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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-1860

BRIGITTE NELSON,

Appellant

v.

ACRE MORTGAGE & FINANCIAL INC;
CLASSIC QUALITY HOMES

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 3-17-cv-01050)
Magistrate Judge: Honorable Joseph F. Saporito, Jr.

Submitted Pursuant to Third Circuit LAR 34.1(a)
October 13, 2023

Before: KRAUSE, PHIPPS, and SCIRICA,
Circuit Judges

(Opinion filed: October 16, 2023)

OPINION*

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

PER CURIAM

Brigitte Nelson brought federal and state law claims against the defendants related to a real estate transaction.[1] Several of the claims went to jury trial, where she prevailed on her breach-of-contract claim against Classic Quality Homes ("Classic") but did not obtain relief on her other state law claims against Classic or her claims against Acre Mortgage & Financial, Inc. ("Acre") under the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA). She now appeals, broadly arguing, inter alia, that she met her burden to show that both defendants violated TILA, RESPA, and Pennsylvania's Unfair Trade Practice and Consumer Protection Law (UTPCPL). But, like most of her claims, that claim is unreviewable without the trial transcript, and her other claims are meritless, so we will affirm.[2]

An appellant must order, within 14 days of filing the notice of appeal, a transcript of the parts of the District Court proceedings "not already on file as the appellant considers necessary." Fed. R. App. P. 10(b)(1). Our local rules also require an appellant to order such a transcript, and they provide that an appellant who cannot afford the cost of the transcript may move to

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[1] As we write primarily for the parties, who are familiar with the procedural history, including the earlier appeal (at C.A. No. 20-3126), and the facts of this case, we omit a detailed description of the background.

[2] We have jurisdiction under 28 U.S.C. § 1291.

have the transcript prepared at government expense pursuant to 28 U.S.C. § 753(f). See 3d Cir. L.A.R. 11.1.

Nelson, who paid the fees for filing and docketing this appeal, neither paid the court reporter to produce that transcript nor moved for relief under § 753(f). And, without the trial transcript, we cannot assess her claims that the evidence presented at trial did not support the jury verdict; that defense counsel used "provocative language," Appellant's Informal Brief at 9; and that an evidentiary decision about a polygraph test was erroneous. See Morisch v. United States, 653 F.3d 522, 529-30 (7th Cir. 2011) (discussing the inability to conduct "meaningful review" in the absence of a transcript). Accordingly, we do not reach these claims.[3] See id. (describing how the failure to order the transcript can be grounds for forfeiture of a claim).

Nelson's other claims lack merit. She contends that the judgment entered in Classic's favor on the UTPCPL count (ECF No. 218) is inconsistent with the jury verdict because she prevailed against Classic on her breach-of-contract claim. However, the claims were separate, and the jury did not find in her favor on the

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[3] Although the failure to order a transcript can be grounds for dismissal, see Fed R. App. P. 3(a)(2), we will not dismiss this appeal. See Homer Equip. Intl, Inc. v. Seascape Pool Ctr., Inc., 884 F.2d 89, 93 (3d Cir. 1989) (explaining that "[d]ismissal of an appeal for failure to comply with procedural rules is not favored"). Although we also could order Nelson to supplement the record, see Fed. R. App. P. 10(e), we decline to do so because she had an opportunity to address or correct the problem after the issue was raised in Acre's brief, and she took no action (she did not even discuss the matter in her reply brief).

UTPCPL claim.[4] To the extent that Nelson challenges the District Court's earlier decision to eliminate recission from consideration by the jury as a possible remedy for a TILA or RESPA violation, that challenge fails because the jury did not that such violations occurred.

Nelson also contends that an admission pro hac vice of one of Acre's attorneys, Alexander Owens, was improper and undermines the validity of the verdict. However, we discern no abuse of discretion, see United States v. Costanzo, 740 F.2d 251, 258 (3d Cir. 1984), in Owens' admission pro hac vice on a motion for admission using a standardized form that included the necessary information, see M.D. Pa. Local Rule 83.8.2.1. Nelson's claims relating to purported misconduct by attorneys in discovery, in preparation for trial, and during jury deliberations (the last of which also implicated the courtroom deputy and possibly implicated a member of the United States Marshals Service), do not appear to have been raised in the District Court, so we have no rulings to review.[5]

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[4] The UTCPCL claim, which was slated for trial, see ECF No. 124, did not appear on the verdict slip. But Nelson does not raise any issue related to that (and the other parties do not discuss it), so we do not address it. See M.S. by & through Hall v. Susquehanna Twp. Sch. Dist., 969 F.3d 120, 124 n.2 (3d Cir. 2020) (holding that the appellant forfeited claims by failing to raise them in the opening brief). Even if the issue were before us, we would be hard-pressed to determine what happened to that claim without the trial transcript.

[5] If the issues were discussed and considered during the court of the trial proceedings, we have no way of evaluating any decisions in the absence of the transcript.

In light of the above, we will affirm the District Court's judgments.[6] Nelson's requests for subpoenas, Appellant's Informal Brief at 22-23, and for an opportunity to submit a supplemental itemized list of damages, id. at 30, are denied.

[6] To the extent that Nelson makes arguments about her other state law claims or any other earlier District Court rulings, they are either too fleetingly presented in her informal brief or presented too late in her reply brief for our consideration. See United States v. Savage, 970 F.3d 217, 280 n.70 (3d Cir. 2020) (indicating that an appellant forfeits an issue if she fails to raise it in his opening brief or makes only a passing reference to it in that brief). In any event, as with many of her other claims, we would need the trial transcript to consider any of her challenges to the jury verdict on the other state law claims. Additionally, to the extent that Nelson challenges the District Court's rejection of her objection to the bill of costs as untimely filed, that ruling postdates her notice of appeal and is not before us. And her arguments that the defendants are not entitled to costs are misdirected. The bill of costs is not before us; it remains pending in the District Court.

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-1860

BRIGITTE NELSON,

Appellant

v.

ACRE MORTGAGE & FINANCIAL INC;
CLASSIC QUALITY HOMES

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 3-17-cv-01050)
Magistrate Judge: Honorable Joseph F. Saporito, Jr.

Submitted Pursuant to Third Circuit LAR 34.1(a)
October 13, 2023

Before: KRAUSE, PHIPPS, and SCIRICA,
Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted pursuant to Third Circuit LAR 34.1(a) on October 13, 2023. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgments of the District Court entered April 7, 2023, be and the same are hereby affirmed. Costs taxed against the appellant. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: October 16, 2023

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

BRIGITTE NELSON, Plaintiff, v. ACRE MORTGAGE & FINANCIAL, INC., et al., Defendant.	CIVIL ACTION NO. 3:17-cv-01050 (SAPORITO, M.J.)

VERDICT SLIP

(Filed Apr. 7, 2023)

1. Do you find by a preponderance of the evidence that Classic Quality Homes entered into a contract for the sale of the Milestone Drive home, that Classic breached a duty created by the contract, and that Brigitte Nelson proved damages resulting from the breach?

Yes ✓ No ____

Proceed to Question 2

2. Do you find a preponderance of the evidence that Classic Quality Homes fraudulently induced Brigitte Nelson to purchase the Milestone Drive home?

Yes ____ No ✓

Proceed to Question 3.

3. Do you find a preponderance of the evidence that Classic Quality Mimes aided and abetted Acre Mortgage & Financial, Inc. in making an illegal act?

Yes ____ No ✓

Proceed to Question 4.

4. Do you find by a preponderance of the evidence that Acre Mortgage & Financial, Inc. violated the Truth-in-Lending Act for failing to provide a good faith estimate of Brigitte Nelson's monthly real estate tax liability and/or failing to provide a reasonable good faith assessment that Brigitte Nelson was reasonably able to repay the mortgage and its associated costs (for example, real estate taxes)?

Yes ____ No ✓

Proceed to Question 5.

5. Do you find by a preponderance of the evidence that Acre Mortgage & Financial, Inc. is liable under the Truth-in-Lending Act for using the HUD-1 disclosure form for Brigitte Nelson's mortgage transaction?

Yes ____ No ✓

Proceed to Question 6.

6. Do you find by a preponderance of the evidence that Acre Mortgage & Financial, Inc. is liable under the Real Estate Settlement Procedures Act for failing to provide timely notice to Brigitte Nelson that servicing of her mortgage would be transferred to The

Money Source and that Brigitte Nelson proved actual damages as a result?

Yes ____ No ✓

Proceed to Question 7.

7. Do you find that Brigitte Nelson proved by a preponderance of the evidence that she suffered actual harm as a direct result of the act or acts you found Acre liable (if you find Acre liable for one or more claims)?

Yes ____ No ✓

If you answered "No" to all Questions 1 through 7, the plaintiff cannot recover. The foreperson should sign and date this form and return to the courtroom.

If you answered "'Yes" to any of Questions 1 through 7, proceed to Question 8.

8. Write in the amount of damages, if any, that you find that Brigitte Nelson proved were caused by either or both defendants' act or acts after considering whether either defendant proved that she failed to mitigate her damages.

Damages caused by Classic $ 40,000

Damages caused by Acre $ 0

/s/ Mary Palmieri
Foreperson

Dated: April 6, 2023

AO 450 (Rev. 11/11) Judgment in a Civil Action

UNITED STATES DISTRICT COURT
for the
Middle District of Pennsylvania

BRIGITTE NELSON *Plaintiff* v. ACRE MORTGAGE & FINANCIAL, INC., et al. *Defendant*	)	Civil Action No. 3:17-CV-1050

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one)*:

☐ the plaintiff *(name)* _____ recover from the defendant *(name)* _____ _____ the amount of _____ dollars ($ _____), which includes prejudgment interest at the rate of _____ %, plus post judgment interest at the rate of _____ % per annum, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant *(name)* _____ _____ recover costs from the plaintiff *(name)* _____.

