

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals
For the Seventh Circuit

Chicago, Illinois 60604

Submitted October 16, 2023*

Decided October 17, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

No. 22-3261

DEBRA A. CHARLES,
Plaintiff-Appellant,

Appeal from the
United States District
Court for the Southern
District of Illinois.

v.

ANNA-JONESBORO
NATIONAL BANK, et al.,

Defendants-Appellees.

No. 22-CV-201-SMY

Staci M. Yandle,

Judge.

ORDER

Debra Charles appeals the district court's dismissal of her second amended complaint against three banks, several bank employees, and an attorney for failing to state a claim upon which relief can be granted. Because one of Charles's claims is barred

We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

No. 22-3261

Page 2

by the *Rooker-Feldman* doctrine, we modify the judgment of the district court to reflect that it is dismissed for lack of subject matter jurisdiction. In all other respects, we affirm.0

Background

Charles and her late husband operated several businesses and owned properties in Anna and Jonesboro, Illinois. They signed a series of promissory notes from 2003 to 2013 with Anna-Jonesboro National Bank (A-J Bank) and First StateBank of Olmsted (Olmsted Bank). The Charleses filed for Chapter 11 Bankruptcy in 2014 and submitted a schedule listing their assets, which included many businesses and properties. They did

not, however, list any legal claim as an asset. The bankruptcy court subsequently converted the bankruptcy petition to Chapter 7, entered an order of discharge in June 2016, and closed the case with a final decree in September 2017. Five years later, Charles sued A-J Bank, Olmsted Bank, First State Bank of Dongola (Dongola Bank), and several of their employees and officers. In her first amended complaint, Charles alleged that A-J Bank and Olmsted Bank breached their fiduciary duty and committed common-law fraud by altering some promissory notes after they were signed, causing her to file for bankruptcy. As to Dongola Bank, she argued it fraudulently filed a quiet title action against one of her properties after her bankruptcy. The district court dismissed the complaint without prejudice, concluding that Charles was not the real party in interest and so lacked standing to pursue the claims because they remained assets of the bankruptcy estate. It also concluded that the claims about the origination of the notes, which occurred from 2003 to 2013, were filed beyond the (at most) five-year statute of limitations and that the complaint failed to comply with Rules 8(a) and 9(b) of the Federal Rules of Civil Procedure.

Charles filed a second amended complaint, repeating many of her claims and adding more parties. This

time, however, Charles cited numerous criminal statutes as the basis for her claims. Most of Charles's claims cited the statute criminalizing bank fraud, 18 U.S.C. § 1344. But she also relied on criminal statutes relating to conspiracy, false statements, embezzlement, and obstruction of justice, as well as a provision of the Uniform Code of Military Justice. The defendants moved to dismiss the complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure. The district court granted the motion and dismissed the complaint with prejudice. It concluded that none of the statutes cited by Charles provided a private right of action and that it would be futile to allow Charles to amend her complaint again.

Charles appeals.

No. 22-3261

Page 3

Analysis

We review a dismissal under Rule 12(b)(6) *de novo*, accepting all well-pleaded facts as true and viewing them in the light most favorable to Charles. *Peterson v. Wexford Health Sources, Inc.*, 986 F.3d 746, 751 (7th Cir. 2021). To survive a Rule 12(b)(6) motion to dismiss, a plaintiff must provide “a short and plain statement” showing she is entitled to relief. FED. R. CIV. P. 8(a)(2).

Charles first argues that the criminal statutes she relies on create private rights of action. We disagree. Only Congress can create a private right of action to

enforce federal law. *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001). Here, the district court correctly concluded that the cited statutes do not expressly provide for a private right of action, and we cannot impliedly create one because the text of the statutes does not demonstrate that Congress intended to create a private right and remedy. *See Ind. Prot. and Advoc. Servs. v. Ind. Fam. and Soc. Servs. Admin.*, 603 F.3d 365, 375 (7th Cir. 2010) (en banc). Indeed, it is rare that courts imply a private right of action into criminal statutes because they are usually for the benefit of the general public, not a particular class. *Chrysler Corp. v. Brown*, 441 U.S. 281, 316 (1979); *Cannon v. Univ. of Chi.*, 441 U.S. 677, 690–93 (1979).

