APPENDIX:

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
February 13, 2026
Lyle W. Cayce
Clerk

No. 25-60662

JACKIE OSBORNE,

Plaintiff—Appellant,

versus

ROCKET MORTGAGE, L.L.C.; AMROCK, L.L.C.; DOES 1-100,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 2:24-CV-101

UNPUBLISHED ORDER

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

PER CURIAM:

This court must examine the basis of its jurisdiction, on its own motion if necessary. *Hill v. City of Seven Points*, 230 F.3d 167, 169 (5th Cir. 2000). Pursuant to 28 U.S.C. § 2107(a) and Federal Rule of Appellate Procedure 4(a)(1)(A), the notice of appeal in a civil case must be filed within thirty days of entry of judgment.

In this case, the district court entered final judgment dismissing the complaint on March 31, 2025. Therefore, the final day for filing a timely notice of appeal was April 30, 2025. Plaintiff's *pro se* notice of appeal was filed on December 1, 2025. When set by statute, the time limitation for filing a notice of appeal in a civil case is jurisdictional. *Hamer v. Neighborhood Hous. Servs. of Chi.*, 583 U.S. 17, 19 (2017); *Bowles v. Russell*, 551 U.S. 205, 214 (2007). The lack of a timely notice mandates dismissal of the appeal. *United States v. Garcia-Machado*, 845 F.2d 492, 493 (5th Cir. 1988).

Plaintiff's attempt to appeal the order denying relief under Federal Rule of Civil Procedure 60(b) also fails. It is not taken from a final or otherwise appealable order of the district court. The notice of appeal was filed prior to the announcement of any appealable decision on the motion. Therefore, it is not effective to appeal any later filed order or judgment. *See FirsTier Mortg. Co. v. Invs. Mortg. Ins. Co.*, 498 U.S. 269, 272–73 (1991) (Rule 4(a)(2) of the Federal Rules of Appellate Procedure permits a notice of appeal from a non-final decision to operate as a notice of appeal from the subsequently entered final judgment only when a district court announces a decision that would be appealable if immediately followed by the entry of judgment).

Accordingly, the appeal is DISMISSED for want of jurisdiction. All pending motions are DENIED.

2

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

February 13, 2026

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

No. 25-60662 Osborne v. Rocket Mortgage
USDC No. 2:24-CV-101

Enclosed is an order entered in this case.

Sincerely,

LYLE W. CAYCE, Clerk

Dantrell Johnson

By:
Dantrell L. Johnson, Deputy Clerk
504-310-7689

Mr. Gene Dickerson Berry
Mr. Stephen T. Masley
Ms. Jackie Osborne

3

APPENDIX B

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

JACKIE OSBORNE **PLAINTIFF**

v. **CIVIL ACTION NO. 2:24-cv-101-TMB-RPM**

**ROCKET MORTGAGE, LLC *and*
AMROCK, LLC** **DEFENDANTS**

ORDER AND MEMORANDUM OPINION

Jackie Osborne brings this case *pro se* against Rocket Mortgage, LLC and AMROCK, LLC. Osborne's claims arise out of the 2021 purchase of 8.79 acres of property from Allan Pearson, who is not a party to this action, and Allan Pearson's 2023 state court suit seeking reformation of the 2021 Warranty Deed. Neither Rocket Mortgage, LLC nor AMROCK, LLC were involved with the sale of the property in 2021. And they had no hand in Allan Pearson's attempt to modify the 2021 Warranty Deed to reflect that 6.25 acres, rather than 8.79 acres, were conveyed to Osborne. Nevertheless, Osborne argues that these Defendants are responsible for forcing her into "utter financial ruin." But because the Defendants' only involvement with Osborne was in relation to the 2022 refinancing of her loan, she fails to state a claim for relief against them. For the reasons discussed below, Osborne's claims are dismissed and this case is closed.

I. BACKGROUND

Jackie Osborne purchased and received a Warranty Deed for 8.79 acres of property located at 155 Old Highway 24 in Sumrall, Mississippi from Allan Pearson on April 15, 2021. To secure the funds, Osborne obtained a loan from Cross-Country Mortgage, LLC, and purchased title insurance from Chicago Title Insurance. Osborne then executed and recorded a Deed of Trust. One year later, in April of 2022, Osborne refinanced her loan through Defendant Rocket Mortgage, LLC and claims that she purchased title insurance from Defendant AMROCK, LLC. A second Deed of Trust was then executed and recorded.