☑ other: JUDGMENT is entered in favor of defendant, Acre Mortgage & Financial, Inc., and against plaintiff, Brigitte Nelson. JUDGMENT is entered in favor of plaintiff,

Brigitte Nelson, against the defendant, D.E.&S., Inc., d/b/a Classic Quality Homes, Inc., in the amount of $40,000.

This action was *(check one)*:

☑ tried by a jury with Judge Joseph F. Saporito, Jr. presiding, and the jury has rendered a verdict.

☐ tried by Judge _____ without a jury and the above decision was reached.

☐ decided by Judge _____ on a motion for

Date: April 7, 2023 *CLERK OF COURT*

/s/ Mary Rose Schirra
Signature of ~~Clerk or~~ Deputy Clerk

AO 450 (Rev. 11/11) Judgment in a Civil Action

UNITED STATES DISTRICT COURT
for the
Middle District of Pennsylvania

BRIGITTE NELSON *Plaintiff* v. ACRE MORTGAGE & FINANCIAL, INC., et al. *Defendant*	)	Civil Action No. 3:17-CV-1050

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one)*:

☐ the plaintiff *(name)* _____ recover from the defendant *(name)* _____ _____ the amount of _____ dollars ($ _____), which includes prejudgment interest at the rate of _____ %, plus post judgment interest at the rate of _____ % per annum, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant *(name)* _____ _____ recover costs from the plaintiff *(name)* _____.

☑ other: JUDGMENT is entered in favor of defendant, D.E.&S., Inc., d/b/a Classic Quality Homes, Inc., and against plaintiff, Brigitte Nelson, on Count Two, Pennsylvania

Unfair Trade Practices and Consumer Protection Law.

This action was *(check one)*:

☐ tried by a jury with Judge _____ presiding, and the jury has rendered a verdict.

☑ tried by Judge Joseph F. Saporito, Jr. without a jury and the above decision was reached.

☐ decided by Judge _____ on a motion for

Date: April 7, 2023 *CLERK OF COURT*

/s/ Mary Rose Schirra
Signature of ~~Clerk or~~ Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-3126

BRIGITTE NELSON,

Appellant

v.

ACRE MORTGAGE & FINANCIAL INC;
CLASSIC QUALITY HOMES

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 3-17-cv-01050)
Magistrate Judge: Honorable Joseph F. Saporito, Jr.
(by consent)

Submitted Pursuant to Third Circuit LAR 34.1(a)
June 17, 2021

Before: MCKEE, SHWARTZ, and RESTREPO,
Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Middle District of Pennsylvania and was submitted pursuant

to Third Circuit LAR 34.1 (a) on June 17, 2021. On consideration whereof, it is now hereby

ORDERED and ADJUDGED by this Court that the judgment of the District Court entered September 25, 2020, be and the same is hereby vacated and remanded for further proceedings. Costs will not be taxed. All of the above in accordance with the opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: January 12, 2022

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 20-3126

BRIGITTE NELSON,

Appellant

v.

ACRE MORTGAGE & FINANCIAL INC;
CLASSIC QUALITY HOMES

On Appeal from the United States District Court
for the Middle District of Pennsylvania
(D.C. Civil Action No. 3-17-cv-01050)
Magistrate Judge: Honorable Joseph F. Saporito, Jr.
(by consent)

Submitted Pursuant to Third Circuit LAR 34.1(a)
June 17, 2021

Before: MCKEE, SHWARTZ, and RESTREPO,
Circuit Judges

(Opinion filed: January 12, 2022)

OPINION*

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* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

PER CURIAM

Pro se appellant Brigitte Nelson appeals from the United States District Court for the Middle District of Pennsylvania's order granting summary judgment to defendant Acre Mortgage & Financial Inc. ("Acre") on Nelson's federal claims and dismissing without prejudice Nelson's state-law claims against Acre and Classic Quality Homes ("Classic") pursuant to 28 U.S.C. § 1367(c)(3). For the following reasons, we will vacate the District Court's judgment and remand for further proceedings.

I.

As we write primarily for the parties, who are familiar with the facts, we will discuss the details only as they are relevant to our analysis. Essentially, Nelson, a retired, disabled military veteran, contracted with Classic to purchase a house and used Acre to obtain a mortgage, which was later transferred to a servicing company, The Money Source. In her amended complaint, Nelson brought one federal count alleging violations of the Truth in Lending Act (TILA) and Real Estate Settlement Procedures Act (RESPA) against Acre and six state-law counts, some against Classic and some against both defendants.[1] Acre moved for

[1] Nelson initially filed her complaint through counsel in the United States District Court for the Eastern District of Pennsylvania. The action was subsequently transferred to the United States District Court for the Middle District of Pennsylvania, where the parties consented to the jurisdiction of a Magistrate Judge pursuant to 28 U.S.C. § 636(c). ECF Nos. 24-25. The District

summary judgment on all of Nelson's claims against it. The District Court granted Acre's motion in part, entering summary judgment with respect to Nelson's federal claims against Acre described in Count One of the amended complaint, but dismissing her remaining state-law claims against both Acre and Classic without prejudice pursuant to 28 U.S.C. § 1367(c)(3).[2] ECF Nos. 82-84. Nelson appeals.[3]

II.

We have jurisdiction under 28 U.S.C. § 1291.[4] We exercise plenary review over a grant of summary judgment, applying the same standard that the District Court applies. Barna v. Bd. of Sch. Dirs. of Panther Valley Sch. Dist., 877 F.3d 136, 141 (3d Cir. 2017).

Court later permitted counsel to withdraw and Nelson to proceed pro se. ECF No. 60 & 66.

[2] The court noted that Nelson would be able to transfer those state-law claims to state court pursuant to 42 Pa. Cons. Stat. § 5103(b). Nelson already filed such an action in the Court of Common Pleas of Monroe County.

[3] The District Court construed Nelson's notice of appeal as also a motion for reconsideration, which the District Court has since denied. Nelson did not file a new or amended notice of appeal to challenge that order, so that decision is not before us. Fed. R. App. P. 4(a)(4)(B)(ii).

[4] Nelson, relying on venue provisions in the Pennsylvania Rules of Civil Procedure and Pennsylvania Rules of Criminal Procedure, argues that the District Court lacked jurisdiction. See Pa. R. Civ. P. § 2179; Pa. R. Crim P. § 584. Those rules do not apply in federal court. The District Court had jurisdiction under 28 U.S.C. § 1331 and § 1367(a) (and venue was appropriate under 28 U.S.C. § 1391(b)).

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). "A factual dispute is 'genuine' if the 'evidence is such that a reasonable jury could return a verdict for the nonmoving party.'" Razak v. Uber Techs., Inc., 951 F.3d 137, 144 (3d Cir. 2020) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986)). A factual dispute is "material" if it "might affect the outcome of the suit under the governing law." Id. The evidence presented is thus viewed "through the prism of the substantive evidentiary burden" to determine "whether a jury could reasonably find either that the plaintiff proved his case by the quality and quantity of the evidence required by the governing law or that he did not." Anderson v. Consol. Rail Corp., 297 F.3d 242, 247 (3d Cir. 2002) (quoting Anderson, 477 U.S. at 254). We "must view the facts and evidence presented in the light most favorable to the nonmoving party." Razak, 951 F.3d at 144.

III.

In Count One of the amended complaint, Nelson alleged that Acre violated TILA and implementing Regulation Z and RESPA and implementing Regulation X.[5] Specifically, she alleged that Acre failed to

[5] As the District Court noted, the amended complaint cites the version of Regulation Z issued by the Board of the Governors of the Federal Reserve System, 12 C.F.R. § 226, and the Department of Housing and Urban Development version of Regulation X, 24 C.F.R. § 3500. But the rulemaking authorities under TILA

make all required disclosures of material terms, improperly represented that Nelson would not have to pay property taxes, failed to make a reasonable and good faith determination of Nelson's ability to pay, and failed to provide notice of the transfer of servicing rights to The Money Source. See 15 U.S.C. §§ 1638, 1639c; 12 U.S.C. § 2605. Nelson alleged that Acre's disclosures were improper because they used outdated documents. Pursuant to a statutory mandate, the Consumer Finance Protection Bureau ("CFPB") revised the regulations governing mortgage disclosures with an effective date of October 3, 2015. See 12 C.F.R. pt. 1026, supp. I, cmt. 1(d)(5). In her amended complaint, Nelson alleged that Acre improperly used the pre-October 3 disclosure forms with her application.

In support of its motion for summary judgment, Acre cited depositions of Nelson, an Acre owner, an Acre employee, and a Classic employee, along with documents including an application and disclosure forms signed by Nelson. ECF No. 72. In response, Nelson filed a memorandum of law and a statement of disputed material facts. ECF Nos. 76, 77. She also submitted 31 exhibits. ECF No. 75. She later submitted a sur-reply brief with a further 15 exhibits. ECF No. 79.[6] Acre

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and RESPA relevant to this case were transferred in 2011 to the CFPB, which issued substantially identical versions of Regulation Z, 12 C.F.R. pt. 1026, and Regulation X, 12 C.F.R. pt. 1024.

