United States Court of Appeals for the Fifth Circuit

No. 21-11079

JACKIE GAFF, *also known as* JACKIE GOFF,

Plaintiff—Appellant,

versus

MSNI ADVANTAGE, L.P.; KARISSA HAPPE JONES, *also known as* KRISSIE; TYLER HAPPE; MAIN STREET ASSOCIATES, INCORPORATED; MAIN STREET ASSET SOLUTIONS, INCORPORATED; PHH MORTGAGE CORPORATION; PHH CORPORATION; OCWEN LOAN SERVICING, L.L.C.; OCWEN FINANCIAL CORPORATION; SEBRING CAPITAL PARTNERS, L.P.; U.S. BANK NATIONAL ASSOCIATION; BANK OF AMERICA, N.A.; JP MORGAN CHASE BANK, N.A.; ALLY FINANCIAL, INCORPORATED; RONALD HAPPE; U.S. BANK NATIONAL ASSOCIATION, *as Trustee, successor in interest to Bank of America National Association, as Trustee, successor by merger to LaSalle Bank National Association, as Trustee for* RESIDENTIAL ASSET MORTGAGE PRODUCTS, INC. MORTGAGE ASSET-BACKED PASS THROUGH CERTIFICATES, SERIES 2007-RP1,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CV-644

ON PETITION FOR REHEARING EN BANC

Before STEWART, DUNCAN, and WILSON, *Circuit Judges*.

PER CURIAM:

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

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*Judge Edith H. Jones did not participate in the consideration of the rehearing en banc.

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
November 8, 2022
Lyle W. Cayce
Clerk

No. 21-11079
Summary Calendar

JACKIE GAFF, *also known as* JACKIE GOFF,

Plaintiff—Appellant,

versus

MSNI ADVANTAGE, L.P.; KARISSA HAPPE JONES, *also known as* KRISSIE; TYLER HAPPE; MAIN STREET ASSOCIATES, INCORPORATED; MAIN STREET ASSET SOLUTIONS, INCORPORATED; PHH MORTGAGE CORPORATION; PHH CORPORATION; OCWEN LOAN SERVICING, L.L.C.; OCWEN FINANCIAL CORPORATION; SEBRING CAPITAL PARTNERS, L.P.; U.S. BANK NATIONAL ASSOCIATION; BANK OF AMERICA, N.A.; JP MORGAN CHASE BANK, N.A.; ALLY FINANCIAL, INCORPORATED; RONALD HAPPE; U.S. BANK NATIONAL ASSOCIATION, *as Trustee, successor in interest to* BANK OF AMERICA NATIONAL ASSOCIATION, *as Trustee, successor by merger to* LASALLE BANK NATIONAL ASSOCIATION, *as Trustee for* RESIDENTIAL ASSET MORTGAGE PRODUCTS, INC. MORTGAGE ASSET-BACKED PASS THROUGH CERTIFICATES, SERIES 2007-RP1,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:20-CV-644

Before STEWART, DUNCAN, and WILSON, *Circuit Judges*.

PER CURIAM:*

Jackie Gaff filed a pro se civil action against numerous defendants in Texas state court raising various claims concerning a foreclosure sale of real property located in Fort Worth, Texas. MSNI Advantage, L.P. filed a notice of removal based on diversity jurisdiction and federal question jurisdiction. The district court denied Gaff's motion to remand and ultimately granted the defendants' motions to dismiss her third amended complaint with prejudice for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6).

On appeal, Gaff first argues that the removal of the case to federal court was improper because diversity jurisdiction did not exist, all defendants did not consent to removal, and the district court should have abstained from exercising jurisdiction under *Younger v. Harris*, 401 U.S. 37 (1971). The district court did not err in finding that diversity jurisdiction existed as Gaff was a citizen of Louisiana and all defendants were either individuals domiciled in California or business entities that were incorporated and had their principal places of business outside of Louisiana. *See* 28 U.S.C. § 1441(b)(2); *Acuna v. Brown & Root Inc.*, 200 F.3d 335, 339 (5th Cir. 2000); *see also Smallwood v. Illinois Cent. R. Co.*, 385 F.3d 568, 572 (5th Cir. 2004). In addition, the district court had federal question jurisdiction because Gaff's amended state court complaint alleged claims based on federal law. *See Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). Contrary to Gaff's argument, the defendants had not been served with her amended complaint at the time the notice of removal was filed and, therefore, consent of all defendants was not required to remove the case to federal court. *See Miranti*

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

v. Lee, 3 F.3d 925, 929 (5th Cir. 1993). Further, the district court did not err in refusing to abstain from exercising jurisdiction under *Younger* because there was no ongoing state judicial proceeding. *See Ankenbrandt v. Richards*, 504 U.S. 689, 705 (1992).