Next, Charles argues that the district court should not have dismissed her claims of common-law fraud, tortious interference, breach of fiduciary duty, and breach of contract. While the district court addressed these claims in its order dismissing the first amended complaint, it did not do so in the order dismissing the second amended complaint, perhaps because it could no longer discern them. To the extent Charles's second amended complaint does court's rationale when it dismissed the first amended complaint that Charles was not the real party in interest. *See* FED. R. CIV. P. 17(a)(1). The tortious conduct alleged in these claims occurred before Charles and her husband filed for bankruptcy in 2014, at which time any legal claims became

property of the bankruptcy estate and could only be prosecuted by the trustee. See 11 U.S.C. § 541 (a)(1); *Biesek v. Soo Line R. Co.*, 440 F.3d 410, 413–14 (7th Cir. 2006). Charles counters that she has standing to bring these claims because they were abandoned by the trustee and therefore reverted to her. See 11 U.S.C. § 554; *Biesek*, 440 F.3d at 413–14. She advances contradictory arguments on this point, however, and both lack merit. On the one hand, Charles says that it was impossible for her to know she possessed the claims because the banks fraudulently concealed them. But that does not change the fact that the claims would have belonged to the bankruptcy estate.

No. 22-3261

Page 4

because the transactions out of which they arose occurred before the bankruptcy petition. *In re Polis*, 217 F.3d 899, 902 (7th Cir. 2000). On the other hand, Charles says that she told the trustee about the claims, and therefore they were scheduled and abandoned. But mere informal disclosure of legal claims to a trustee is ineffective to schedule them. *Morlan v. Universal Guar. Life Ins. Co.*, 298 F.3d 609, 618 (7th Cir. 2002). The claims were never scheduled, so they were never abandoned and continue to belong to the bankruptcy estate. *Id.*; 11 U.S.C. § 554(c)–(d). Charles also argues that her fraud claim against Dongola Bank related to its quiet title action is timely because it arose after the bankruptcy case and was brought within the five-

year statute of limitations. See 735 ILCS 5/13-205. But this claim is barred under the *Rooker-Feldman* doctrine, which prevents a person who lost in state court from asking a lower federal court to review and reject the state-court judgment that is the source of her injury. See *Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923); *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983). The appellees and the district court failed to raise this issue, but it is one pertaining to subject matter jurisdiction, so we raise it sua sponte. *Crawford v. Countrywide Home Loans, Inc.*, 647 F.3d 642, 646 (7th Cir. 2011).

Here, a state court already has considered and decided the issue of who owns the relevant property. Charles takes issue with this decision, arguing that she had a right of first refusal on the property which Dongola Bank violated by secretly filing a quiet title action. But it is the state-court judgment quieting title, not Dongola Bank's filing of the suit, that is the source of Charles's injury. Whether the fraud claim is intended as a belated defense or as an attack on the judgment itself, to declare the quiet title action wrongful or invalid would directly upset the state-court judgment. See, e.g., *Crawford*, 647 F.3d at 646–47. Accordingly, the district court lacked subject matter jurisdiction to consider this claim.

Throughout her brief, Charles also argues that the dismissal of her complaint without discovery or a hearing violates her due process rights. This argument is without merit. A motion to dismiss seeks only to test the legal sufficiency of a complaint. *Gibson v. City of Chi.*, 910 F.2d 1510, 1520 (7th Cir. 1990). At this stage, all well-pleaded facts in Charles's complaint are taken as true, so there is not yet any reason to hold an evidentiary hearing or begin discovery. *See id.* at 1520–21.

Finally, the district court did not err when it concluded that permitting Charles to amend her

complaint would be futile. Charles has not identified any way in which she could amend her complaint to address the deficiencies identified by the district court. Nor could she. Charles does not have a private right of action under

No. 22-3261

Page 5

the cited criminal statutes. And any attempt to state claims relating to events before the bankruptcy would be futile because they would belong to the bankruptcy estate.

Accordingly, the judgment of the district court is modified to reflect that the dismissal of the claim against Dongola Bank is for lack of subject matter jurisdiction, and is, as modified, affirmed.