[6] On appeal, Nelson submits an additional exhibit, a December 2020 email exchange with a Monroe County employee regarding her case. 3d Cir. ECF No. 11 at 212-14. This exhibit was obviously not part of the record before the District Court, as it postdates the District Court's ruling, so we do not consider it. See

argued that the District Court should not consider Nelson's exhibits because she produced no documents in discovery. ECF No. 78 at 2-7.

The District Court ruled that, on the record presented, no reasonable jury could return a verdict for Nelson on her TILA and RESPA claims. Viewing the record in the light most favorable to Nelson, we conclude instead that Acre failed to meet its initial burden to show no genuine dispute as to any material fact. Acre submitted and cited Nelson's deposition testimony, and the District Court considered it. Mem. on Summ. J., ECF No. 82 at 9, 14. Nelson testified regarding several of the key factual questions underlying her federal claim. While Acre provides testimony and documentary evidence to support its own version of events, these materials do not foreclose a reasonable jury from crediting Nelson's testimony over Acre's account and finding Acre liable.

First, Nelson alleged that Acre improperly provided disclosures under the pre-October 3, 2015 regulatory regime. The CFPB's interpretive guidance provides that the relevant disclosure changes generally apply only where "the creditor or mortgage broker receives an application on or after October 3, 2015." 12

In re Capital Cities/ABC, Inc.'s Application for Access to Sealed Transcripts, 913 F.2d 89, 96 (3d Cir. 1990) ("This Court has said on numerous occasions that it cannot consider material on appeal that is outside of the district court record.").

C.F.R. pt. 1026, supp. I, cmt. 1(d)(5).[7] A broker receives an application when it receives "the consumer's name, the consumer's income, the consumer's social security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought." 12 C.F.R. pt. 1026, supp. I, cmt. 2(a)(3). Acre argues that the record shows it received this information from Nelson on September 24, 2015, and so properly provided disclosures under the previous requirements. An Acre employee testified that Classic initially referred Nelson to Acre in September regarding a mortgage for a newly constructed home. After speaking to Nelson by phone, Acre began preparing an application. Classic and Nelson later agreed that she would instead purchase a refurbished home and Acre restarted the application process, again by phone. After Acre prepared the second application, Nelson came to the office in person. Suppl. Appx. 273-76, 3d Cir. ECF No. 70. The record contains a loan application form in which Acre's loan originator attests that she collected the information supporting the second application by phone on September 24 and a Good Faith Estimate with that same date. Id. at 303, 310.[8] It

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[7] Nelson's claims do not involve the few exceptions that came into force on October 3 regardless of when an application was received. See 12 C.F.R. pt. 1026, supp. I, cmt. 1(d)(5).

[8] Acre and the District Court also cited the deposition testimony of one of Acre's owners in support of the September 24 date, but in the cited passage it appears he merely reads the date from the loan originator's attestation. Mem. on Summ. J. at 9 fn. 4; Suppl. Appx. 171-72.

also contains disclosure forms signed by Nelson with a September 24 date. Id. at 307-08, 318.

Nelson argues that the September 24 call never occurred and that Acre deliberately backdated her application to avoid the new disclosure requirements. At her deposition, Nelson testified that Classic did not suggest the refurbished home to her until October, and that she first contacted Acre only after that. Suppl. Appx. 196-99.[9] Without the address of the refurbished home, Acre could not receive the mortgage application for that property. See 12 C.F.R. pt. 1026, supp. I, cmt. 2(a)(3). She also testified that, at Acre's request, she later backdated certain documents to September 24. Suppl. Appx. 212, 214.

While Acre cited testimony and exhibits that support its account of events and contradict Nelson's, these materials are not so compelling as to prevent a reasonable jury from disagreeing.[10] None of Acre's documentary evidence addresses any developments prior to September 24. There is no testimony from the loan originator who allegedly spoke to Nelson by phone on that day. The originator's attestation was signed at the

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[9] In the first amended complaint, filed through her then-counsel, Nelson alleged that Classic introduced her to Acre in August 2015. ECF No. 2 ¶ 15. But the complaint does not specifically allege that Nelson reached out to Acre at that time and, in any case, this potential discrepancy does not so undermine her testimony that a reasonable jury could not rule for her on this point.

[10] On the record submitted by Acre, a reasonable jury could also accept portions of each account, such as finding that Nelson and Acre interacted in September, but only concerning the newly constructed property.

November closing. Nothing in the record forecloses Nelson's testimony that she signed the other documents with a September 24 date in October at Acre's request.[11] Even in Acre's account, these forms were not signed in person on September 24, and Acre does not cite evidence of how or when they were signed. Viewing this evidence in the light most favorable to Nelson, a reasonable jury could credit her testimony even absent additional evidence and find that Acre did not receive an application within the meaning of the applicable regulation until after October 3. See Anderson, 477 U.S. at 255 ("Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions."). This genuine dispute of fact is material to Nelson's claim that Acre failed to make the disclosures required by TILA and Regulation Z. See 15 U.S.C. § 1638; 12 C.F.R. § 1026.19(e) & (f).

Next, Nelson alleged that Acre misled her regarding property taxes and conducted a deficient investigation of Nelson's ability to pay. In Pennsylvania, disabled veterans may receive a property tax exemption if their income falls below a certain maximum. During the mortgage application process, the parties believed Nelson would be eligible for an exemption, but she was ultimately denied an exemption because

[11] In her opposition to Acre's summary judgment motion, Nelson attached an October 13 email from Acre's loan originator to Nelson asking Nelson to sign some forms with a September 24 date. Suppl. Appx. at 449; ECF No. 75-6 at 2. As we find that Acre did not meet its initial burden, we do not consider or rely on this exhibit.

education benefits that she received as a veteran brought her income over the maximum. Regulation Z requires mortgage lenders to make "good faith estimates" of certain disclosures, including, where an escrow account is established, "an estimate of the amount of taxes and insurance . . . payable with each periodic payment." 12 C.F.R. §§ 1026.18(s)(3)(i)(C), 1026.19(a)(1)(i) (2011)).[12] Where exact information is unknown, lenders are to estimate, acting in good faith and exercising due diligence, by using "the best information reasonable available," which can include relying on the representations of other parties. 12 C.F.R. § 1026.17(c)(2) (2014); 12 C.F.R. pt. 1026, supp. I, cmt. 17(c)(2)(i) (2014).

Acre argues that the record shows it did not include property taxes in Nelson's estimated monthly payments based on her own representations and an appropriate investigation. Acre witnesses testified that Nelson did not disclose her education benefits while applying for the mortgage. They relied on her disclosed income, which they verified against her tax returns. Suppl. Appx. 165-66, 279. Nelson signed a mortgage application which describes her monthly income as consisting solely of her pension, Social Security benefits, and "VA Benefits Non Educational." Id. at 299. The Acre witnesses also testified that they contacted county and federal Veterans Affairs officials as part of their investigation and were told, based on Nelson's

[12] While the applicable version of these regulations would hinge on when Acre received an application from Nelson, no amendments are materially relevant here.

declared income, that she should be eligible for an exemption. Id. at 165-66, 277-80. One Acre employee testified that Nelson gave him contact information of someone with Monroe County, and that contact told him that Nelson had herself consulted with the County regarding the tax exemption. Id. at 278.

At her deposition, Nelson testified that she in fact disclosed her education benefits to an Acre employee but that employee told her that she should not include it in her application because it was not permanent income. Id. at 201, 225. Nelson also denied that she consulted with the county regarding the tax exemption prior to closing or told Acre that she did so. Id. at 201, 203-06, 217, 223-5. The Acre employee denies that Nelson ever disclosed her educational benefits. Id. at 275.

Viewing this evidence in the light most favorable to Nelson, a reasonable jury could accept Nelson's testimony that she disclosed her education benefits and disbelieve the Acre employee's contrary testimony. See Anderson, 477 U.S. at 255. Nothing in the remaining relevant evidence is inconsistent with the Acre employee telling Nelson she need not include the education benefits in income and then either inadvertently or deliberately concealing that fact from his colleagues. And if the Acre employee so instructed Nelson, a jury could find that Acre provided faulty disclosures under TILA and Regulation Z by misleading Nelson and inadequately investigating her ability to pay. See 15 U.S.C. § 1638; 12 C.F.R. § 1026.19(e) & (f).

Finally, Nelson alleged that Acre transferred her mortgage for servicing to The Money Source without requisite notice. See 12 C.F.R. § 1024.33. Acre responds that it properly provided notice, pointing to two documents. First, Nelson signed and dated September 24 a servicing disclosure statement advising that Acre would be transferring the mortgage for servicing, but not specifying the details of the transfer or the identity of the transferee. Suppl. Appx. 318. Second, Acre produced a notice of servicing transfer dated November 9 advising that Acre would transfer the mortgage to the Money Source effective January 1, 2016. Suppl. Appx. 319. This form, if provided to Nelson, would meet the requirements of the disclosure regulation. Acre represents that it was given to Nelson at closing, but the document is not signed and Acre did not provide any evidence of delivery or receipt, or argue that it is entitled to any presumption of delivery.

At her deposition, Nelson testified that she never received the notice of servicing transfer and did not learn about The Money Source until after closing. Suppl. Appx. 211. She testified that she sent a December email to Acre about sending payments to The Money Source. Suppl. Appx. 211.