In addition, Gaff argues that the district court should have remanded the case to state court under the *Rooker-Feldman*[1] doctrine and that MSNI Advantage did not transmit a complete and accurate record as required by 28 U.S.C. § 1446. Gaff raised these arguments in her motion to vacate, which was filed more than 28 days after entry of judgment, and she did not file an amended or new notice of appeal from the denial of this postjudgment motion. We therefore do not have jurisdiction to review the denial of Gaff's motion to vacate and the arguments raised therein. *See* FED. R. APP. P. 4(a)(4)(B)(ii); *Williams v. Chater*, 87 F.3d 702, 705 (5th Cir. 1996).

To the extent Gaff challenges the district court's jurisdiction based on her contention that the defendants lacked standing because they falsified documents and committed fraud on the court, this claim lacks merit as the plaintiff is the party who must have standing to establish jurisdiction. *See Hollingsworth v. Perry*, 570 U.S. 693, 704-05 (2013).

Gaff also contends that the district court erred in denying her motion for entry of a default judgment. However, she was not entitled to a default judgment as a matter of right, even if the defendants were technically in default. *See Lewis v. Lynn*, 236 F.3d 766, 767 (5th Cir. 2001). Moreover, because the defendants had not been properly served with her amended complaint at the time the notice of removal was filed and because the defendants were not unresponsive, this case does not present the type of

[1] *See D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923).

extreme situation warranting the entry of a default judgment. *See Sun Bank of Ocala v. Pelican Homestead & Sav. Ass'n*, 874 F.2d 274, 276 (5th Cir. 1989). Accordingly, Gaff has not shown the district court abused its discretion in denying her motion for default judgment. *See Lewis*, 236 F.3d at 767.

Also on appeal, Gaff contends that the district court erred in dismissing her third amended complaint for failure to state a claim. The district court dismissed Gaff's complaint because the only well-pleaded claims, which concerned fraudulent dealings around 2007 and an illegal foreclosure in 2014, were not filed within the applicable limitations period and therefore were not plausible. Although she mentioned a nonjudicial foreclosure set for June 2, 2020 in her third amended complaint, the district court did not err in finding that her complaint did not provide notice of a claim concerning a June 2020 foreclosure. *See Heinze v. Tesco Corp.*, 971 F.3d 475, 479 (5th Cir. 2020); *see also* FED. R. CIV. P. 8(a). Gaff does not identify any error in the district court's determination that her claims concerning fraudulent dealings in 2007 and the wrongful foreclosure in 2014 were time barred and, therefore, she has abandoned this issue on appeal by failing to brief it adequately. *See Brinkmann v. Dallas Cnty. Deputy Sheriff Abner*, 813 F.2d 744, 748 (5th Cir. 1987). The district court also did not err in rejecting Gaff's argument that the limitations period should be equitably tolled, as she did not show that she was "actively misled by the defendant about the cause of action or [was] prevented in some extraordinary way from asserting [her] rights." *Ramirez v. City of San Antonio*, 312 F.3d 178, 183 (5th Cir. 2002). In addition, Gaff has not shown that the district court failed to consider any specific exhibits, nor has she explained how the court's alleged failure to consider specific exhibits affected its decision.

Gaff also maintains that the defendants committed fraud on the court. As to her stand-alone claims of fraud, the district court's determination that Gaff's third amended complaint failed to state a claim was based solely on the

allegations made in that complaint. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Rogers v. Boatright*, 709 F.3d 403, 407 (5th Cir. 2013). Therefore, any documents submitted by the defendants did not have any bearing on the district court's determination that Gaff's complaint failed to state claim a upon which relief may be granted. *See Iqbal*, 556 U.S. at 678; *Rogers*, 709 F.3d at 407. As to her contention that the defendants committed fraud on the court, *see* FED. R. CIV. P. 60(b)(3), (d)(3), Gaff raised this claim in her motion to vacate. As explained above, this court's jurisdiction does not extend to a review of that ruling. *See* FED. R. APP. P. 4(a)(4)(B)(ii); *Williams*, 87 F.3d at 705. Likewise, this court does not have jurisdiction to review Gaff's claim, presented in her motion to vacate, that the district court judge was biased and should have recused himself. *See* FED. R. APP. P. 4(a)(4)(B)(ii); *Williams*, 87 F.3d at 705.