On March 7, 2023, almost two years after Osborne purchased the property, Allan Pearson filed a "Corrected Warranty Deed" for the property. According to the "Corrected Warranty Deed," the legal description in the original Warranty Deed conveying 8.79 acres of property to Osborne was incorrect. Although the original Warranty Deed was signed and executed by Allan Pearson, the "Corrected Warranty Deed" reflects that Allan Pearson only intended to sell Osborne 6.25 acres rather than the 8.79 acres that were conveyed to Osborne.

Allan Pearson filed suit against Osborne and Rocket Mortgage, LLC, in the Chancery Court of Lamar County on March 10, 2023, seeking reformation of the original Warranty Deed and the second Deed of Trust to correct the legal description of the property he conveyed to Osborne in 2021. Although Chicago Title Insurance provided Osborne with counsel to defend the state court action, Osborne claims that she "terminat[ed] the service of their appointed counsel for lack of representation." [1], p. 3. Eventually, Osborne filed a *pro se* motion to dismiss the state court action. Her motion was granted, and judgment was entered on May 20, 2024.

Osborne then filed this diversity action in this Court on July 11, 2024, against Rocket Mortgage, LLC and AMROCK, LLC, asserting claims for negligence, cloud on title, breach of contract, intentional infliction of emotional distress, defamation and harassment, and conspiracy to commit fraud. The Defendants have each filed a Motion to Dismiss, which are now fully briefed. Although Osborne included a request to amend her complaint in her sur-reply [17], which was filed without leave of Court, she "failed to furnish the district court with a proposed amended

5

complaint, and failed to alert both the court and defendants to the substance of [her] proposed amendment." *McKinney v. Irving Independent Sch. Dist.*, 309 F.3d 308, 315 (5th Cir. 2002). While she claims that any alleged deficiencies could be cured by amendment, Osborne fails "to make clear the nature of such an amendment." *Id.* Because it is unclear to this Court how additional facts would save her claims from dismissal, amendment would be futile. *See Burke v. Ocwen Loan Servicing, L.L.C.*, 855 F. App'x 180, 187 (5th Cir. 2021).

II. DISCUSSION AND ANALYSIS

A complaint must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." *Hester v. Bell-Textron, Inc.*, 11 F.4th 301, 304-305 (5th Cir. 2021). In considering a motion to dismiss for failure to state a claim, a district court must limit itself to the contents of the pleadings, including attachments thereto. *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Hester*, 11 F.4th at 305 (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 1974, 167 L. Ed. 2d 929 (2007))). The Fifth Circuit has explained the *Iqbal/Twombly* standard as follows:

> In order for a claim to be plausible at the pleading stage, the complaint need not strike the reviewing court as probably meritorious, but it must raise 'more than a sheer possibility' that the defendant has violated the law as alleged. The factual allegations must be 'enough to raise a right to relief above the speculative level.'

Oceanic Expl. Co. v. Phillips Petroleum Co. ZOC, 352 F. App'x 945, 950 (5th Cir. 2009) (citing *Twombly*, 550 U.S. at 570).

Although *pro se* pleadings are to be treated quite liberally, at least "some facts must be alleged that convince [the court] that the plaintiff has a colorable claim; conclusory allegations will

6

not suffice." *Mills v. Crim. Dist. Court #3*, 837 F.2d 677, 678 (5th Cir. 1988). Indeed, the Court need not "accept as true conclusory allegations or unwarranted deductions of fact." *Collins*, 224 F.3d at 498 (quoting *Tuchman v. DSC Commc'ns Corp.*, 14 F.3d 1061, 1067 (5th Cir. 1994)). That said, "[p]leadings should be construed liberally, and judgment on the pleadings is appropriate only if there are no disputed issues of fact and only questions of law remain." *Chaudhary v. Arthur J. Gallagher & Co.*, 832 F. App'x 829, 832 (5th Cir. 2020). "The issue is not whether the plaintiff[] will ultimately prevail, but whether [he is] entitled to offer evidence to support [his] claim[s]." *Cook v. City of Dallas*, 683 F. App'x 315, 318 (5th Cir. 2017) (citation omitted).

A. Negligence

"To succeed on a negligence claim, a plaintiff must show the following five elements: (1) duty, (2) breach, (3) cause in fact, (4) legal cause, and (5) damages." *Smith v. Minier*, --- So.3d ---, 2023 WL 2381726, *4 (Miss. Ct. App. 2023) (citing *Sanderson Farms Inc. v. McCullough*, 212 So.3d 69, 76 (Miss. 2017)). For the reasons discussed below, Osborne's allegations fail to establish a prima facie case of negligence against the Defendants.