Case 3:22-cv-00201-SMY Document 115-3 Filed
11/20/23 Page 1 of 1 Page ID #2286 Case: 22-3261
Document: 00714293968 Filed: 11/20/2023 Pages: 1

**United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604**

November 9, 2023

Before

FRANK H. EASTERBROOK, *Circuit Judge*
AMY J. ST. EVE, *Circuit Judge*
THOMAS L. KIRSCH II, *Circuit Judge*

DEBRA A. CHARLES,

Plaintiff-Appellant,

v.

ANNA-JONESBORO
NATIONAL BANK, *et al.*,
Defendants-Appellees

Appeal from the
United States District
Court for the Southern
District of Illinois

No. 22-CV-201-SMY

Staci M. Yandle,
Judge.

ORDER

Plaintiff-Appellant filed a document on October 31, 2023, that we construe as a petition for rehearing. All the judges on the panel have voted to deny rehearing. The petition for rehearing is therefore DENIED.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

DEBRA A. CHARLES,)

)

Plaintiff,)

vs.)

) **Case No. 22-cv-201-SMY**

A-J NATIONAL BANK (ANNA)

-JONESBORO, IL), DAVID)

GOULD (formerly AJNB)

President,) SCOTT WILSON)

(AJNB President), SCOTT E.)

WILKINS (formerly AJNB)

President and FNBJ)

President, Anna-Jonesboro,)

IL,DAN GRAHAM (formerly)

FNBJ)VicePresident of)

Anna-Jonesboro, IL),)

AMANDA BARNHART)

(formerly AJNBAssistant)

Vice President), FIRST)

STATE)BANK OF OLMSTED,))

BRUCE MOSBY(FSBO)

President), STEVE WATERS)

(FSBO Vice President), LEE)

ESSEX (FSBO Vice President)

FIRST STATE BANK OF)

DONGOLA (Dongola, IL) and)

NEAL NEEDHAM (FSBD)

President).)

)

Defendants.)

MEMORANDUM AND ORDER

YANDLE, District Judge:

Plaintiff Debra A. Charles filed a *pro se* Amended Complaint against Defendants A-J National Bank (Anna-Jonesboro, IL), David Gould (formerly AJNB President), Scott Wilson (AJNB President), Scott E. Wilkins (formerly AJNB President and FNBJ President, Anna-Jonesboro, IL), Dan Graham (formerly FNBJ Vice President of Anna-Jonesboro, IL), Amanda Barnhart (formerly AJNB Assistant Vice President), First State Bank of Olmsted, Bruce Mosby (FSBO President), Steve Waters (FSBO Vice President), Lee Essex (FSBO Vice President), First State Bank of Dongola (Dongola, IL), and Neal Needham (FSBD President) (Doc. 8).

Page 2 of 5 Page ID #1800

The case is now before the Court for consideration of three separate motions to dismiss filed by Defendants David Gould, Amanda Barnhart, Dan Graham, Scott Wilson and Scott E. Wilkins (Doc. 29), Defendant Anna-Jonesboro National Bank (Doc. 31), and Defendants First State Bank of Olmstead, Bruce Mosby, Steve Waters, and Lee Essex (Doc. 44). Plaintiff responded in opposition to the motions (Docs. 38-41, 50).

For the following reasons, the motions to dismiss are **GRANTED**.

Background

According to the Amended Complaint, Plaintiff and her now-deceased husband ran businesses and

owned properties for which they signed the following promissory notes from 2003 to 2013:

- (1) "AJNB Note # 122255" which involved an alleged "expedited closing of 6-27-13" (Doc. 8, ¶ 13);
- (2) "AJNB note # 121309" that was allegedly filed "on 10-22-12" (Doc. 8, ¶ 32);
- (3) "Note # 119704" dated "9-29-11" (Doc. 8, ¶ 52);
- (4) "[N]ote # 31492 for \$300,000 dated 12-30-03" (Doc. 8, ¶ 55);
- (5) "AJNB Note # 120142 for \$170,075 dated 1-13-12" (Doc. 8, ¶ 56);
- (6) AJNB Note # 120523 dated 4-25-12" (Doc. 8, ¶ 57);
- (7) "AJNB Note # 121053 dated 8-13-12" (Doc. 8, ¶ 58);
- (8) "AJNB Participatory Note # 96774" that is later referenced with date "7-9-09" (Doc. 8, ¶¶ 63, 67);
- (9) "Note #31482 release late on 7-12-13" (Doc. 8, ¶ 65).