In addition, Gaff challenges the district court's failure to order the defendants to respond to her requests for admission. However, Gaff was not entitled to discovery prior to the district court's ruling on whether her claim should be dismissed pursuant to Rule 12(b)(6). *See Sw. Bell Tel., LP v. City of Houston*, 529 F.3d 257, 263 (5th Cir. 2008). Therefore, she has not shown that the district court's discovery ruling, or lack thereof, was arbitrary or clearly unreasonable. *See Wiwa v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 817 (5th Cir. 2004).

For the first time on appeal, Gaff argues that her constitutional rights were violated by the wrongful seizure of her property, the nonjudicial foreclosure without notice, and the district court's order concerning her requests for admission. This court will generally not consider a new claim raised for the first time on appeal in a civil action. *See Leverette v. Louisville Ladder Co.*, 183 F.3d 339, 342 (5th Cir. 1999). We therefore will not consider these claims. *See id.*

For these reasons, the district court's judgment is AFFIRMED. Gaff's motions for judicial notice are DENIED.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JACKIE GAFF	§	
	§	
VS.	§	ACTION NO. 4:20-CV-644-Y
	§	
ALLY FINANCIAL, INC., et al.	§	

AMENDED FINAL JUDGMENT

In accordance with the amended order issued on January 4, 2022, and Federal Rule of Civil Procedure 58, all claims against Bank of America, N.A.; PHH Mortgage Corporation; Ocwen Loan Servicing Corporation; PHH Corporation; Ocwen Financial Corporation; U.S. Bank National Association; JPMorgan Chase Bank; MSNI Advantage, LP; Main Street Associates; Main Street Asset Solutions; Karissa Jones; Tyler Happe; Ronald Happe; and Aily Financial, Inc. are hereby DISMISSED WITH PREJUDICE to their refiling. In accordance with the order issued on September 21, 2021 and Rule 58, all claims against Sebring Capital Partners, LP are hereby DISMISSED WITHOUT PREJUDICE. All costs of Court under 28 U.S.C. § 1920 shall be borne by the party incurring same.

SIGNED January 5, 2022.

Trust not listed

Terry R. Means
TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

FINAL JUDGMENT - Page Solo
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JACKIE GAFF	§	
	§	
VS.	§	CIVIL NO. 4:20-CV-644-Y
	§	
ALLY FINANCIAL, INC., et al.	§	

AMENDED ORDER GRANTING MOTIONS TO DISMISS

The plaintiff, Jackie Gaff, filed this suit relating to her home mortgage, pro se, against 15 defendants. Before the Court are four motions to dismiss Gaff's amended complaint (doc. no. 84) for failing to state a claim. (Doc. nos. 86, 89, 94, 97.) The Court has twice ordered Gaff to amend her complaint because her prior attempts did not contain "a short and plain statement of the claim showing that the pleader is entitled to relief." See FED. R. CIV. P. 8(a)(2); doc nos. 4, 81. This attempt also fails. As a result, the defendants' motions will be granted, and Gaff's amended complaint will be dismissed with prejudice against the 14 defendants that filed a motion to dismiss.

BACKGROUND[1]

On May 31, 2002, Gaff obtained two loans, each secured by a deed of trust on property in Grand Prairie, Texas. Her original

[1] The Court draws its factual background from Gaff's amended complaint, viewing the well pleaded facts in the light most favorable to Gaff—as it must. *See Sonnier v. State Farm Mut. Auto. Ins. Co.*, 509 F.3d 673, 675 (5th Cir. 2007). This section does not represent the Court's findings.

lender, Sebring Capital Partners, L.P., immediately assigned the deeds of trust, and over the following years, these deeds of trust were assigned numerous times to entities with byzantine names only comprehendible by lawyers.[2] Also during this time, multiple entities serviced her loans. At some point, each defendant appeared on some document relating to her loans.