The first obligation of a plaintiff in any negligence case is to prove the existence of a duty. *Enter. Leasing Co. v. Bardin*, 8 So.3d 866, 868 (Miss. 2009) (citation omitted). Whether a duty exists in a negligence case is a question of law to be determined by the Court. *Id.* (citation omitted). Osborne's negligence claims arise out of an apparent misunderstanding of her contractual relationships with the Defendants, which is one way "in which the law imposes a duty of care." *River Prod. Co., Inc. v. Baker Hughes Prod. Tools, Inc.*, 98 F.3d 857, 859 (5th Cir. 1996) (citing *Dr. Pepper Bottling Co. of Miss. v. Bruner*, 148 So. 2d 199, 201 (Miss. 1962)); *River Prod. Co., Inc. v. Baker Hughes Prod. Tools, Inc.*, 98 F.3d 857, 859 (5th Cir. 1996) ("[a] contract creates a reasonable duty of care in fulfilling one's contractual obligations.") (citing *McKinnon v. Batte*, 485 So. 2d 295, 298 (Miss. 1986)). Thus, this Court must determine at the outset whether Rocket Mortgage, LLC and AMROCK, LLC owed a duty to Osborne. If not, Osborne's negligence claims must be dismissed because, under Mississippi law, "[w]hen a plaintiff fails to prove that a duty is owed, there can be no claim for negligence." *Horton ex rel. Est. of Erves v. City of Vicksburg*, 268 So. 3d 504, 510 (Miss. 2018) (explaining that "duty is a question of law, and whether a defendant breached its duty to the plaintiff is a question of fact.").

1. Rocket Mortgage, LLC

According to Osborne, Rocket Mortgage, LLC had a duty to defend and assist her in the state court action filed against her by Allan Pearson. [1], p. 4. Specifically, Osborne claims that Rocket Mortgage, LLC "had a judiciary responsibility to defend not only their best interest but the best interest of its client. They offered Plaintiff no support in resolving the cloud on her title." [1], p. 4. Apart from Osborne's conclusory allegations, however, she fails to identify or even allege a contractual duty arising out of either the Promissory Note or the Second Deed of Trust.[1] Nor does Osborne allege that there is a legal duty for a mortgagor to defend or assist in a state court action

---

[1] "The Fifth Circuit has long held that issues not sufficiently briefed are waived." *Grimes v. Santander Consumer USA*, No. 3:22-cv-1933-X-BH, 2023 WL 5022276, at *5 n. 6 (N.D. Tex. Jul. 13, 2023), *report and recommendation adopted*, No. 3:22-cv-1933-X-BH, 2023 WL 5021786 (N.D. Tex. Aug. 5, 2023) (citing *United States v. Martinez*, 263 F.3d 436, 438 (5th Cir. 2001) ("Generally speaking, a defendant waives an issue if he fails to adequately brief it.")). And "[i]ssues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived and it is not sufficient for a party to mention a possible argument in the most skeletal way, leaving the court to put flesh on its bones." *United States v. Brown*, 819 F.3d 800, 829 (6th Cir. 2016) (citations omitted); *see Grimes*, 2023 WL 5022276, at *5 n.6 ("The role of a court is 'not to create arguments for adjudication' or 'raise them like a Phoenix from the ashes,' but 'to adjudicate the arguments with which it is presented.'") (citing *In re Cao*, 619 F.3d 410, 435 (5th Cir. 2010)). Thus, "[t]o avoid waiver, a party must identify relevant legal standards and any relevant Fifth Circuit cases." *JTB Tools & Oilfield Servs., L.L.C. v. United States*, 831 F.3d 597, 601 (5th Cir. 2016) (holding that claims were inadequately briefed and therefore waived). Osborne fails to do so. In fact, she fails to address all but her cloud on title claim in her Response [14]. While her failure to adequately brief her claims does rise to the level of waiver, the Court concludes that it is not outcome determinative since her claims should be dismissed on the merits.

8

against the mortgagee to clear cloud on title. But even if she did, under Mississippi law, "[d]uties to disclose or to act affirmatively . . . do not arise in arms length transactions or under an ordinary standard of care. Rather, they arise only in fiduciary or confidential relationships." *MS Credit Ctr., Inc. v. Horton*, 926 So. 2d 167, 177 (Miss. 2006) (citing *Van Zandt v. Van Zandt*, 86 So. 2d 466 (Miss. 1956)). And a relationship between a mortgagor and mortgagee is not a fiduciary one, but "an arms-length business transaction involving a normal debtor-creditor relationship." *Merchants & Planters Bank of Raymond v. Williamson*, 691 So. 2d 398, 403 (Miss. 1997).