Nelson's claim turns on whether she received the notice of servicing transfer. She may have signed the prior disclosure statement and became aware of the Money Source's involvement in December, but still not received the required notice. Nelson testified that she did not receive the document and, on the evidence submitted by Acre, a reasonable jury could accept that

testimony, which is material to her claim that Acre failed to comply with the notice provisions of RESPA and Regulation X, see 12 U.S.C. § 2605(b); 12 C.F.R. § 1024.33, and rule in her favor on this point. See Anderson, 477 U.S. at 255.

We thus conclude that Acre failed to show that there was no genuine dispute as to any material fact based on the materials submitted in support of its motion for summary judgment. We thus do not assess the evidentiary value of the exhibits Nelson submitted in opposition. To the extent that any of those exhibits would, if considered, undermine Nelson's deposition testimony, a reasonable jury could still find for Nelson on the decisive factual questions.

IV.

For these reasons, we conclude that the District Court erred in granting summary judgment in favor of Acre on the record before it, and we will vacate the judgment and remand for further proceedings.[13]

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[13] Nelson challenges the District Court's ruling on several procedural grounds. As the resolution of these issues is unnecessary to the outcome, we do not reach them. We note nonetheless that Classic had no obligation to file for summary judgment or participate in this appeal, see Fed. R. Civ. P. 56; the District Court had discretion to rule without oral argument, see Fed. R. Civ. P. 78(b); M.D. Pa. L.R. 7.9; and Nelson could not raise, or expect the District Court to discern, new claims in her opposition to the motion for summary judgment. See Shanahan v. City of Chicago, 82 F.3d 776, 781 (7th Cir. 1996) ("A plaintiff may not amend his complaint through arguments in his brief in opposition to a motion for summary judgment."); cf. Gilmore v. Gates, McDonald & Co.,

Because the District Court declined to exercise supplemental jurisdiction over the state law claims in light of its ruling on the federal claim, we will also vacate the District Court's ruling as to supplemental jurisdiction and remand to give the District Court an opportunity to consider exercising its jurisdiction over Nelson's state law claims. See United States v. Omnicare, Inc., 903 F.3d 78, 94 (3d Cir. 2018).[14]

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382 F.3d 1312, 1315 (11th Cir. 2004) ("Liberal pleading does not require that, at the summary judgment stage, defendants must infer all possible claims that could arise out of facts set forth in the complaint."). While Nelson may now wish her then-counsel had framed her claims differently, she is "deemed bound by the acts of [her] lawyer," and may only amend her claims in accordance with Federal Rule of Civil Procedure 15. Link v. Wabash R.R. Co., 370 U.S. 626, 634 (1962); see Mala v. Crown Bay Marina, Inc., 704 F.3d 239, 245 (3d Cir. 2013) (Pro se litigants "must abide by the same [procedural] rules that apply to all other litigants.").

[14] We deny Nelson's motion to disqualify one of Acre's counsel. 3d Cir. ECF No. 12. Counsel's entry of appearance lacks the certificate of service attached to the entries of counsel, so Nelson may not have received notice. See 3d Cir. ECF Nos. 3, 5, 15. But neither this nor anything else in Nelson's motion is grounds for disqualification.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

BRIGITTE NELSON, Plaintiff, v. ACRE MORTGAGE & FINANCIAL, INC., et al., Defendants.	CIVIL ACTION NO. 3:17-cv-01050 (SAPORITO, M.J.)

ORDER

(Filed Oct. 20, 2020)

On September 25, 2020, we entered a memorandum and order granting summary judgment in favor of one of the defendants with respect to the plaintiffs federal claims and dismissing the plaintiff's state law claims without prejudice. (Doc. 82; Doc. 83.) That same day, the Clerk entered judgment with respect to the federal claims. (Doc. 84.)

On October 19, 2020, the *pro se* plaintiff filed a document styled as a "Motion to Appeal," which the clerk docketed as a Notice of Appeal. (Doc. 85.) In the body of this document, the plaintiff appears not only to express her desire to appeal final judgment in this case, but also to request reconsideration of our Order of September 25, 2020, expressly requesting relief pursuant to Rule 60(d)(3) of the Federal Rules of Civil Procedure. (See *id.*) In view of the plaintiff's *pro se* status, we will liberally construe the document *also* as a motion for reconsideration pursuant to Rules 59(e), 60(b) and

60(d) of the Federal Rules of Civil Procedure. *See generally Mala v. Crown Bay Marina, Inc.*, 704 F.3d 239, 244-46 (3d Cir. 2013) (discussing a court's obligation to liberally construe *pro se* pleadings and other submissions). The defendants will be directed to respond to the plaintiff's motion.

Accordingly, **IT IS HEREBY ORDERED THAT**:

1. The Clerk shall separately docket a copy of the plaintiff's *pro se* "Motion to Appeal" (Doc. 85) as a motion for reconsideration of our Order of September 25, 2020;

2. The defendants shall file and serve briefs in opposition, if any, **on or before November 3, 2020**;

3. The plaintiff may file and serve a reply brief **within fourteen days after service** of any brief in opposition.

Date: October 20, 2020

/s/ Joseph F. Saporito, Jr.
JOSEPH F. SAPORITO, JR.
United States Magistrate Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

BRIGITTE NELSON, Plaintiff, v. ACRE MORTGAGE & FINANCIAL, INC., et al., Defendants.	CIVIL ACTION NO. 3:17-cv-01050 (SAPORITO, M.J.)

MEMORANDUM

(Filed Sep. 25, 2020)

This federal civil action commenced on November 9, 2016, when the plaintiff, appearing through counsel, filed her original complaint in the United States District Court for the Eastern District of Pennsylvania. (Doc. 1.) The original one-count complaint asserted a federal claim for violation of the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 *et seq.*, and Regulation Z, 12 C.F.R. part 1026,[1] the latter of which implemented TILA. The original complaint named five defendants, including Acre Mortgage & Financial, Inc. ("Acre Mortgage") and Classic Quality Homes ("Classic").

[1] The original and amended complaints cite to Regulation Z, 12 C.F.R. part 226, promulgated by the Board of Governors of the Federal Reserve System (the "Board"). But general rulemaking authority with respect to TILA was transferred from the Board to the Consumer Finance Protection Bureau ("CFPB") in 2011. The CFPB then issued its own Regulation Z, 12 C.F.R. part 1026, which was substantially identical to the Board's Regulation Z.

On January 30, 2017, the plaintiff filed her counseled amended complaint. (Doc. 2.) The seven-count amended complaint omitted three of the original defendants, effectively dismissing them from the action. Only Acre Mortgage and Classic remained as defendants. Count One of the amended complaint asserts federal claims for violation of TILA, Regulation Z, the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2601 *et seq.*, and Regulation X, 24 C.F.R. part 1024,[2] the last of which implemented RESPA. These federal claims in Count One are brought against Acre Mortgage only. The remaining six counts of the amended complaint assert related state-law claims against Acre Mortgage and Classic.

Defendant Classic moved to dismiss or transfer the case for improper venue, arguing that the property at issue was located, and all relevant events or omissions occurred, in Monroe County, Pennsylvania, which is located within this judicial district, the Middle District of Pennsylvania. (Doc. 11.) On May 2, 2017, the motion was granted, and the case was transferred to this Court. (Doc. 15.)

On March 13, 2019, after discovery was completed but before the dispositive motion deadline, we granted a motion to withdraw filed by plaintiff's counsel. (Doc.

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[2] The amended complaint cites to Regulation X, 24 C.F.R. part 3500, promulgated by the Department of Housing and Urban Development ("HUD"). But all rulemaking authority with respect to RESPA was transferred from HUD to the CFPB in 2011. The CFPB then issued its own Regulation X, 12 C.F.R. part 1024, which was substantially identical to HUD's Regulation X.

60; *see also* Doc. 52.) On August 16, 2019, after allowing the plaintiff several months to secure new legal representation, we granted the plaintiff's motion to proceed *pro se* in this matter. (Doc. 66; *see also* Doc. 65.)

Acre Mortgage has moved for summary judgment on all claims against it, pursuant to Rule 56 of the Federal Rules of Civil Procedure. (Doc. 70.) The motion is fully briefed and ripe for decision. (Doc. 71; Doc. 71; Doc. 72; Doc. 76; Doc. 77; Doc. 78; Doc. 79.) Classic has not joined the motion, nor has it filed a dispositive motion of its own.

I. BACKGROUND

The plaintiff, Brigitte Nelson, is a retired, disabled military veteran. On November 9, 2015, she purchased a home from the non-moving defendant, Classic. In the process of securing financing for the home purchase, she grew dissatisfied with another lender and applied for a mortgage with the moving defendant, Acre Mortgage, to which she was referred by Classic. On or before the closing date, Acre Mortgage provided her with: (1) a Truth-in-Lending Disclosure Statement (Doc. 72-10), dated September 24, 2015; (2) an initial Good Faith Estimate (Doc. 72-11), also dated September 24, 2015; (3) a revised Good Faith Estimate (Doc. 72-12), dated October 28, 2015; (4) a Servicing Disclosure Statement (Doc. 72-13, at 2), dated September 24, 2015; (5) a Notice of Servicing Transfer (Doc. 72-13, at 3), dated November 9, 2015; and (6) a Settlement Statement (HUD-1) (Doc. 72-14), dated November 9, 2015.

One year after closing, she filed the instant lawsuit, claiming that Acre Mortgage violated the provisions of TILA and its implementing regulations because: (a) the lender provided disclosures on the wrong forms; (b) the lender failed to disclose local property taxes for which she would be liable; (c) the lender failed to correctly disclose the estimated monthly payments for which she would be responsible; and (d) the lender failed to make a reasonable and good faith determination of her ability to repay the loan. In addition, she claims that Acre Mortgage violated the provisions of RESPA and its implementing regulations because the lender failed to provide notice of the transfer of its servicing rights to a non-party entity, The Money Source. For relief, Nelson seeks damages and rescission of her mortgage.

