

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

KIMBERLY FREELAND, )  
)  
Plaintiff, )  
)  
v. )  
) 1:23-CV-1098  
LONG BEACH MORTGAGE COMPANY and )  
SELECT PORTFOLIO SERVICING, )  
INC., )  
)  
Defendants. )

**MEMORANDUM ORDER**

THOMAS D. SCHROEDER, District Judge.

Before the court is the motion to dismiss by Defendants Long Beach Mortgage Company and Select Portfolio Servicing, Inc. (Doc. 8.) Plaintiff Kimberly Freeland has responded in opposition (Doc. 12), and Defendants have replied (Doc. 17). In her response in opposition, Freeland also seeks to amend the complaint to join Selene Finance LP as a Defendant and moves for summary judgment. (Doc. 12.) Freeland has since separately filed a "Bill of Judgment for Special Performance and Permanent Injunction" and a motion "compelling judgment." (Docs. 19, 23.) For the reasons set forth below, the motion to dismiss will be granted, and Freeland's remaining motions will be denied as moot.

**I. BACKGROUND**

Freeland appears pro se, and her pleadings "should not be scrutinized with such technical nicety that a meritorious claim

should be defeated.” Gordon v. Leeke, 574 F.2d 1147, 1151 (4th Cir. 1978). But the liberal construction of a pro se party’s filing does not require the court to ignore clear defects in it, Bustos v. Chamberlain, No. 3:09-1760, 2009 WL 2782238, at \*2 (D.S.C. Aug. 27, 2009), or to become an advocate for the pro se party, Weller v. Dep’t of Soc. Servs., 901 F.2d 387, 391 (4th Cir. 1990). See also Beaudett v. City of Hampton, 775 F.2d 1274, 1278 (4th Cir. 1985) (noting that “[d]istrict judges are not mind readers”). Moreover, it is not the court’s duty to “scour the record to locate uncited evidentiary support for a party’s factual assertions.” Seaman v. Duke Univ., No. 1:15-CV-462, 2018 WL 10446957, at \*1 (M.D.N.C. June 6, 2018). Rather, under Local Rule 7.2(a)(2), “[e]ach statement of fact should be supported by reference to a part of the official record in the case.”

The facts alleged in the complaint, which the court accepts as true for the purpose of the motion to dismiss, show the following:

Freeland owns the property at 3615 Portland Trail in Greensboro, North Carolina. (Doc. 1 at 1.) Long Beach Mortgage Company and Select Portfolio Servicing, Inc. are “named as a nominee for the lender and the mortgagee of record.” (Id. at 2.) A fixed rate, 30-year loan was granted on August 4, 2005, and “endorsed in blank by Long Beach Mortgage Company.” (Id. (all caps removed).) The mortgage was recorded in Anaheim, California

on that date, and it has not been assigned. (Id.) Freeland “asserts the separation of the Fixed Rate Note from the Mortgage, without proper assignment, constitutes a violation of standard mortgage and securitization procedures and consumer protection laws.” (Id.)

Freeland alleges several violations of the law: (1) Real Estate Settlement Procedures Act (“RESPA”); (2) Rule 10b-5 of the Securities and Exchange Act and GAAP Violations; (3) Truth in Lending Act (“TILA”), Regulation Z (12 C.F.R. §§ 1026.13 and 1026.15), and 15 U.S.C. § 1635(a) and (b); (4) California Consumer Privacy Act; (5) Predatory Lending Practices; (5) lack of legal standing to foreclose and unlawful separation of the note and mortgage without proper assignment under Glaski v. Bank of America; and (6) N.C. Gen. Stat. § 14-118.12 (2022). (Id. at 2-4.)

Freeland pleads three causes of action. First, she alleges invalid foreclosure and lack of standing because Defendants “do not have the original note nor the proper assignment of the mortgage, rendering any foreclosure action fraudulent.” (Id. at 4.) Second, she alleges fraud and misrepresentation because “Defendants ha[ve] engaged in fraudulent practices by misrepresenting the nature of the mortgage and note, and concealing vital information.” (Id.) Third, she alleges a violation of “Consumer Protection Laws” because “Defendants have violated numerous consumer protection laws, including TILA, RESPA, and

state-specific laws.” (Id.) She seeks a declaration that “all attempts to collect on the property in question [are] void,” damages, and an order to revert the ownership rights back to her. (Id.)

On December 15, 2023, Defendants moved to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). The motion is fully briefed and ready for resolution.

## **II. ANALYSIS**

### **A. Standard of Review**

Federal Rule of Civil Procedure 8(a)(2) provides that a pleading must contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. (8)(a)(2). A Rule 12(b)(6) motion to dismiss is meant to “test[] the sufficiency of a complaint” and not to “resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.” Republican Party of N.C. v. Martin, 980 F.2d 943, 952 (4th Cir. 1992). To survive such a motion, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)).