In 2007, Gaff and the then-current loan servicer consolidated both notes and deeds of trust into one. (Pl.'s Amend. Comp't at ¶ 24, 28, doc. no. 84.) There are no records of this consolidation, or "wrap," because the defendants deleted all records of the transaction from their computers. (*Id.* at ¶ 24.) From that point forward, Gaff only had one note and deed of trust. Around this time (the exact time is unclear), the defendants committed various types of fraud, violated several consumer-protection statutes, and breached several agreements. Defendants argue that the evidence shows this is false, but Gaff alleges it.

On April 1, 2014, despite the agreement that consolidated the two deeds of trust, defendant MSNI Advantage foreclosed on the property under the second, allegedly dissolved, deed of trust.

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[2] *See e.g.*, "The Bank of New York Mellon Trust Company, National Association FKA The Bank of New York Trust Company, N.A., as successor to JPMorgan Chase Bank, N.A., FKA JPMorgan Chase Bank as Trustee, By Residential Funding Company, LLC FKA Residential Funding Corporation, attorney in fact, In C/O GMAC Mortgage, LLC." (Doc. no. 87-4.)

Gaff alleges that nobody sent her any notice of foreclosure and the foreclosure was illegal. (*Id.* at ¶ 49.) But she admits that she learned of the foreclosure by at least the next day—April 2, 2014. (*Id.* at ex. "T".) No reference to Case#153-281708-15

On May 19, 2020, Gaff sued Defendants in Texas state courts, and the case was then removed. (Doc. 1.) On June 24, sua sponte, the Court ordered Gaff to amend her pleading because her "fifty-seven page amended complaint is hardly the 'short and plain statement of the claim' required by Federal Rule of Civil Procedure 8(a)." (Doc. no. 4.) The Court extended Gaff's deadline to file her amended complaint numerous times, and Gaff eventually filed it on February 11, 2021. Upon the Court's cursory review of the amended complaint, it failed to meet Rule 8's standards. The Court then struck her 158-page second attempt. (Doc. no. 81.)

On May 3, 2021, Gaff filed her third attempt to meet Rule 8's requirements. (Doc. no. 84.) The amended complaint alleges the defendants illegally applied her payments, failed to maintain accurate records, charged illegal fees, provided false information, breached contracts, recorded fraudulent documents, illegally foreclosed on her house, and numerous other bad acts. Gaff's amended complaint list 14 causes of action. Many of these appear to revolve around the alleged consolidation of notes and the resulting illegal foreclosure.

Over the next few weeks, 14 defendants moved to dismiss the case on several grounds. (See doc. nos. 86, 89, 94, 97.) Each motion contains, among others, the following two grounds: (A) Gaff's amended complaint failed to comply with Federal Rule of Civil Procedure 8's dictate to contain "a short and plain statement of the claim showing the pleader is entitled to relief"; and (B) Gaff failed to state a claim against the defendants because time barred. These motions are now ripe for review.

LEGAL STANDARDS

Under Federal Rule of Civil Procedure 12(b)(6), the Court should dismiss a challenged claim if the plaintiff fails to provide both fair notice of the claim and plausible factual allegations to support the claim. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A complaint provides fair notice when it contains "a short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). But the Court does not accept conclusory statements as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678-79 (2009). After disregarding any conclusory statements, the complaint must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

The plausibility standard demands more than "a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556

U.S. at 678. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* at 663. Admittedly, "[i]t is well-established that 'pro se complaints are held to less stringent standards than formal pleadings drafted by lawyers.'" *Taylor v. Books A Million, Inc.*, 296 F.3d 376, 378 (5th Cir. 2002) (quoting *Miller v. Stanmore*, 636 F.2d 986, 988 (5th Cir. 1981)). But regardless of the plaintiff's pro-se status, "conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss." *Taylor*, 296 F.3d at 378 (quoting *S. Christian Leadership Conf. v. Supreme Court of the State of La.*, 252 F.3d 781, 786 (5th Cir. 2001)).