Although it is difficult to decipher the Amended Complaint, Plaintiff generally claims fraud in the origination of the referenced promissory notes. She alleges that the banks which loaned money her and her husband for their businesses and properties did so improperly and also acted improperly with respect to the receivership or sale of Plaintiff's properties in 2018 and 2019 (Doc. 8, ¶¶ 92, 106-109).

Discussion

Significantly, Plaintiff (and her now-deceased husband) filed for Chapter 11 Bankruptcy in 2014, listing many of the properties referenced in Plaintiff's Complaint.¹ They submitted a Schedule B-Personal Property filing, which required them to identify "other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the Debtor, and rights to set off claims" (Doc. 30-2, p. 3). In response, Plaintiff checked the column for "NONE" (Doc. 30-2, p. 3). During the pendency of the bankruptcy proceedings, Plaintiff did not amend the schedule or notify the bankruptcy trustee or judge about her claims against the defendants herein (Doc. 32-5). The bankruptcy judge entered an Order of Discharge in January 2016 (Doc. 32-4), and the bankruptcy case was closed with the entry of a Final Decree in September 2017.

When Plaintiff filed for bankruptcy, her "legal or equitable interests" and property became assets of the bankruptcy estate. 11 U.S.C. § 541(a)(1). "Legal or equitable interests" include legal claims that can be prosecuted for the benefit of the estate. *Cable v. Ivy Tech State College*, 200 F.3d 467, 472-73 (7th Cir. 1999). That is, any cause of action held by Plaintiff on the petition date became "'property' of the debtor and hence of the debtor's estate in bankruptcy." *In re Polis*, 217 F.3d 899, 902 (7th Cir. 2000). Bankruptcy trustees hold the exclusive right to pursue pre-petition causes of action. *Cable*, 200 F.3d at 472 ("in liquidation proceedings, *only* the trustee has standing to prosecute or defend a claim belonging to the estate") (emphasis in original). A bankruptcy discharge does not revert standing to bring such causes of action to a plaintiff. While a trustee

may “abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate” under 11 U.S.C. § 554(a), an unscheduled asset

The Court takes judicial notice of Plaintiff's bankruptcy filing, Federal Bankruptcy Case No. 14-40421-wva *In RE: Ronald L. Charles and Debra A. Charles. Spaine v. Cmty. Contacts, Inc.*, 756 F.3d 542, 545 (7th Cir. 2014) (permitting courts to take judicial notice of publicly available records of court proceedings).

Page 4 of 5 Page ID #1802

is not abandoned by a trustee to a debtor when the case is closed. *Morlan v. Universal Guar. Life Ins. Co.*, 298 F.3d 609, 618 (7th Cir. 2002). “Property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate.” 11 U.S.C. § 554(a); *see also*, *Id.* Plaintiff's knowledge of such claims is irrelevant with respect to whether such claims remain part of the estate. *In re Polis*, 217 F.3d at 902.

Although Plaintiff allegedly had claims against the present defendants for fraud in the origination of her promissory notes between 2003 and 2013, she failed to disclose them in her bankruptcy filing and failed to amend her bankruptcy petition to include the claims in this lawsuit. The claims remained unscheduled, and the bankruptcy trustee did not abandon its claim to this lawsuit. 11 U.S.C. § 554(a). Consequently, Plaintiff has no standing to proceed on the claims asserted herein – they remain assets of the bankruptcy estate.