Not only has Osborne failed to allege any basis from which this alleged duty arises, the Court is unaware of any duty requiring Rocket Mortgage, LLC to anticipate a future "Corrected Warranty Deed" and a future lawsuit arising out a transaction they were not involved in and a party they never contracted with. Indeed, while Osborne claims that Rocket Mortgage, LLC had a duty to defend her "best interests," it was wholly unforeseeable at the time of refinancing that Osborne would expect Rocket Mortgage, LLC to defend and assist her in a future lawsuit. To be sure, in April of 2022, when Osborne refinanced her loan through Rocket Mortgage, LLC, Allan Pearson had not yet filed suit against Osborne to reform the original Warranty Deed. In fact, the "Corrected Warranty Deed" and subsequent lawsuit were not filed until March of 2023—one year after Osborne and Rocket Mortgage, LLC entered into the Promissory Note and second Deed of Trust. Under Mississippi law, "there is no duty to protect against an unforeseeable harm and, therefore, no negligence in failing to do so." *Rhaly v. Waste Mgmt. of Miss. Inc.*, 43 So. 3d 509, 513 (Miss. Ct. App. 2010) ("Foreseeability is an essential element of both duty and causation."). As a result, Rocket Mortgage, LLC had no duty under Mississippi law "to defend . . . the best interests of [Osborne]." [1], p. 4; *Rhaly*, 43 So. 3d at 513.

9

Having found no legal duty on behalf of Rocket Mortgage, LLC, the Court finds, in turn, that there was no breach. *Dependants of Reid v. City of Canton*, 858 So. 2d 163, 168 (Miss. Ct. App. 2003) ("[t]here can be no breach of a legal duty if no duty exists."); *Horton ex rel. Est. of Erves v.*, 268 So. 3d at 510. Osborne's negligence claim against Rocket Mortgage, LLC must therefore be dismissed. *Enter. Leasing Co. S. Cent. v. Bardin*, 8 So.3d 866, 868 (Miss. 2009) ("To prevail in any type of negligence action, a plaintiff must first prove the existence of a duty."); *Brown v. DFS Services, L.L.C.*, 434 F. App'x 347, 353 (5th Cir. 2011) (affirming dismissal of negligence claim because "Brown identified no duty owed to him.").

2. AMROCK, LLC

In support of her claim against AMROCK, LLC, Osborne asserts that the "Defendant(s) owed a duty of care to Plaintiff to conduct a thorough and accurate title search and to disclose any issues affecting the title to her property." [1], p. 5.[2] But Osborne's claim fails because there was no title issue affecting her property at the time of refinancing. Indeed, the "Corrected Warranty Deed" was recorded in March of 2023—one year after Osborne purchased new title insurance from AMROCK, LLC, and two years after the initial title search, in which AMROCK, LLC had no involvement. [1], p. 2. As a result, "no search conducted in advance of the April 2022 loan closing would have discovered the issue created by the Corrected Warranty Deed recording in March 2023." [9-1], p. 6.

Additionally, Osborne asserts that Allan Pearson filed suit against her in the Chancery Court of Lamar County claiming "he sold [her] 8.79 acres but *intended* to sell her 6.25 acres." [1],

[2] For the same reasons discussed above, *see supra*. n. 1, Osborne's failure to adequately brief this issue rises to the level of waiver. But waiver is not outcome determinative since this claim should be dismissed on the merits.

10

p. 2 (emphasis added). But there is certainly no duty for AMROCK, LLC to foresee that Allan Pearson would change his mind, or that he would later realize that the Warranty Deed did not reflect his unexpressed intentions, because he "inadvertently sold property to a buyer he intended to give his neighbors." [1], p. 2. Since "there is no duty to protect against an unforeseeable harm," as discussed above, there can also be no breach. *Rhaly*, 43 So.3d at 513 (citing *Crain v. Cleveland Lodge 1532, Ord. of Moose, Inc.*, 641 So. 2d 1186, 1190-91 (Miss. 1994)); *Dependants of Reid*, 858 So. 2d at 168; *Horton ex rel. Estate of Erves*, 268 So. 3d at 510 (citation omitted). Osborne's negligence claim against AMROCK, LLC must be dismissed.

B. Cloud on Title

Under Mississippi law, "[a] suit to remove a cloud on title is considered an action to recover land." *Lott v. Saulters*, 133 So.3d 794, 799 (Miss. 2014). A party seeking to remove a cloud from title must "set forth in plain and concise language the deraignment of his title." MISS. CODE ANN. § 11-17-35. A plaintiff's deraignment of title "must show title in himself from the government down, or . . . must show title by adverse possession . . . or he must show title from the defendant, or that both derive their claim from a common source, and that his is the better title from that source." *Barham v. Miss. Power Co.*, 266 So. 3d 994, 995 n.1 (Miss. 2019) (internal quotation marks omitted). "A mere statement . . . that complainant is the real owner of the land shall be insufficient." MISS. CODE ANN. § 11-17-35.