Nelson also asserts state-law claims against Acre Mortgage and Classic, seeking damages and rescission of the home sale agreement.

II. LEGAL STANDARD

Under Rule 56 of the Federal Rules of Civil Procedure, summary judgment should be granted only if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A fact is "material" only if it might affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute of material fact is "genuine" only if the evidence "is such that a reasonable jury could return a verdict for

the non-moving party." *Anderson*, 477 U.S. at 248. In deciding a summary judgment motion, all inferences "should be drawn in the light most favorable to the non-moving party, and where the non-moving party's evidence contradicts the movant's, then the non-movant's must be taken as true." *Pastore v. Bell Tel. Co. of Pa.*, 24 F.3d 508, 512 (3d Cir. 1994).

The party seeking summary judgment "bears the initial responsibility of informing the district court of the basis for its motion," and demonstrating the absence of a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If the movant makes such a showing, the non-movant must set forth specific facts, supported by the record, demonstrating that "the evidence presents a sufficient disagreement to require submission to the jury." *Anderson*, 477 U.S. at 251-52. Thus, in evaluating a motion for summary judgment, the Court must first determine if the moving party has made a *prima facie* showing that it is entitled to summary judgment. *See* Fed. R. Civ. P. 56(a); *Celotex*, 477 U.S. at 331. Only once that *prima facie* showing has been made does the burden shift to the nonmoving party to demonstrate the existence of a genuine dispute of material fact. *See* Fed. R. Civ. P. 56(a); *Celotex*, 477 U.S. at 331.

Both parties may cite to "particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for the purposes of the motion only), admissions, interrogatory answers or other materials." Fed. R. Civ. P. 56(c)(1)(A).

"An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated." Fed. R. Civ. P. 56(c)(4). "Although evidence may be considered in a *form* which is inadmissible at trial, the *content* of the evidence must be capable of admission at trial." *Bender v. Norfolk S. Corp.*, 994 F. Supp. 2d 593, 599 (M.D. Pa. 2014); *see also Pamintuan v. Nanticoke Mem'l Hosp.*, 192 F.3d 378, 387 n.13 (3d Cir. 1999) (noting that it is not proper, on summary judgment, to consider evidence that is not admissible at trial).

III. UNDISPUTED MATERIAL FACTS[3]

The plaintiff, Brigitte Nelson, is a veteran of the United States Army who retired in 2013 after 32 years of honorable military service. Upon retirement, she was classified as a 100-percent disabled veteran. Under a state program, a veteran who is classified as 100-percent disabled may be exempted from paying local

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[3] Because we ultimately decline to retain jurisdiction over the plaintiff's state-law claims, we limit our recitation of the undisputed material facts to those concerning the plaintiff's federal claims only.

In her response to Acre Mortgage's statement of undisputed material facts, Nelson qualifies many—if not most—of the defendant's fact statements without specifically admitting or denying them. For the most part, these qualifications do not directly dispute the facts as stated by the defendant, but simply restate them to her own satisfaction. In the few instances where Nelson has contradicted material facts as stated by Acre Mortgage, we have looked to the evidence cited by each party in support of their respective statements. See generally the previous section of this memorandum opinion (citing Fed. R. Civ. P. 56(a), (c), and *Anderson*, 477 U.S. at 251-52). We note that, in addition to particular documentary exhibits, Nelson has often cited to sections of her brief in opposition to summary judgment to support her counter-statements of fact, but "assertions in briefs are not competent evidence unless agreed to by the adverse parties." *Dabone v. Thornburgh*, 734 F. Supp. 195, 199 (E.D. Pa. 1990); *see also Braden v. Univ. of Pittsburgh*, 477 F.2d 1, 6 (3d Cir. 1973) ("We have repeatedly stated that statements in briefs unless specifically admitted by the adversary side cannot be treated as record evidence."); *Prince v. Sun Shipbuilding & Dry Dock Corp.*, 86 F.R.D. 106, 107 (E.D. Pa. 1980) ("[T]he unverified representations of counsel in a brief are not a proper part of the record for consideration on a motion for summary judgment."). To defeat a motion for summary judgment, the nonmoving party must raise more than "some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

property taxes, so long as his or her income falls below a statutory maximum. Applications for this exemption are handled by a county veteran affairs office, but whether the individual veteran satisfies the income-eligibility criteria is determined by officials with the state veterans commission.

In July 2015, Nelson contacted Classic after seeing an advertisement on television for homes to purchase in Monroe County, Pennsylvania. On July 3, 2015, Nelson entered into a contract with Classic to purchase a newly constructed home. After initially contracting to purchase that newly constructed home, she subsequently contracted to instead purchase an existing home located at 124 Milestone Drive. The 124 Milestone Drive property had been purchased by Classic out of foreclosure and had been, or was to be, renovated.

After she had initially contracted to purchase the newly constructed home from Classic, Nelson had begun the mortgage loan application process with Navy Federal Credit Union. In the course of this process, Nelson became dissatisfied with Navy Federal Credit Union and applied for a mortgage loan from Acre Mortgage instead, to which she had been referred by Classic. On September 24, 2015, she initiated her application with Acre Mortgage when she submitted her financial information to an Acre Mortgage loan officer, Angie Maxwell, over the phone.[4] Nelson

[4] In her counter-statement and in her deposition testimony, Nelson appears to take the position that her application for a

disclosed—and subsequently provided proof of—her income in connection with her mortgage application. She disclosed a monthly income of $7,086.83, including $1,510 in social security disability benefits, $2,906.83 in non-educational veterans benefits, and $2,670 in military pension benefits. She did not disclose any other income.[5] Later, at closing, Nelson signed the loan application form below a statement acknowledging that this income information was true and correct.

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mortgage loan commenced later, when she first received and signed a written loan application form during an in-person meeting at the offices of Acre Mortgage in October. Based on this, she suggests that her application was improperly backdated to September 24, 2015. But for the purposes of Regulation Z (and TILA), "an application consists of the submission of the consumer's name, the consumer's income, the consumer's social security number to obtain a credit a report, the property address, an estimate of the value of the property, and the mortgage loan amount sought." 12 C.F.R. § 1026.2(a)(3)(ii). "[O]nce a creditor has received [this] information, it has an application for purposes of Regulation Z. A submission may be in written or electronic format and includes a written record of an oral application." 12 C.F.R. pt. 1026, supp. I, pt. 1, cmt. 2(a)(3)-1 (official interpretation of 12 C.F.R. § 1026.2(a)(3)). The evidence of record indicates that, notwithstanding any written forms, Nelson's loan application with Acre Mortgage was initiated on September 24, 2015, when she provided Maxwell with the requisite financial information over the phone. (Doc. 72-1, at 11; *see also* Doc. 72-9, at 7.) Nelson fails to cite any evidence in the record to dispute this date.

[5] In her counter-statement, Nelson avers that she disclosed her educational veterans benefits as well. But she cites no competent record evidence in support. She cites only to a subsequent July 2016 email from a federal official with the U.S. Department of Veterans Affairs to an Acre Mortgage official, which does not address any disclosures made by Nelson.

Before closing, Nelson received and signed a Truth-in-Lending Disclosure Statement, dated September 24, 2015.[6] (Doc. 72-10.) The disclosure statement disclosed the estimated annual percentage rate of her prospective mortgage loan, the estimated total amount of her payments, the estimated amount financed, the estimated finance charge, and her total estimated monthly payment, which included principal, interest, and estimated taxes and insurance. The amount for estimated taxes and insurance was $75, which covered insurance only. It did not include any property taxes due to Nelson's anticipated exemption as a disabled veteran.

Before closing, Nelson received an initial Good Faith Estimate, dated September 24, 2015. (Doc. 72-11.) The initial Good Faith Estimate included a line-item for an initial deposit of $225 into an escrow account to pay future recurring charges, including all property taxes and all insurance. (*Id.*) The form explicitly advised that the escrow account "may or may not cover all of these charges." (*Id.*) Nelson also received a revised Good Faith Estimate, dated October 28, 2015. (Doc. 72-12) The revised Good Faith Estimate included a line-item for an initial deposit of $225 into an escrow account to pay future recurring charges, including all property taxes and all insurance. (*Id.*) The form explicitly advised that the escrow account "may or may not

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[6] In her counter-statement, Nelson avers that she received and signed the Truth-in-Lending Disclosure Statement during an in-person meeting at the offices of Acre Mortgage in October. She does not dispute that it was received before the closing.

cover all of these charges." (*Id.*) The escrow account deposits reflected on these forms did not include any property taxes due to Nelson's anticipated exemption as a disabled veteran.

In conducting its due diligence prior to closing, Acre Mortgage consulted Monroe County officials to confirm that property taxes could be excluded. Based on the income information provided by Nelson to Acre Mortgage, county officials informed Acre Mortgage that Nelson should be eligible for the property tax exemption. Nelson had previously spoken with county officials about the tax exemption as well.[7]

Officials at Acre Mortgage remained uncertain about the exclusion of property taxes, and they held a meeting one or two days before the closing. Following the meeting, Acre Mortgage once again contacted county officials to confirm Nelson's eligibility for the tax exemption. The county informed Acre Mortgage that, based on the income information submitted to the lender, she was eligible, but the exemption could not be granted formally until Nelson had title to the property. Based on these multiple consultations with county officials and its own investigation in to the requirements for the property tax exemption, Acre Mortgage concluded that Nelson was eligible and property taxes could be excluded from the loan disclosures and closing documents.[8]

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[7] Nelson disputes these fact statements by the defendant, but she fails to cite any competent evidence. *See supra* note 3.

