequently endorsed in blank, by Deutsche Bank, formerly known as Bankers Trust Company of California, N.A., as Trustee for Vendee Mortgage Trust 1993-1, by Wells Fargo, its Attorney in Fact, as reflected by the Allonge for the Purpose of Endorsement, and it is currently held by Plaintiff.

9. The deed of trust was assigned to Bankers Trust Company of California, N.A., not in its individual capacity but solely trustee, or its permitted successors and

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assigns, on behalf of Vendee Mortgage Trust 1993-1, herein by assignment recorded as Instrument No. 9313706. As aforementioned, Deutsche Bank is formerly known as Bankers Trust Company of California.

10. The original Deed of Trust Note, with the relevant endorsement, was provided to Plaintiff's counsel, who offered Defendant Marshall the opportunity to view said Note. Prior to the date of this hearing, Defendant Marshall did not take the opportunity to view the Note.

11. At the hearing in question, Plaintiff, through counsel, presented the original Deed of Trust Note, with the endorsement in question, to this Court and in the presence of Defendant Marshall, who viewed the same in the presence of Plaintiff's counsel and this Court.

12. There is no genuine dispute of the fact that Plaintiff is the holder of the interest in question, and thus the real party in interest, with standing to enforce the provisions relevant to this action.

13. There is no genuine dispute that Defendant Marshall is in default on the loan in question, and that absent a cure of this default, Plaintiff shall be entitled to a final order in the form of a Decree of Foreclosure, along with the relief, in full or in part, requested in its Complaint.

14. For the reasons set forth herein and in Plaintiff's Motion(s), Summary Judgment is hereby granted, in part, pursuant to Ark. R. Civ. P. 56.

15. Defendant has raised fact issues with regard to payments allegedly made on the loan; consequently, there remains an issue to be determined by this Court. Specifically,

that issue pertains to the specific amount owed on the loan and thus the amount of the judgment to which Plaintiff is entitled.

16. An evidentiary hearing shall be set, solely for the purpose of determining the amount owed on the loan and the proper amount of judgment, because there remain fact issues to be decided with regard to said amount. The Court retains full jurisdiction of this matter in that regard; consequently, this Order is for Partial Summary Judgment, and this Order is not a final, appealable Order.

17. Except for the determination to be made by the Court after an evidentiary hearing, as set forth above, Plaintiff is otherwise awarded Summary Judgment, pursuant to Ark. R. Civ. P. 56, on all remaining issues because with regard to the issue of liability there is no genuine dispute of material fact, and Plaintiff is entitled to judgment as a matter of law.

IT IS SO ORDERED

  
Judge Wendell L. Griffen

1-1-15  
Date

Prepared by:

/s/Samuel S. High  
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