Although Osborne asserts that she is the "lawful owner of the real property located at Old Hwy 24 Sumrall, MS with 8.79 acre[s]," she is suing Rocket Mortgage, LLC and AMROCK, LLC for monetary damages—not for these Defendants to remove the cloud on her title. [1], p. 5. Even so, she wholly fails to allege how the cloud on her title was in anyway related to the actions of these

11

Defendants. [1], p. 4-5. While Osborne alleges that the "Defendants coerced and encouraged the reformation of the deed to her property" and that those actions were "wrongful and unlawful because Defendant's actions violated property laws," she does not claim that the Defendants were involved with the filing of the "Corrected Warranty Deed" on March 7, 2023, which gave rise to this claim. Instead, Osborne asserts that the Defendants "allow[ed] fraudulent liens and filings, and the assertion of false ownership claims by the previous owner (Allan Person)." *Id.* It appears, then, that the allegations about her cloud on title claim focus solely on the conduct of Allan Pearson, who is not a party to this action.

While *pro se* litigants are held to more lenient standards of pleading than attorneys, there are limits to this liberal construction. *Gordon v. Watson*, 622 F. 2d 120, 123 (5th Cir. 1980) (*per curiam*) ("[P]ro se litigants are not held to the same standards of compliance with formal or technical pleading rules applied to attorneys."). It is well-settled that "regardless of whether a plaintiff is proceeding pro se or is represented by counsel, pleadings must show specific, well-pleaded facts, not mere conclusory allegations to avoid dismissal." *Morgan v. Textas Dep't of State Health Services*, No. 3:17-cv-897-M-BH, 2017 WL 5956822, *5 (N.D. Tex. Nov. 2, 2017); *Chhim v. Univ. of Texas at Austin*, 836 F.3d 467, 469 (5th Cir. 2016) (explaining that courts "hold pro se plaintiffs to a more lenient standard than lawyers when analyzing complaints, but pro se plaintiffs must still plead factual allegations that raise the right to relief above the speculative level."). Indeed, the Court may not raise issues the *pro se* litigant has failed to plead, and the "pro se litigant must actually argue something that is susceptible to liberal construction." *Frazier v. Morris*, No. 2:11-cv-104-MPM-DAS, 2014 WL 4686723, n. 17 (N.D. Miss. Sep. 18, 2014) (citing *Haines v. Kerner*, 404 U.S. 519, 520, 92 S. Ct. 594, 30 L. Ed. 2d 652 (1972)). Osborne fails to do so. While her allegations

12

may give rise to a claim against Allan Pearson, which is not before this Court, it is clear from her Complaint that Osborne has not alleged a viable damages claim against Rocket Mortgage, LLC or AMROCK, LLC arising out of the alleged cloud on her title. This claim is therefore dismissed.

C. Breach of Contract

A breach of contract claim in Mississippi has two elements: (1) "the existence of a valid and binding contract," and (2) a showing "that the defendant has broken, or breached it." *Bus. Commc'ns, Inc. v. Banks*, 90 So.3d 1221, 1224 (Miss. 2012). "To survive a motion to dismiss, [the plaintiff] must sufficiently plead enough facts facially establishing the existence of a contract and showing that the promises to be performed were reasonably certain." *Burns v. Georgetown Univ.*, No. 3:07-cv-486-HTW, 2012 WL 2563037, *2 (S.D. Miss. May 30, 2012). A contractual offer "must be so definite in its terms, or require such definite terms in the acceptance, that the promises and performances to be rendered by each party are reasonably certain." *Izard v. Jackson Pro. Credit Corp.*, 195 So. 331, 333 (Miss. 1940). Further, "vague, indefinite and uncertain agreements, in which the promises and performances to be rendered by each party are not reasonably certain, are not enforceable as contracts." *Massengill v. Guardian Mgmt. Co.*, 19 F.3d 196, 202 (5th Cir. 1994).