[8] *See supra* notes 3, 5, 7.

On or before the closing date, Nelson received a Settlement Statement, commonly known as a "HUD-1" statement. (Doc. 72-14.) The HUD-1 indicated that $14,539 in school district property taxes for 2015-2016 had been "paid outside closing" by the seller, and thus it did not include an adjustment to charge a prorated portion of this property tax payment to the buyer. (*Id.*) The HUD-1 indicated that Nelson's loan terms included a monthly payment of $1,377.43 in principal and interest, plus a monthly escrow payment of $103.25 to cover homeowner's insurance, bringing her total monthly payment to $1,480.68. (*Id.*) An unchecked box on the HUD-1 indicated that the escrow payment *did not* include property taxes. (*Id.*)[9]

Before the closing date, Nelson received a Servicing Disclosure Statement from Acre Mortgage advising her that the lender did not service mortgage loans of the type for which she applied, and that the lender intended to assign, sell, or transfer the servicing of her mortgage loan before the first payment was due. (Doc. 72-13, at 2.) Nelson signed the document to acknowledge its receipt. (*Id.*) Her signature was dated September 24, 2015.[10] (*Id.*) At the closing, Nelson received a Notice of Servicing Transfer informing her that, instead of Acre Mortgage, her loan would be serviced by The Money Source for all payments beginning

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[9] *See supra* notes 3, 7.

[10] At her deposition, Nelson acknowledged that the signature was hers, but testified that the date was written in by someone else. She did not recall having read the document, but she does not dispute having received it on or before the closing date.

January 1, 2016. (Doc. 72-13, at 3.) This notice included the effective date of the transfer of servicing, the name, address and phone number of both Acre Mortgage and The Money Source, the date when Acre Mortgage would cease to accept payments and The Money Source would begin to accept them, and a statement that the transfer of servicing did not affect any term or condition of the mortgage loan other than who would be collecting the loan payments. (*Id.*)[11]

In December 2015, after the closing, Nelson applied for the disabled veteran property tax exemption. In February 2016, she was notified by the state veterans commission that she was not eligible for the property tax exemption for 2015 or 2016 because she received educational benefits that substantially increased her income for the purposes of this program, exceeding the statutory maximum income for eligibility.[12] Nelson requested reconsideration of this decision, and her application was denied on reconsideration by the state veterans commission in March 2016.

Nelson completed a graduate degree program in May 2016 and no longer received educational veterans benefits thereafter. Without the educational veterans benefits, her income fell below the statutory maximum. She reapplied in 2017 and was granted tax-exempt

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[11] *See supra* notes 3, 7.

[12] The value of these educational veterans benefits appears to have been reported directly to the state veterans commission by the U.S. Department of Veterans Affairs.

status as a 100-percent disabled veteran effective beginning in 2018.

IV. Discussion

The plaintiff claims that Acre Mortgage violated the provisions of TILA, RESPA, and their respective implementing regulations. She claims that Acre Mortgage violated TILA and Regulation Z when it provided disclosures on the wrong forms, failed to disclose local property taxes for which she ultimately would be liable and consequently failed to correctly disclose the estimated monthly payments for which she would be responsible, and failed to make a reasonable and good faith determination of her ability to repay the loan. She claims that Acre Mortgage violated RESPA and Regulation X by failing to provide proper notice of the transfer of its servicing rights to The Money Store.

A. TILA Claims

"Congress enacted the Truth in Lending Act . . . to 'assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit.'" *Krieger v. Bank of America, N.A.*, 890 F.3d 429, 432 (3d Cir. 2018). "Historically, Regulation Z of the Board of Governors of the Federal Reserve System (Board), 12 CFR part 226, has implemented TILA." Truth in Lending (Regulation Z), 76 Fed. Reg. 79,768, 79,768 (Dec. 22, 2011). "[T]he Dodd-Frank Act transferred rulemaking authority for TILA

to the [Consumer Finance Protection Board (CFPB)], effective July 21, 2011." *Id.* The CFPB subsequently promulgated implementing regulations, also known as Regulation Z, codified at 12 C.F.R. part 1026. The CFPB has also issued official interpretations of these regulations to facilitate the implementation of TILA. *See* 12 C.F.R. pt. 1026, supp. I; *Curtis v. Propel Prop. Tax Funding, LLC*, 915 F.3d 234, 242 (4th Cir. 2019).

The Dodd-Frank Act also directed the CFPB "to integrate the mortgage loan disclosures under TILA and RESPA." Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z), 78 Fed. Reg. 79,730, 79,730 (Dec. 31, 2013). Previously, mortgage lenders were required to provide multiple disclosure forms developed by two different agencies charged with implementing TILA and RESPA. *Id.* Consumers often found the forms confusing, and lenders and settlement agencies found them burdensome to provide and explain. *Id.* In discharging this statutory mandate, the CFPB promulgated revisions to Regulation Z, mandating a new set of integrated disclosure forms for mortgage loans for which the lender or mortgage broker receives an application on or after October 3, 2015—the effective date of these revisions. 12 C.F.R. pt. 1026, supp. I, pt. 1, cmt. 1(d)(5)-1 (official interpretation of 12 C.F.R. § 1026.1(d)(5)).

Nelson first claims that Acre Mortgage violated TILA and Regulation Z because it provided her with the old disclosure forms, rather than the new integrated forms. But, as noted above, the moving

defendant has adduced evidence that her application was received by Acre Mortgage on September 24, 2015, and Nelson has failed to cite any competent evidence to the contrary. On the record before us, we find no genuine dispute of material fact with respect to the application date, and thus Acre Mortgage did not use the wrong disclosure forms.

Nelson next claims that Acre Mortgage failed to disclose local property taxes for which she ultimately would be liable, and it consequently failed to correctly disclose the estimated monthly payments for which she would be responsible. Prior to October 3, 2015, Regulation Z required a mortgage lender to "make good faith estimates of the disclosures required by § 1026.18" following receipt of a consumer's written application. 12 C.F.R. § 1026.19(a)(1)(i) (2011) (amended eff. Oct. 3, 2015). These disclosures included "an estimate of the amount of taxes and insurance, including any mortgage insurance, payable with each periodic payment." 12 C.F.R. § 1026.18(s)(3)(i)(C) (2011) (amended eff. Oct. 3, 2015). Regulation Z further provided that, "[i]f any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided to the consumer, and shall state clearly that the disclosure is an estimate." 12 C.F.R.

§ 1026.17(c)(2)(i).[13] The CFPB's official interpretation at the time provided that:

> Disclosures may be estimated when the exact information is unknown at the time disclosures are made. Information is unknown if it is not reasonably available to the creditor at the time the disclosures are made. The "reasonably available" standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. . . . The creditor normally may rely on the representations of other parties in obtaining information.

12 C.F.R. pt. 1026, supp. I, pt. 2, cmt. 17(c)(2)(i)-1 (2014) (amended eff. Oct. 3, 2015) (official interpretation of 12 C.F.R. § 1026.17(c)(2)(i) (2014) (amended eff. Oct. 3, 2015)).

As noted above, the moving defendant has adduced evidence that Nelson failed to disclose her educational veterans benefits as income when she applied for a mortgage loan with Acre Mortgage, and Nelson has failed to cite any competent evidence to the contrary. The evidence adduced by the moving defendant further indicates that Acre Mortgage relied on the representations of both Nelson and county officials with respect to her eligibility for the disabled veterans property tax exemption, and that Acre Mortgage acted in good faith and exercised due diligence in seeking to determine whether property taxes could be excluded from her estimated monthly payment and other

[13] We note that, although § 1026.17 has been amended, the text of this subparagraph, § 1026.17(c), was not.

mortgage loan disclosures. The moving defendant has adduced evidence that its TILA disclosures were based on the best information reasonably available at the time the disclosures were provided to Nelson, and the disclosures clearly stated that they were estimates. On the record before us, we find that no reasonable jury could return a verdict in favor of the plaintiff with respect to whether Acre Mortgage adequately disclosed Nelson's local property tax obligations or her estimated monthly payments under the mortgage loan.

Finally, Nelson claims that Acre Mortgage failed to make a reasonable and good faith determination of her ability to repay the mortgage loan. Regulation Z provides that "[a] creditor shall not make a loan that is a covered transaction unless the creditor makes a reasonable and good faith determination at or before consummation that the consumer will have a reasonable ability to repay the loan according to its terms." 12 C.F.R. § 1026.43(c)(1). But, as the official interpretation notes,

> the rule and commentary do not specify how much income is needed to support a particular level of debt or how credit history should be weighed against other factors. So long as creditors consider the factors set forth in § 1026.43(c)(2) according to the requirements of § 1026.43(c), creditors are permitted to develop their own underwriting standards and make changes to those standards over time in response to empirical information and changing economic and other conditions. Whether a particular ability-to-repay determination is

> reasonable and in good faith will depend not only on the underwriting standards adopted by the creditor, but on the facts and circumstances of an individual extension of credit and how a creditor's underwriting standards were applied to those facts and circumstances.