Moreover, at least some of Plaintiff's claims are time barred. Although "dismissing a complaint as untimely at the pleading stage is an unusual step," dismissal is appropriate "when the plaintiff pleads himself out of court by alleging facts sufficient to establish the tardiness of a complaint." *Cancer Foundation, Inc. v. Cerberus Capital Management, LP*, 559 F.3d 671, 674 (7th Cir. 2009). Here, Plaintiff asserts claims sounding in common law fraud, accounting, fraudulent concealment, and breach of fiduciary duty arising from the origination of promissory notes. Under Illinois law the longest statute of limitations applicable to these claims is five years: 735 ILCS 5/13-205 (five years statute of limitations for common law fraud); 735 ILCS 5/13-215 (five years for fraudulent concealment); 735 ILCS 5/13-205 (five years for fiduciary duty claims); 735 ILCS 5/13-205 (catch-all statute of limitations for "all civil actions not otherwise provided for"). The promissory notes Plaintiff complains of were issued between 2003 and 2013. As such, she had until 2018 or 2019 at the latest to bring this lawsuit which she filed in 2022.

For these reasons, Plaintiff's Amended Complaint must be dismissed. However, she will be given one last opportunity to amend her Complaint to state colorable claims (while most of Plaintiff's allegations involve claims that are time-barred or remain part of the bankruptcy estate, she also alleges post-bankruptcy conduct in 2018-2019 by Defendants regarding the receivership or sale of her former

properties that may be actionable if pleaded properly).²

Conclusion

Defendants' motions to dismiss (Docs. 29, 31, 44) are **GRANTED**; Plaintiff's Amended Complaint is **DISMISSED without prejudice**. Plaintiff is granted leave to file a Second Amended Complaint on or before August 18, 2022.³

IT IS SO ORDERED.

DATED: July 19, 2022



STACI M. YANDLE
United States District Judge

The Amended Complaint as drafted fails to meet pleading standards and does not adequately allege actionable conduct. Plaintiff's Amended Complaint is replete with confusing sentences like, "Exhibit L33 dated 6-27-13 lists AJNB Note #122255 balance as \$3,672,649.70 and which does not match the 7-11-13 Exhibit Q balance which lists Note #122255 (Ex L33) payout balance as \$3,647,870.43" (Doc. 8, ¶ 30). It also includes, with little context, over 1,000 pages of exhibits regarding the numerous promissory notes and mortgages that Plaintiff alleges were unlawful. Dismissal pursuant to Rule 8(a) of the Federal Rules of Civil Procedure is appropriate when "a complaint that is prolix and/or confusing makes it difficult for the defendant to file a responsive pleading and makes it difficult for the trial court to conduct orderly litigation." *Vicom, Inc. v. Harbridge Merchant Services, Inc.*, 20 F.3d 771, 775-776 (7th Cir. 1994).

Additionally, under *FRCP* 9(b), a party pleading fraud must also “state with particularity the circumstances constituting fraud.” Fed. R. Civ. P. 9(b). This “ordinarily requires describing the ‘who, what, when, where, and how’ of the fraud, although the exact level of particularity that is required will necessarily differ based on the facts of the case.” *AnchorBank, FSB v. Hofer*, 649 F.3d, 610, 615 (7th Cir. 2011). Plaintiff’s Amended Complaint does not adequately plead the circumstances of the fraud, particularly how the Defendants’ conduct was fraudulent. Instead, it merely repeats conclusory allegations such as, “Creation of fraudulent AJNB Promissory Note . . . blocked all Plaintiffs restructure ability” (Doc. 8, ¶ 59). Similarly, Plaintiff alleges, in conclusory fashion, collusion as evidenced by, “FSBO colluding with AJNB, fraudulently created multiples notes”(Doc. 8, ¶ 77). It is unclear what she claims was fraudulent about these notes (e.g., the sums, the dates), how Defendants defrauded her by using these notes, and what damages she suffered as a result of the allegedly fraudulent conduct. These pleading deficiencies must be corrected if Plaintiff chooses to file a Second Amended Complaint.

If Plaintiff fails to file a Second Amended Complaint within the allotted time or consistent with the instructions set forth in this Order, the case will be dismissed with prejudice for failure to state a claim for relief and failure to comply with a court order.

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

DEBRA A. CHARLES,

Plaintiff,

vs.