In her Complaint, Osborne provides a conclusory allegation that she entered into "a valid and enforceable contract on April 9, 2022" with the Defendants. [1], pps. 5-6 (emphasis added). But such allegations are "much too vague, incomplete, and conclusory to state a valid claim under the law of contracts." *Burns*, 2012 WL 2563037, at *2. While Osborne need not attach a contract to her complaint to state a claim for breach of contract, "something more than conclusory comments is required as the Supreme Court made clear in *Twombly/Iqbal*." *Spinosa v. Foremost Insurance Company Grand Rapids Michigan*, 2025 WL 304530, at *1 (5th Cir. 2025) (citation omitted);

13

Hernandez v. Newell, No. 1:21-cv-322-TBM, 2023 WL 223183, *2 (S.D. Miss. Jan. 17, 2023); *Stankevich v. Mississippi College Sch. of Law*, No. 3:23-cv-356-KHJ, 2024 WL 409397, * 3 (S.D. Miss. Feb. 2, 2024); *see also Rogers v. Nationstar Mortg. LLC*, No. 2:16-cv-197-KS, 2017 WL 11609613, *3 (S.D. Miss. Mar. 7, 2017). But Osborne "offers no details of the contract, of its formation, or of its terms. [She] alleges no written documentation supporting [her] contract claim." *Burns*, 2012 WL 2563037, at *2. Absent more, Osborne's breach of contract claim must fail. *See Rogers v. Nationstar Mortgage LLC*, No. 2:16-cv-197-KS, 2017 WL 11609613, *3 (S.D. Miss. Mar. 7, 2017).

D. Intentional Infliction of Emotional Distress

A claim for intentional infliction of emotional distress requires conduct "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Bowden v. Young*, 120 So. 3d 971, 980 (Miss. 2013). Thus, to state a claim for intentional infliction of emotional distress, a plaintiff must show that: (1) the "defendant acted willfully or wantonly towards the plaintiff by committing certain described actions; (2) the defendant's acts are ones which evoke outrage or revulsion in civilized society; (3) the acts were directed at, or intended to cause harm to, the plaintiff; (4) the plaintiff suffered severe emotional distress as a direct result of the acts of the defendant; and (5) such resulting emotional distress was foreseeable from the intentional acts of the defendant." *Pointer v. Rite Aid Headquarters Corp.*, 327 So. 3d 159, 170 (Miss. Ct. App. 2021) (internal citations omitted). As a result, "meeting the requisites of a claim for intentional infliction of emotional distress is a tall order in Mississippi." *Montgomery*, 955 F. Supp. 2d at 653 (citation omitted).

14

Here, Osborne provides conclusory allegations that the "Defendant's conduct was so outrageous and extreme that it goes beyond all bounds of decency and is regarded as atrocious and utterly intolerable in a civilized community." [1], p. 6. In support, Osborne argues that the "Defendant engaged in the conduct intentionally or with reckless disregard for the likelihood of causing Plaintiff emotional distress." [1], p. 6. Osborne therefore claims that she suffered "severe emotional distress, including anxiety, depression, nightmares, and humiliation, and the demise of her excellent credit history and function of Focus Trucking Co." [1], p. 6. She also asserts this emotional distress "has significantly affected Plaintiff's daily life and well-being, as evidence by receiving medical treatment, therapy, inability, and desire to work." [1], p. 6.

Even assuming such allegations are true, they do not meet the "tall order" of alleging a claim for intentional infliction of emotional distress. *Speed v. Scott*, 787 So. 2d 626, 630 (Miss. 2001). Indeed, Osborne's allegations do not support that the Defendants "intentionally acted in such a way that would evoke outrage or revulsion." *Jones v. Tyson Foods, Inc.*, 971 F. Supp. 2d 623, 643 (N.D. Miss. Sep. 11, 2013) (finding no IIED claim even where plaintiff "demonstrated that the alleged acts of placing him in an unsanitary work environment filled with dust, live chickens hanging from wires, and chicken feces, as well as alongside employees who could have had TB, and denying his request to see a medical professional for his physical ailments, were perhaps negligent, and perhaps even grossly negligent."). And other courts have dismissed similarly conclusory intentional infliction of emotional distress claims where the plaintiff "merely provides one statement, claiming, '[b]y its actions, omissions, and extreme and outrageous conduct, [the defendant] defamed and has intentionally and negligently inflicted emotional distress upon [the plaintiff].' "*Beauchene v. Mississippi Coll.*, 986 F. Supp. 2d 755, 765 (S.D. Miss. 2013); *Jones v. Tyson*

15

Foods, Inc., No. 4:10-cv-11, 971 F. Supp. 2d 632, 642, 2013 WL 4876373, at *7 (N.D. Miss. Sep. 11, 2013) ("Conduct that rises to the level of nervewracking, upsetting, and even improper is not enough to reach the level of extreme and outrageous conduct required for recovery for intentional infliction of emotional distress.") (citations and quotation marks omitted). Without more, "the Court cannot find that the alleged facts rise to the level of extremity and outrageousness required to sustain a claim of intentional infliction of emotional distress under Mississippi law." *Jones*, 971 F. Supp. 2d at 643. Osborne's claims for intentional infliction of emotions distress are dismissed.