ANALYSIS

Instead of a "short and plain statement" of her claims, Gaff's amended complaint contains a prolix and confused history of her loan. After spending hours reading and re-reading the amended complaint, the Court cannot recount the factual basis for this suit any clearer than its summary attempt above. In fact, after disregarding the conclusory statements and legal buzz words, there isn't much left. *See Twombly*, 550 U.S. at 570.

However, the amended complaint does provide notice of fraudulent dealings around 2007 and an illegal foreclosure in 2014.

If combined notes action is on-going

But these claims are late, and therefore not plausible. *See Jones v. Bock*, 549 U.S. 199, 215 (2007) (holding that a claim barred by limitations fails to state a claim). The amended complaint acknowledges that Gaff knew of the foreclosure on the allegedly void second deed of trust in April 2014. (Pl.'s Amend. Com't at ¶ 21.) In Texas, wrongful foreclosure actions have a four-year statute of limitation. *Gonzales v. Lockwood Lumber Co.*, 668 S.W.2d 813, 815 (Tex. Civ. App.—Houston [14th Dist.] 1984, writ ref'd n.r.e.). This would require any claim to be brought by April 2018. Gaff initiated this claim in May 2020. (Doc. no. 1.) Court case filed 2015

Gaff claims the limitations deadline should be extended, but the Court disagrees. Gaff first argues that the discovery rule extends limitations. But the discovery rule defers the accrual of a claim until the injured party learned of or, in the exercise of reasonable diligence, should have learned of the wrongful act causing the injury. *Cosgrove v. Cade*, 468 S.W.3d 32, 36 (Tex. 2015). Here, Gaff pleads that she learned of the foreclosure on April 2, 2014. So there is no factual basis to defer the accrual date. Next, she argues that limitations should be tolled because the conduct is ongoing. But it is unclear what conduct she claims is ongoing. Moreover, no legal authority tolls limitation in a situation anywhere close to what Gaff has alleged. As a result, limitations barred the wrongful foreclosure claim by April 2018.

Since her interest in the house was foreclosed in 2014, any fraud the defendants committed in servicing the loan must have occurred before this. But the statute of limitation would be no longer than four years for those claims. TEX. CIV. PRAC. & REM. CODE § 16.003, .004. As a result, these claims are also late.

Other than these barred claims, the amended complaint fails to provide fair notice of additional claims. Once the legal buzz words and illegal-foreclosure claims are disregarded, there is very little substance. *See Taylor*, 296 F.3d at 378 ("regardless of whether the plaintiff is proceeding *pro se* or is represented by counsel, conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss"). And no plausible inferences can be drawn from the well plead factual allegations. *See Roe v. Johnson Co.*, 2019 WL 5031357, *5 (N.D. Tex. July 29, 2019) ("While Plaintiff's amended complaint does contain factual material, most claims as currently pled lack sufficient facts to support an inference that the defendant is responsible for that particular harm to Plaintiff—therefore there is no more than the mere possibility of misconduct, which, of course, is not enough to state a plausible claim.") (cleaned up). Thus, Gaff's amended complaint violates Rule 8(a).

If the Court's analysis seems conclusory and surface-level, that is because the amended complaint provides almost no allegations to analyze. The amended complaint fails to allege basic

details like, who, what, or when. A "short and plain statement of the claim showing that the pleader is entitled to relief" needs these details. See FED. R. CIV. P. 8(a)(2). Because the amended complaint lacks them, it fails to state a claim. *See Anderson v. U.S. Dept. of Housing & Urban Dev.*, 554 F.3d 525, 528 (5th Cir. 2008) ("Where the complaint is devoid of facts that would put the defendant on notice as to what conduct supports the claims, the complaint fails to satisfy the requirement of notice pleading.").

CONCLUSION

For the reasons above, the Court concludes that Gaff's amended complaint fails to state a claim. Although Gaff has not requested leave to amend, even if she had, the request would be denied. Gaff's amended complaint represents her third attempt to satisfy Rule 8. Moreover, the Court has twice provided guidance in satisfying Rule 8. Despite that guidance, Gaff's third attempt failed. There is no reason to expect the next effort would be different. *See Simmons v. Sabine River Auth. La.*, 732 F.3d 469, 478 (5th Cir. 2013) (holding leave to amend is not required when amending would be futile).