12 C.F.R. pt. 1026, supp. I, pt. 3, cmt. 43(c)(1)-1 (official interpretation of 12 C.F.R. § 1026.43(c)(1)). Moreover, "[a] change in the consumer's circumstances *after* consummation . . . that cannot be reasonably anticipated from the consumer's application or the records used to determine repayment ability is not relevant to determining a creditor's compliance with the rule." *Id.* cmt. 43(c)(1)-2 (emphasis added).

In performing this ability-to-repay evaluation, the lender is required to consider "[t]he consumer's current or reasonably expected income or assets," *id.* § 1026.43(c)(2)(i), and to "verify the amounts of income or assets that the creditor relies on . . . using third-party records that provide reasonably reliable evidence of the consumer's income or assets," *id.* § 1026.43(c)(4). The lender is also required to consider "[t]he consumer's monthly payment for mortgage-related obligations," 12 C.F.R. § 1043(c)(2)(v), which includes expected property taxes, 12 C.F.R. pt. 1026, supp. I, pt. 3, cmt. 43(c)(2)(v)-1 (official interpretation of 12 C.F.R. § 1026.43(c)(2)(v)).

> Estimates of mortgage-related obligations should be based upon information that is known to the creditor at the time the creditor underwrites the mortgage obligation.

> Information is known if it is reasonably available to the creditor at the time of underwriting the loan. Creditors may rely on guidance provided under comment 17(c)(2)(i)-1 in determining if information is reasonably available.

Id. cmt. 43(c)(2)(v)-5.

As noted above, the moving defendant has adduced evidence that Nelson failed to disclose her educational veterans benefits as income when she applied for a mortgage loan with Acre Mortgage, and Nelson has failed to cite any competent evidence to the contrary. The evidence adduced by the moving defendant further indicates that Acre Mortgage relied on the representations of both Nelson and county officials with respect to her eligibility for the disabled veterans property tax exemption, and that Acre Mortgage acted in good faith and exercised due diligence in seeking to determine whether property taxes could be excluded from her estimated monthly payment and other mortgage loan disclosures. The moving defendant has adduced evidence that its ability-to-repay determination was based on the best information reasonably available at the time of consummation of the loan transaction. The fact that, contrary to the expectations of all parties, Nelson was subsequently deemed ineligible for the property tax exemption by state officials based on her undisclosed educational veterans benefits is immaterial because that information was not—and could not be—known to Acre Mortgage at or before the time of consummation. On the record before us, we find that no reasonable jury could return a verdict in favor of the

plaintiff with respect to whether Acre Mortgage made a reasonable and good faith determination at or before consummation that Nelson would have a reasonable ability to repay the loan according to its terms.

B. RESPA Claims

The plaintiff claims that Acre Mortgage violated RESPA and Regulation X by failing to provide proper notice of the transfer of its servicing rights to The Money Store.

Under RESPA and Regulation X, a mortgage lender or servicer must provide notice of any transfer of servicing of a mortgage loan. 12 C.F.R. § 1024.33(b)(1). The notice must include: the effective date of the transfer of servicing; the name, address, and telephone number of both the transferee servicer and the transferor servicer, the date(s) on which the transferor servicer will cease to accept payments and the transferee servicer will begin to accept such payments; and a statement that the transfer of servicing does not affect any term or condition of the mortgage loan other than terms directly related to the servicing of the loan. *Id.* § 1024.33(b)(4). The notice of transfer must be provided to the borrower "not less than 15 days before the effective date of the transfer of the servicing of the mortgage loan." *Id.* § 1024.33(b)(3)(i). Moreover, "[n]otices of transfer provided at settlement . . . satisfy the timing requirements of paragraph (b)(3) of this section." *Id.* § 1024.33(b)(3)(iii). Prior to October 3, 2015, Regulation X also required a mortgage lender

to "provide to the person a servicing disclosure statement that states whether the servicing of the mortgage loan may be assigned, sold, or transferred to any other person at any time." 12 C.F.R. § 1024.33(a) (2014) (amended Oct. 3, 2015).

As noted above, the moving defendant has adduced evidence that Nelson was provided with a Servicing Disclosure Statement dated September 24, 2015, the form and content of which complied with the requirements of pre-amendment § 1024.33(a), and Nelson has failed to cite any evidence to the contrary. The moving defendant has further adduced evidence that Nelson was provided with a Notice of Servicing Transfer at the closing on November 9, 2015—more than 15 days before the transfer was effective—informing her that her loan would be serviced by The Money Source instead of Acre Mortgage, and that the form, content, and timing of this notice complied with the requirements of § 1024.33(b), and Nelson has failed to cite any evidence to the contrary.

On the record before us, we find that no reasonable jury could return a verdict in favor of the plaintiff with respect to whether Acre Mortgage provided adequate notice of the transfer of the servicing of Nelson's mortgage loan to The Money Source.

C. Supplemental State-Law Claims

Upon dismissal of the plaintiff's federal TILA and RESPA claims on summary judgment, only her

state-law claims against Acre Mortgage and Classic remain.[14]

Where a district court has dismissed all claims over which it had original jurisdiction, the Court may decline to exercise supplemental jurisdiction over state law claims. 28 U.S.C. § 1367(c)(3). Whether the Court will exercise supplemental jurisdiction is within its discretion. *Kach v. Hose*, 589 F.3d 626, 650 (3d Cir. 2009). That decision should be based on "the values of judicial economy, convenience, fairness, and comity." *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 (1988). Ordinarily, when all federal law claims have been dismissed and only state-law claims remain, the balance of these factors indicates that these remaining claims properly belong in state court. *Cohill*, 484 U.S. at 350. Finding nothing in the record to distinguish this case from the ordinary one, the balance of factors in this case "point[s] toward declining to exercise jurisdiction over the remaining state law claims." *See*

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[14] We note that the plaintiff's counseled amended complaint includes civil conspiracy and aiding-and-abetting counts against both defendants. As pleaded in the amended complaint, these are state-law claims. We decline, however, to liberally construe them as federal claims seeking damages from Classic under TILA or RESPA on a conspiracy or aiding-and-abetting theory. For one thing, Nelson was represented by counsel at the time when she filed her amended complaint. *See Ostrowski v. D'Andrea*, Civil Action No. 3:14-cv-00429, 2015 WL 10434888, at *3 (M.D. Pa. Aug. 11, 2015), *report and recommendation adopted by* 2016 WL 862477 (M.D. Pa. Mar. 7, 2016). For another, such relief against a non-lender or non-servicer under TILA or RESPA is unavailable as a matter of law. *See Weiner v. Bank of King of Prussia*, 358 F. Supp. 684, 694 (E.D. Pa. 1973).

Cohill, 484 U.S. at 350 n.7. Moreover, we note that the Pennsylvania savings statute, 42 Pa. Cons. Stat. Ann. § 5103(b), permits the plaintiff to transfer her state-law claims by her own action to state court following dismissal of those claims by this Court for lack of subject matter jurisdiction. *See McLaughlin v. Arco Polymers, Inc.*, 721 F.2d 426, 430-31 (3d Cir. 1983); *Rousseau v. City of Philadelphia*, 589 F. Supp. 961, 974 (E.D. Pa. 1984). *See generally* 42 Pa. Cons. Stat. Ann. § 5103(b)(2) (requiring a plaintiff seeking to transfer claims to promptly file in state court a certified transcript of the final judgment of the federal court together with a certified copy of the pleadings from the federal action).

Accordingly, the plaintiff's state-law claims will be dismissed without prejudice pursuant to 28 U.S.C. § 1367(c)(3).

V. CONCLUSION

For the reasons set forth above, Acre Mortgage's motion for summary judgment will be granted in part and denied in part as moot. It will be granted with respect to the plaintiff's TILA and RESPA claims set forth in Count One of the Amended Complaint. The plaintiff's state-law claims against both defendants will be dismissed without prejudice pursuant to 28 U.S.C. § 1367(c)(3). As a result, the remainder of Acre Mortgage's motion for summary judgment will be denied as moot.

An appropriate order follows.

Dated: September 25, 2020

s/Joseph F. Saporito, Jr.
JOSEPH F. SAPORITO, JR.
United States Magistrate Judge

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

BRIGITTE NELSON, Plaintiff, v. ACRE MORTGAGE & FINANCIAL, INC., et al., Defendants.	CIVIL ACTION NO. 3:17-cv-01050 (SAPORITO, M.J.)

ORDER

AND NOW, this 25th day of September, 2020, in accordance with the accompanying Memorandum, **IT IS HEREBY. ORDERED THAT**:

1. The motion for summary judgment by defendant Acre Mortgage & Financial, Inc. (Doc. 70) is **GRANTED in part and DENIED in part**;

2. The Clerk shall enter **JUDGMENT** in favor of defendant Acre Mortgage & Financial, Inc. and against the plaintiff with respect to the plaintiff's federal claims, set forth in Count. One of the Amended Complaint (Doc. 2);

3. The plaintiff's state-law claims against both defendants, set forth in Counts Two through Seven of the Amended Complaint (Doc. 2), are **DISMISSED without prejudice** pursuant to 28 U.S.C. § 1367(c)(3); and

4. The Clerk shall mark this case as **CLOSED**.

/s/ Joseph F. Saporito, Jr.
JOSEPH F. SAPORITO, JR.
United States Magistrate Judge

AO 450 (Rev. 11/11) Judgment in a Civil Action

UNITED STATES DISTRICT COURT
for the
Middle District of Pennsylvania

BRIGITTE NELSON *Plaintiff* v. ACRE MORTGAGE & FINANCIAL, INC., et al. *Defendant*	)	Civil Action No. 3:17-CV-1050

JUDGMENT IN A CIVIL ACTION

The court has ordered that *(check one)*:

☐ the plaintiff *(name)* _____ recover from the defendant *(name)* _____ the amount of _____ dollars ($ _____), which includes prejudgment interest at the rate of _____ %, plus post judgment interest at the rate of _____ % per annum, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant *(name)* _____ _____ recover costs from the plaintiff *(name)* _____ _____ .