E. Defamation and Harassment

"A claim of defamation requires the plaintiff to establish a false statement having the capacity to injure the plaintiff's reputation, in addition to other elements." *Funderburk v. Johnson*, 935 So. 2d 1084, 1101 (Miss. Ct. App. 2006) (citing *Fulton v. Miss. Publishers Corp.*, 498 So. 2d 1215, 1216 (Miss. 1986)). "Mississippi law requires that a complaint for defamation must provide allegations of sufficient particularity so as to give the defendant or defendants notice of the nature of the complained-of statements." *Brune v. Takeda Pharmaceuticals U.S.A., Inc.*, No. 1:18-cv298-LG, 2019 WL 3323511, *8 (S.D. Miss. Jul. 24, 2019) (quoting *Chalk v. Bertholf*, 980 So. 2d 290, 297 (Miss. Ct. App. 2007)). This means that the complaint must "set forth the statements, paraphrased or verbatim, that constituted [defamation]." *Chalk*, 980 So. 2d at 298.

In her Complaint, Osborne asserts that the "Defendant's statement against the Plaintiff regarding credit and credit worthiness were defamatory per se they impugn Plaintiff character, accuse her of crimes being unreliable, a risk to extend credit, destroyed Plaintiff business relationship with Focus Trucking Company and personal relationships within her community by reporting false information to all three major credit reporting agencies." [1], p. 6. Osborne's

16

allegations, however, provide "no particulars concerning the alleged defamatory statements made about her." *Brune*, 2019 WL 3323511, at *8. In fact, her allegations do not specify "to whom the statements were directed, by whom the statements were made, and how the statements were [defamatory]." *Chalk*, 980 So. 2d at 298. Instead, Osborne's allegations "constitute[] a bare legal conclusion with no support in the complaint." *Id.*; *Cooper v. Paragon Sys., Inc.*, No. 5:08-cv-169-DCB, 2008 WL 4187942, at *4 (S.D. Miss. Sep. 5, 2008) (dismissing defamation claim where "plaintiff fails to set forth information in her complaint regarding the substance or nature of any alleged statement or how it was defamatory."). Osborne's defamation claims are therefore dismissed.

F. Conspiracy to Commit Fraud

In support of her alleged civil conspiracy to commit fraud claim, Osborne alleges that "AMRCOK Title Company, Luckett Title Company, Chicago Title Company, Rocket Mortgage and First Choice Relator all conspired to unlawfully and with ill will to take land from the Plaintiff through the use of force, bullying and intimidation." [1], p. 7. According to Osborne, "Defendants took specific actions to conceal the fact that they failed to perform their Duty of Care regarding the Title to Old Hwy 24." [1], p. 7.

"A heightened level of pleading is imposed for fraud claims: '[i]n alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake.'" *Dorsey v. Portfolio Equities, Inc.*, 540 F.3d 333, 339 (5th Cir. 2009) (quoting FED. R. CIV. P. 9(b)). While "[w]hat constitutes particularity will necessarily differ with the facts of each case," the Fifth Circuit strictly interprets Rule 9(b), which "requires the who, what, when, where, and how to be laid out." *Benchmark Electronics, Inc. v. J.M. Huber Corp.*, 343 F.3d 719, 714, 724 (5th Cir. 2003) (citation

17

omitted). Thus, plaintiffs must "specify the statements contended to be fraudulent, identify the speaker, state when and where the statements were made, and explain why the statements were fraudulent." *Herrmann Holdings Ltd. v. Lucent Techs. Inc.*, 302 F.3d 552, 564-65 (5th Cir. 2002) (internal quotations omitted). Osborne fails to do so.

In her Complaint, Osborne merely alleges that the Defendants intentionally deceived and prevented her from "discovering the truth and facts about their role regarding the reformation of the Deed and property boundaries." [1], p. 7. But Osborne "does not identify or describe any fraudulent statements or provide any information regarding the alleged fraud that forms the basis for [her] civil conspiracy to defraud claim." *Russell Energy, Inc. v. Rubrecht*, No. 1:18-cv-89-LG, 2018 WL 3876586, at *1 (S.D. Miss. Aug. 15, 2018). She also fails "to include any facts or details surrounding the timeline of the alleged misrepresentation or where the misrepresentation occurred." *Cummings v. Wells Fargo, N.A.*, No. 1:18-cv-72-SA, 2019 WL 180188, *6 (N.D. Miss. Jan. 11, 2019). Thus, Osborne's fraud claim fails to meet the particularity requirements necessary to satisfy Rule 9(b) and dismissal is warranted. *U.S. ex rel. Grubbs v. Kanneganti*, 565 F.3d 180, 185 n.1 (5th Cir. 2009) ("A dismissal for failure to plead fraud with particularity under Rule 9(b) is treated as a dismissal for failure to state a claim under Rule 12(b)(6).").