Accordingly, Gaff's amended complaint is **DISMISSED with prejudice** against the following defendants:

- Bank of America, N.A.;
- PHH Mortgage Corporation;

- Ocwen Loan Servicing Corporation;
- PHH Corporation;
- Ocwen Financial Corporation;
- U.S. Bank National Association, as trustee, successor in interest to Bank of America National Association, as trustee, successor by Merger to Lasalle Bank National Association, as trustee for Residential Asset Mortgage Products, Inc., Mortgage Asset-Backed Pass-Through Certificates, Series 2007-RP1;
- JPMorgan Chase Bank;
- MSNI Advantage, LP;
- Main Street Associates;
- Main Street Asset Solutions;
- Karissa Jones;
- Tyler Happe;
- Ronald Happe;
- Ally Financial, Inc.

SIGNED January 5, 2022.

Terry R. Means

TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JACKIE GAFF	§	
	§	
VS.	§	ACTION NO. 4:20-CV-644-Y
	§	
ALLY FINANCIAL, INC., et al.	§	

FINAL JUDGMENT

In accordance with the order issued on August 25, 2021, and Federal Rule of Civil Procedure 58, all claims against Bank of America, N.A.; PHH Mortgage Corporation; Ocwen Loan Servicing Corporation; PHH Corporation; Ocwen Financial Corporation; U.S. Bank National Association; JPMorgan Chase Bank; Main Street Advantage, LP; Main Street Associates; Main Street Asset Solutions; Karissa Jones; Tyler Happe; Ronald Happe; and Ally Financial, Inc., are hereby DISMISSED WITH PREJUDICE to their refiling. In accordance with the order issued on September 21, 2021, and Rule 58, all claims against Sebring Capital Partners, LP, are hereby DISMISSED WITHOUT PREJUDICE. All costs of Court under 28 U.S.C. § 1920 shall be borne by the party incurring same.

SIGNED September 22, 2021.

Terry R. Means
TERRY R. MEANS
UNITED STATES DISTRICT JUDGE

FINAL JUDGMENT - Page Solo
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

JACKIE GAFF	§	
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ORDER GRANTING MOTIONS TO DISMISS

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the foreclosure was illegal. (*Id.* at ¶ 49.) But she admits that she learned of the foreclosure by at least the next day—April 2, 2014. (*Id.* at ex. "T".)

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motion contains, among others, the following two grounds: (A) Gaff's amended complaint failed to comply with Federal Rule of Civil Procedure 8's dictate to contain "a short and plain statement of the claim showing the pleader is entitled to relief"; and (B) Gaff failed to state a claim against the defendants because time barred. These motions are now ripe for review.

LEGAL STANDARDS

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The plausibility standard demands more than "a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678. "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable

inference that the defendant is liable for the misconduct alleged." *Id.* at 663. Admittedly, "[i]t is well-established that 'pro se complaints are held to less stringent standards than formal pleadings drafted by lawyers.'" *Taylor v. Books A Million, Inc.*, 296 F.3d 376, 378 (5th Cir. 2002) (quoting *Miller v. Stanmore*, 636 F.2d 986, 988 (5th Cir. 1981)). But regardless of the plaintiff's pro-se status, "conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss." *Taylor*, 296 F.3d at 378 (quoting *S. Christian Leadership Conf. v. Supreme Court of the State of La.*, 252 F.3d 781, 786 (5th Cir. 2001)).

ANALYSIS

Instead of a "short and plain statement" of her claims, Gaff's amended complaint contains a prolix and confused history of her loan. After spending hours reading and re-reading the amended complaint, the Court cannot recount the factual basis for this suit any clearer than its summary attempt above. In fact, after disregarding the conclusory statements and legal buzz words, there isn't much left. *See Twombly*, 550 U.S. at 570.

However, the amended complaint does provide notice of fraudulent dealings around 2007 and an illegal foreclosure in 2014. But these claims are late, and therefore not plausible. *See Jones v. Bock*, 549 U.S. 199, 215 (2007) (holding that a claim barred by

limitations fails to state a claim). The amended complaint acknowledges that Gaff knew of the foreclosure on the allegedly void second deed of trust in April 2014. (Pl.'s Amend. Com't at ¶ 21.) In Texas, wrongful foreclosure actions have a four-year statute of limitation. *Gonzales v. Lockwood Lumber Co.*, 668 S.W.2d 813, 815 (Tex. Civ. App.—Houston [14th Dist.] 1984, writ ref'd n.r.e.). This would require any claim to be brought by April 2018. Gaff initiated this claim in May 2020. (Doc. no. 1.)