)
)
)
)
)
) **Case No. 22-cv-201-SMY**

**A-J NATIONAL BANK (ANNA)
-JONESBORO, IL), DAVID
GOULD (formerly AJNB
President,) SCOTT WILSON)
(AJNB President), SCOTT E.)
WILKINS (formerly AJNB)
President and FNBJ)
President, Anna-Jonesboro,)
IL,DAN GRAHAM (formerly)
FNBJ)VicePresident of)
Anna-Jonesboro, IL),)
AMANDA BARNHART)
(formerly AJNBAssistant)
Vice President), FIRST)
STATE)BANK OF OLMSTED,)
BRUCE MOSBY(FSBO)
President), STEVE WATERS)
(FSBO Vice President), LEE)
ESSEX (FSBO Vice President)
FIRST STATE BANK OF)
DONGOLA (Dongola, IL) and)
NEAL NEEDHAM (FSBD)
President).)**

Defendants.

MEMORANDUM AND ORDER

YANDLE, District Judge:

Plaintiff Debra A. Charles filed a *pro se* Second Amended Complaint against Defendants A-J National Bank (Anna-Jonesboro, IL), David Gould (formerly AJNB President), Scott Wilson (AJNB President), Scott E. Wilkins (formerly AJNB President and FNBJ President, Anna-Jonesboro, IL), Dan Graham (formerly FNBJ Vice President of Anna-Jonesboro, IL), Amanda Barnhart (formerly AJNB Assistant Vice President), First State Bank of Olmsted, Bruce Mosby (FSBO President), Steve Waters (FSBO Vice President), Lee Essex (FSBO Vice President), First

Page 2 of 4

Page ID #2229

State Bank of Dongola (Dongola, IL), and Neal Needham (FSBD President), and attorney John R. Schneider, Johnson, Schneider & Ferrell (Doc. 56).

The case is now before the Court for consideration of motions to dismiss filed by Defendant First State Bank of Dongola (Doc.61), Defendants David Gould, Amanda Barnhart, Dan Graham, Scott Wilson and Scott E. Wilkins (Doc. 65), Defendant Anna-Jonesboro National Bank (Doc. 67), and Defendants First State Bank of Olmstead, Bruce Mosby, Steve Waters, and Lee Essex (Doc. 72). Plaintiff responded in opposition to the motions (Docs. 75-76, 78-79, 92), and also filed a motion for summary judgment and motion for recusal. (Docs. 80-81).

During the pendency of the aforementioned motions, Plaintiff filed a motion seeking an extension of time to serve an additional defendant, the law firm of Johnson, Schneider & Ferrell (Doc. 84), a motion for court ordered summons and service on the same (Doc. 86), and a separate motion for a permanent restraining order preliminary injunction (Doc. 87). For the following reasons, the motions to dismiss are **GRANTED** and Plaintiff's various motions (Docs. 80, 81, 84, 86) are **TERMINATED** as **MOOT**. Plaintiff's Motion for a Temporary Restraining Order (Doc. 87) is **DENIED**.

Before the defendants herein were served, Plaintiff filed an Amended Complaint alleging fraud with respect to the origination and servicing of various promissory notes (Doc. 8). The Court dismissed the Amended Complaint without prejudice and advised Plaintiff as follows: "(Plaintiff) will be given one last opportunity to amend her Complaint to state colorable claims (while most of Plaintiff's allegations involve claims that are time-barred or remain part of the bankruptcy estate, she also alleges post-bankruptcy conduct in 2018-2019 by Defendants regarding the receivership or sale of her former properties that may be actionable if pleaded properly)" (Doc. 55).

Under Federal Rule of Civil Procedure 12(b)(6), Plaintiff must provide "a short and plain statement"

showing that she is entitled to relief. Fed. R. Civ. P. 8(a)(2). Although a Complaint need not contain “detailed factual allegations,... a formulaic recitation of the elements of a cause of action will not do.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Instead, Plaintiff must provide “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570.

A Complaint fails to state a plausible claim “where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct.” *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1950 (2009). Additionally, to the extent Plaintiff alleges fraud or mistake by Defendants, she “must state with particularity the circumstances constituting fraud or mistake.” Fed. R. Civ. P. 9(b).