In considering a Rule 12(b)(6) motion, a court “must accept as true all of the factual allegations contained in the complaint,” Erickson v. Pardus, 551 U.S. 89, 94 (2007) (per curiam), and all

reasonable inferences must be drawn in the non-moving party's favor, Ibarra v. United States, 120 F.3d 472, 474 (4th Cir. 1997). However, the court "need not accept as true unwarranted inferences, unreasonable conclusions, or arguments." Giarratano v. Johnson, 521 F.3d 298, 302 (4th Cir. 2008). Rule 12(b)(6) protects against meritless litigation by requiring sufficient factual allegations "to raise a right to relief above the speculative level" so as to "nudge[] the[] claims across the line from conceivable to plausible." Twombly, 550 U.S. at 570; see Iqbal, 556 U.S. at 678. Thus, mere legal conclusions should not be accepted as true, and "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Iqbal, 556 U.S. at 678.

#### **B. Defendants' Rule 12(b)(6) Motion**

Defendants argue that the complaint should be dismissed because it is a "shotgun pleading." (Doc. 9 at 4.) They contend that the complaint "makes vague legal conclusions that are not connected to any cause of action upon which relief can be granted." (Id. at 5.) While they note that the complaint references several statutes, they maintain that the complaint never "explains who violated these statutes or how they were violated." (Id.; see also id. ("It is impossible for Defendants to understand the grounds for her claims and the conduct that is being contested."))

In response, Freeland makes several “negative averments.” (Doc. 12 at 2-5.)

Freeland’s complaint is devoid of factual allegations giving rise to a plausible claim for relief. As Defendants correctly observe, the complaint is so sparse that it hinders their ability to “frame a responsive pleading.” (Doc. 9 at 4 (quoting Salami v. JPMorgan Chase Bank, N.A., No. 1:18-cv-794, 2019 WL 2526467, at \*3 (M.D.N.C. June 19, 2019))); Twombly, 550 U.S. at 555 (stating that a complaint must “give the defendant fair notice of what the . . . claim is and the grounds upon which it rests” (internal quotation marks omitted)); Bing v. Brivo Sys., LLC, 959 F.3d 605, 618 (4th Cir. 2020) (affirming dismissal of pro se complaint because there were “no facts to support [the] conclusory allegations”).<sup>1</sup>

For the “invalid foreclosure and lack of standing” claim, Freeland states that “Defendants do not have the original note nor the proper assignment of the mortgage, rendering any foreclosure action fraudulent.” (Doc. 1 at 4.) Yet the complaint does not allege a foreclosure occurred or is imminent. Freeland also alleges no facts to support the conclusory assertion that the mortgage was not “proper[ly] assigned,” and fails to explain the significance of the possession of the original note. (Id. at 2

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<sup>1</sup> Freeland’s motion for “Bill of Judgment” further demonstrates the difficulty Defendants face in responding, as she argues that Defendants have violated the Eleventh Amendment to the United States Constitution and, for unexplained reasons, that their attorneys are foreign agents. (Doc. 20.)

(merely asserting that separation of the note from the mortgage “without proper assignment” would be a violation of “standard mortgage and securitization procedures and consumer protection laws”).)

Freeland’s fraud and misrepresentation claim is likewise inadequately pleaded. Simply put, Freeland does not allege facts in the complaint to support any misrepresentation whatsoever. Rather, she only makes conclusory assertions of “untrue statements” without any reference to the contents of those statements. (Doc. 1 at 3); Iqbal, 556 U.S. at 678 (stating that “[t]hreadbare recitals of the elements of a cause of action . . . do not suffice”). Freeland’s claim for violations of consumer protection laws fails for the same reason. She references a number of statutes, such as the Truth in Lending Act, 15 U.S.C. 1601 et seq., and the California Consumer Privacy Act, but does not allege any facts to support those claims. Instead, she merely recites apparent elements of claims under those statutes in conclusory fashion. (Doc. 1 at 2-4.) In sum, because Freeland has failed to state a plausible claim for relief, the motion to dismiss will be granted. It is not clear whether she can remedy these defects, so the dismissal will be without prejudice.

As noted above, Freeland attempts, in her response to the motion to dismiss, to join Selene Finance LP as a Defendant pursuant to Federal Rule of Civil Procedure 20. (Doc. 12 at 1.)

Even if the court construed the complaint and response to include claims against Selene Finance LP, Freeland's claims would still fail for the reasons stated above.

### **III. CONCLUSION**

For the reasons stated, therefore,

IT IS ORDERED that Defendants' motion to dismiss (Doc. 8) is GRANTED. Accordingly, the complaint is DISMISSED WITHOUT PREJUDICE. All other pending motions (Docs. 12, 19, 23) are DENIED AS MOOT.

          /s/          Thomas D. Schroeder  
United States District Judge

July 22, 2024