Gaff claims the limitations deadline should be extended, but the Court disagrees. Gaff first argues that the discovery rule extends limitations. But the discovery rule defers the accrual of a claim until the injured party learned of or, in the exercise of reasonable diligence, should have learned of the wrongful act causing the injury. *Cosgrove v. Cade*, 468 S.W.3d 32, 36 (Tex. 2015). Here, Gaff pleads that she learned of the foreclosure on April 2, 2014. So there is no factual basis to defer the accrual date. Next, she argues that limitations should be tolled because the conduct is ongoing. But it is unclear what conduct she claims is ongoing. Moreover, no legal authority tolls limitation in a situation anywhere close to what Gaff has alleged. As a result, limitations barred the wrongful foreclosure claim by April 2018.

Since her interest in the house was foreclosed in 2014, any fraud the defendants committed in servicing the loan must have occurred before this. But the statute of limitation would be no

longer than four years for those claims. TEX. CIV. PRAC. & REM. CODE § 16.003, .004. As a result, these claims are also late.

Other than these barred claims, the amended complaint fails to provide fair notice of additional claims. Once the legal buzz words and illegal-foreclosure claims are disregarded, there is very little substance. *See Taylor*, 296 F.3d at 378 ("regardless of whether the plaintiff is proceeding *pro se* or is represented by counsel, conclusory allegations or legal conclusions masquerading as factual conclusions will not suffice to prevent a motion to dismiss"). And no plausible inferences can be drawn from the well plead factual allegations. *See Roe v. Johnson Co.*, 2019 WL 5031357, *5 (N.D. Tex. July 29, 2019) ("While Plaintiff's amended complaint does contain factual material, most claims as currently pled lack sufficient facts to support an inference that the defendant is responsible for that particular harm to Plaintiff—therefore there is no more than the mere possibility of misconduct, which, of course, is not enough to state a plausible claim.") (cleaned up). Thus, Gaff's amended complaint violates Rule 8(a).

If the Court's analysis seems conclusory and surface-level, that is because the amended complaint provides almost no allegations to analyze. The amended complaint fails to allege basic details like, who, what, or when. A "short and plain statement of the claim showing that the pleader is entitled to relief" needs these details. See FED. R. CIV. P. 8(a)(2). Because the amended

complaint lacks them, it fails to state a claim. *See Anderson v. U.S. Dept. of Housing & Urban Dev.*, 554 F.3d 525, 528 (5th Cir. 2008) ("Where the complaint is devoid of facts that would put the defendant on notice as to what conduct supports the claims, the complaint fails to satisfy the requirement of notice pleading.").

CONCLUSION

For the reasons above, the Court concludes that Gaff's amended complaint fails to state a claim. Although Gaff has not requested leave to amend, even if she had, the request would be denied. Gaff's amended complaint represents her third attempt to satisfy Rule 8. Moreover, the Court has twice provided guidance in satisfying Rule 8. Despite that guidance, Gaff's third attempt failed. There is no reason to expect the next effort would be different. *See Simmons v. Sabine River Auth. La.*, 732 F.3d 469, 478 (5th Cir. 2013) (holding leave to amend is not required when amending would be futile).

Accordingly, Gaff's amended complaint is **DISMISSED with prejudice** against the following defendants:

- Bank of America, N.A.;
- PHH Mortgage Corporation;
- Ocwen Loan Servicing Corporation;
- PHH Corporation;
- Ocwen Financial Corporation;

- U.S. Bank National Association, as trustee, successor in interest to Bank of America National Association, as trustee, successor by Merger to Lasalle Bank National Association, as trustee for Residential Asset Mortgage Products, Inc., Mortgage Asset-Backed Pass-Through Certificates, Series 2007-RP1;
- JPMorgan Chase Bank;
- Main Street Advantage, LP;
- Main Street Associates;
- Main Street Asset Solutions;
- Karissa Jones;
- Tyler Happe;
- Ronald Happe;
- Ally Financial, Inc.

SIGNED August 25, 2021.

Terry R. Means

TERRY R. MEANS
UNITED STATES DISTRICT JUDGE