Because the underlying fraud claim has been dismissed, Osborne's civil conspiracy claim must also be dismissed. *Rex Distrib. Co., Inc. v. Anheuser-Busch, LLC*, 271 So. 3d 445, 455 (Miss. 2019) (listing the elements of a civil conspiracy as: "(1) an agreement between two or more persons, (2) to accomplish an unlawful purpose or a lawful purpose unlawfully, (3) an overt act in furtherance of the conspiracy, (4) and damages to the plaintiff as a proximate result."). Indeed, it is well-settled that if a plaintiff fails to allege a separate underlying claim that passes Rule 12(b)(6) scrutiny, then

18

a claim for civil conspiracy necessarily fails. *MultiPlan, Inc. v. Holland*, 937 F.3d 487, 496 (5th Cir. 2019) (affirming district court's dismissal of civil conspiracy claim where summary judgment was granted on underlying breach of contract claim); *Meadows v. Hartford Life Ins. Co.*, 492 F.3d 634, 640 (5th Cir. 2007). Accordingly, Osborne's civil conspiracy claim must be dismissed, as a civil conspiracy claim cannot stand alone. *Wells v. Shelter Gen. Ins. Co.*, 217 F. Supp. 2d 744, 755 (S.D. Miss. 2002).

III. CONCLUSION

IT IS THEREFORE ORDERED AND ADJUDGED that Rocket Mortgage, LLC's Motion to Dismiss [9] is GRANTED.

IT IS FURTHER ORDERED AND ADJUDGED that AMROCK, LLC's Motion to Dismiss [10] is GRANTED.

IT IS FURTHER ORDERED AND ADJUDGED that Jackie Osborne's Motion for Recusal [13] of any "magistrate or senior judges" is MOOT.

This, the 31st day of March, 2025.

Taylor B. McNeel

TAYLOR B. McNEEL
UNITED STATES DISTRICT JUDGE

19

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

JACKIE OSBORNE **PLAINTIFF**

v. **CIVIL ACTION NO. 2:24-cv-101-TMB-RPM**

ROCKET MORTGAGE, LLC *and*
AMROCK, LLC **DEFENDANTS**

FINAL JUDGMENT

For the reasons stated in the Order entered this same day, Jackie Osborne's claims are DISMISSED WITH PREJUDICE. This CASE is CLOSED.

This, the 31st day of March, 2025.

Taylor B. McNeel

TAYLOR B. McNEEL
UNITED STATES DISTRICT JUDGE

20

Other Orders/Judgments

2:24-cv-00101-TBM-RPM
Osborne v. Rocket Mortgage, LLC et al

JURY,NO_CMC,PRO_SE_NON-PRISONER,RPM

U.S. District Court

Southern District of Mississippi

Notice of Electronic Filing

The following transaction was entered on 3/31/2025 at 1:16 PM CDT and filed on 3/31/2025
Case Name: Osborne v. Rocket Mortgage, LLC et al
Case Number: 2:24-cv-00101-TBM-RPM
Filer:
WARNING: CASE CLOSED on 03/31/2025
Document Number: 22

Docket Text:
FINAL JUDGMENT; for reasons stated in Order [21], plaintiff's claims are DISMISSED WITH PREJUDICE. This CASE is CLOSED. Signed by District Judge Taylor B. McNeel on 3/31/2025. (CAD)

2:24-cv-00101-TBM-RPM Notice has been electronically mailed to:

Gene D. Berry genedberry@berryfirm.net

Stephen T. Masley smasley@hinshawlaw.com, HOUDocket@hinshawlaw.com, jrichardson@hinshawlaw.com, lweaver@hinshawlaw.com, sgarcia@hinshawlaw.com

2:24-cv-00101-TBM-RPM Notice has been delivered by other means to:

Jackie Osborne
P.O. Box 730
Sumrall, MS 39482

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename: n/a
Electronic document Stamp:
[STAMP dcecfStamp_ID=1081288797 [Date=3/31/2025] [FileNumber=7077243-0
] [26d0c07560b843508cec668cd869c09b5db93db3466497ac740ffb2e9a7ac9112b8
8297aa9c4ccb8cc5a52e9380e39d92503283c155f65bef9e5ea8744bb1a70]]

21

Additional material from this filing is available in the Clerk's Office.