The Second Amended Complaint

In the Second Amended Complaint, Plaintiff attempts to assert certain claims by invoking criminal statutes: in Courts 1, 5, 7, and 9, she seeks damages for Defendants’ alleged violation of 18 U.S.C. §1344 (bank fraud); in Count 6, she seeks damages for Defendants’ alleged violation of 18 U.S.C. § 1519 (destruction, alternation, or falsification of records in federal investigations and bankruptcy), and in Court 8, she alleges a conspiracy pursuant to 18 U.S.C. § 371. These claims are all subject to dismissal as no private right of action exists under these statutes.

The remainder of the Second Amended Complaint also fails to state plausible, cognizable claims, and is also subject to dismissal. Count 2 raises arguments regarding whether Plaintiff's bankruptcy filing preempted her causes of action. Plaintiff cites two bankruptcy statutes, 11 U.S.C. § 554(a) and 523(a)(2)(A), which do not confer a right of action, but rather set forth the circumstances under which discharges are granted. Court 3 references various statutes of limitation but fails to assert a cause of action. In Court 4, Plaintiff includes factual allegations that attorney John R. Schneider committed a series of improprieties with her accounts, including bidding against Plaintiff's son on acres of estate property and preparing an improper warranty deed (Doc. 56, p. 17). However, she cites a number of criminal and civil statutes that do not confer a private cause of action. Finally, Court 10 includes additional arguments and improperly pleads criminal statutes (10 U.S.C. § 921 and 18 U.S.C. § 1503).

Conclusion

For the foregoing reasons, Defendants' motions to dismiss (Docs. 61, 65, 67, 72) are **GRANTED**; Plaintiff's Second Amended Complaint is **DISMISSED** with **PREJUDICE**. Plaintiff's Motion for Temporary Restraining Order (Doc. 87) is **DENIED**; and Plaintiff's Motions for Summary Judgment and Recusal (Docs. 80, 81), Motion for an Extension of Time to Serve Defendant, and Motion for Court Ordered Summons and Service on same (Docs. 84, 86) are **TERMINATED** as **MOOT**.

App. 23

The Clerk of Court is **DIRECTED** to enter judgment accordingly and to close this case.

IT IS SO ORDERED.

DATED: November 28, 2022

A handwritten signature in cursive script, reading "Staci M. Yandle", is written over a circular, embossed seal. The seal appears to be the official seal of the United States District Court for the District of Columbia, though the details are faint.

STACI M. YANDLE
United States District Judge

App. 24

Case 14-40421-wva

Doc 267 Filed 01/12/24

Page 1 of 1

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

DEBRA CHARLES

vs

CASE NO: 14-40421

CHAPTER: 7

ANNA-JONESBORO NATIONAL BANK

DATE: January 12, 2024

PLACE: Benton

PRESENT: Honorable William V. Altenberger, US
Bankruptcy Judge

COUNCIL FOR PLAINTIFF: Pro Se Appears

COUNCIL FOR DEFENDANT: John Schneider Appears

PROCEEDINGS: Motion to Reopen Chapter 7 Case
to file Adversary Proceeding Complaint and Request
to Waive the Filing Fee with Objection

MINUTES OF COURT: Case is called for hearing on
the trustee's Motion to Reopen Chapter 7 Case to file
Adversary Proceeding Complaint and Request to
Waive the Filing Fee with Objection filed by Anna-
Jonesboro National Bank. Trustee Dana Frazier
appears. Debra Charles makes an oral Motion to
Continue the Hearing. The oral Motion is Denied.

Pursuant to the statements made in open court, the Motion to Reopen Chapter 7 Case to file Adversary Proceeding Complaint and Request to Waive the Filing Fee is Denied and the Objection is moot.

Dean Lugge

Clerk of Bankruptcy Court

By: /s/ Kelli Owens

Deputy Clerk

NOTE: THESE WRITTEN MINUTES ARE A CLERICAL ENTRY OF THE COURT PROCEEDINGS FOR RECORD KEEPING PURPOSES ONLY. THEY ARE NOT AND SHOULD BE BE CONSTRUED AS THE ORDER OF THE COURT, WHICH WAS ORALLY DELIVERED CONSULT THE TRANSCRIPT OF PROCEEDINGS FOR THE ACTUAL ORDER.