☑ other: Judgment is entered in favor of defendant Acre Mortgage & Financial, Inc., and against plaintiff with respect to the plaintiff's federal claims, set forth in Count One of the Amended Complaint (Doc. 2).

This action was *(check one)*:

☐ tried by a jury with Judge _____ presiding, and the jury has rendered a verdict.

☐ tried by Judge _____ without a jury and the above decision was reached.

☑ decided by Judge Joseph F. Saporito, Jr. _____ on a motion for summary judgment (Doc. 70).

Date: Sept. 25, 2020

CLERK OF COURT

/s/ Mary Rose Schirra

Signature of ~~Clerk or~~ Deputy Clerk

From: Jamison, Mark, VBACLEV
To: jdicriscio@acremortgage.com
Subject: Property Tax Exemption
Date: Friday, June 17, 2016 10:06:35 AM
Attachments: Nelson.pdf

Hey Joe, about a year ago I was approached by Ryan Barbalios and Liz Martin with regard to removing the property tax amount in the PITI calculation when a veteran is proven to be tax exempt due to VA service connected disabilities. At that time, I told them that as long as you had evidence that the tax exemption would be granted, you could remove it from that PITI amount for qualifying purposes.

Now comes a veteran named Brigitte Nelson, VA #10-10-6-0682229, that Acre underwrote and closed. This is the case that we've also had some conversations both a month ago, and yesterday about Classic Quality Homes (CQH), and some of the issues we've been noting about that builder's contracts. There's a lot going on with her case.

- Acre Mortgage did indeed remove that tax amount from her monthly PITI to qualify the borrower basing that decision on the fact that she's rated 100% disabled by VA. The problem is that Acre didn't do it's homework on who qualifies for tax exemption in Pennsylvania. Ms. Nelson exceeds the income limit to qualify, and was denied that tax exemption. If Acre had properly documented this case, you would have added the monthly tax amount to the PITI for qualifying and this case may not have been approved. She was approved

at 47% DTI without her property taxes added to the PITI. Once you add the $1,211 a month taxes to her monthly housing expense, this loan doesn't qualify.

- In the contract that Classic Quality Homes had Ms. Nelson sign, it's noted that "Seller will pay all transfer taxes and title insurance cost." Based on the HUD-1 your office provided the veteran was charged $2,225.50 for lender's title insurance. **That $2,225.50 will need to be reimbursed to the veteran, and proof of such will need to be provided. I would also like a copy of that title policy for VA and Ms. Nelson's records.**

- On the HUD-1 on Line 1302 it is noted 2015-2016 School Taxes to Dawn Arnst, Tax Collector: POC $14,539.00(S), with annotations on your HUD-1 that (S) means paid by Seller. Ms. Nelson was recently sent a tax bill from Classic Quality Homes for $9,320.22 for a tax bill due of $14,538.98. I've included a copy of that invoice from Classic Quality Homes. Someone other than Ms. Nelson needs to pay those taxes. I'll let you work it out between Acre and Classic Quality Homes.

- The contract as we talked about a month ago and again yesterday, is for an existing home, yet the builder has been taking the original new construction contract, with the same signature and date of signature, and placing a new address on the front of the contract for the existing home. I will tell you that Ms. Nelson is one of 3 veterans who have now told us that they originally went to CQH to inquire about building a new home, signed a contract for a new home, and

were then told that CQH could not build the home for them. They were then steered to an existing property that CQH purchased as an REO and rehabbed. Thereby taking the original signed new construction contract and swapping out the address on the front of the contract for the proposed new construction with the address for the existing home that was rehabbed.

- Ms. Nelson's home is now leaking carbon dioxide from the gas line, and appears to also have radon problems, amongst other Issues. She has been going to the hospital to have her blood sampled, and states that she has proof that her blood levels are showing increased levels of various chemicals related to the home. Ms. Nelson claims that she was told by CQH on more than one occasion that she didn't need to get an inspection of the home because VA does the inspection

According to some of our appraisers in the area, they've got all kinds of issues with that builder. Many of those issues related to threats from the builder and builder's son. Three of them have asked to be removed from appraising any of CQH's homes.

Finally, you need to instruct your underwriting staff that they are to cease and decist removing the tax portion of the PM from the monthly housing expense. It doesn't appear that Acre is getting the proper proof of those tax exemptions and as such, I don't want to see any new veterans getting hurt by this process. You will include the real estate taxes in the PITT on all VA loans regardless of whether the veteran MIGHT qualify for a tax exemption.

We take these allegations very serious, especially In light of other veteran complaints now coming in. At this time we are going to request for audit every file that involves this builder. Those will be requested via WebLGY using our usual audit process for you to upload those files. Once I get the VA loan numbers, your staff will start to see those file requests come into your company.

<<Nelson.pdf>>

Mark R. Jamison
Loan Production Officer
U.S. Department of Veterans Affairs
Cleveland VA Regional Loan Center
1240 E. 9th Street
Cleveland, OH 44199
(800) 729-5772, ext. 3959 – phone
(215) 991-5088 – RightFax

Cleveland Regional Loan Center Website:

http://www.vba.va.gov/ro/cleveland/index1.htm

To receive automatic e-mail updates from VA regarding policy changes, training, etc:

IN THE COURT OF COMMON PLEAS
OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

BRIGITTE NELSON,	:	**No. 5641-CV-2020**
Plaintiff	:	
vs.	:	
ACRE MORTGAGE & FINANCIAL INC., et al.,	:	
Defendants	:	

ORDER

AND NOW this 13th day of June, 2022, upon consideration of the arguments made during oral arguments held by this Court on April 26, 2022 and the briefs of the parties and responses thereto, **IT IS ORDERED** as follows:

1. The stay issued by this Court on March 12, 2021 is **LIFTED** for the reasons expressed in Defendant, Acre Mortgage & Financial, Inc.'s ("Acre") Reply in Opposition to Plaintiff's Memorandum to Continue Stay of Proceedings.

2. Defendant, Acre's Preliminary Objections to Plaintiff's Complaint are **SUSTAINED** as to its First, Second, Fourth, and Fifth Preliminary Objection, and **OVERRULED** as to its Third Preliminary Objection.

3. Plaintiff's Complaint is **DISMISSED WITHOUT PREJUDICE**.

4. Plaintiff is directed by the Court to refrain from filing any further pleadings until such time as the United States District Court for the Middle District of Pennsylvania relinquishes jurisdiction of the pending state law claims related to this matter.

BY THE COURT:

/s/ C. Daniel Higgins, Jr.

C. DANIEL HIGGINS, JR., Judge

cc: Stefanie Sherr, Esq.
Alexander M. Owens, Esq.
Douglas K. Rosenblum, Esq.
Michael V. Gazza, Esq.

COURT OF COMMON PLEAS OF MONROE COUNTY
43RD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

THE MONEY SOURCE, INC., Plaintiff	:	NO. 556 CV 2017
vs.	:	
BRIGITTE NELSON, Defendant	:	

ORDER – STATUS CONFERENCE

AND NOW, this 28th day of January, 2020, this matter having come before the Court for a status conference hearing, and after considering the positions of Attorney Buck for Money Source, Inc. and Ms. Nelson in which the parties agreed to stay this matter pending the outcome of litigation now pending in Federal Court, it is Ordered as follows:

1. The parties' request to stay this matter is GRANTED.

2. The matter is stayed until any party notifies the Court that it is no longer necessary to stay the proceedings due to further developments in the Federal Court litigation.

BY THE COURT:

/s/ Arthur L. Zulick
Arthur L. Zulick, Judge

cc: James Buck, Squire
Brigitte Nelson, Defendant, Pro se
Sheriff
J. Grevera-Higgins, RPR

COURT OF COMMON PLEAS
OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA

ALLIED FIRST BANK, SB d/b/a SERVBANK,	:	**No. 556 CV 2017**
Plaintiff,	:	
vs.	:	
BRIGITTE NELSON,	:	
Defendant.	:	

ORDER

AND NOW, this 7th day of December, 2023, following consideration of the Motion for Summary Judgment filed by Plaintiff Allied Bank, and the response of Defendant Brigitte Nelson, and consideration of the final judgment entered against Brigitte Nelson in the Matter of Nelson v. Acre Mortgage and Financial Inc., in the U.S. District Court for the Middle District of Pennsylvania, No. 3:17-CV- 1050 on April 7, 2023, and the law in Pennsylvania that a judgment otherwise final remains so despite the taking of an appeal. . . .", Shaffer v. Smith, 673 A.2d 872, 875, (Pa.1996), **IT IS ORDERED** as follows:

1. Plaintiff's Motion for Summary Judgment is **granted**.

2. Judgment *in rem* is entered in favor of Plaintiff, Allied First Bank, SB dba Servbank, and against

Defendant, Brigitte Nelson, in the amount of $434,714.67 as of September 22, 2023, plus interest at a per diem amount of $32.38 until today's date.

BY THE COURT:

/s/ Arthur L. Zulick
ARTHUR L. ZULICK, J.

cc: Jessica N. Manis, Esquire
Brigitte Nelson, *pro se*