

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18



JS - 6

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MAVIS MURPHY,)	Case No. CV 11-02719 DDP (CWx)
)	
Plaintiff,)	
)	ORDER GRANTING MOTION TO DISMISS
v.)	AND REMANDING
)	
METROCITIES MORTGAGE LLC;)	
INVESTORS TITLE COMPANY;)	
FIRST AMERICAN TITLE)	[Motion filed on 5/23/11]
INSURANCE; MORTGAGE)	[Docket Number 15]
ELECTORNIC REGISTRATION)	
SYSTEMS,)	
)	
Defendants.)	
_____)	

Presently before the court is the Motion to Dismiss Plaintiff's First Amended Complaint filed by Defendants Central Mortgage Company ("Central Mortgage") and Old Republic Default Management Services ("Old Republic"). Having considered the submissions of the parties, the court grants the motion and adopts the following order.¹

///

¹ The court notes that Plaintiff's Opposition does not appear to have been tailored to the instant motion. The Opposition cites to page numbers in Defendants' Motion that do not exist and addresses arguments not raised in Defendants' motion or at issue in this case.

1 **I. Background**

2 On or about June 19, 2006, Plaintiff obtained a loan, secured
3 by a Deed of Trust, from Metrocities Mortgage, LLC ("Metrocities")
4 in the amount of \$880,000 (the "Loan") for the real property
5 located at 707 Quail Valley Lane, West Covina, California 91791
6 (the "Property"). (Defendants Central Mortgage and Old Republic's
7 Motion to Dismiss at 3:15-18.) Plaintiff subsequently defaulted on
8 her loan payments, and a Notice of Default was recorded on the
9 Property on April 30, 2009. (Motion to Dismiss 3:19-20.)

10 On June 8, 2009, Mortgage Electric Systems, Inc. ("MERS"), as
11 nominee for Metrocities, assigned the loan and Deed of Trust for
12 the loan to Central Mortgage. (Motion to Dismiss 3:21-23.) Also
13 on June 8, Defendant Old Republic became the trustee under the Deed
14 of Trust through a Substitution of Trustee. (FAC ¶ 79.) On
15 November 20, 2009, after Plaintiff failed to cure her default on
16 the Property, a Notice of Trustee's Sale was recorded. (Motion to
17 Dismiss 3:26-27; FAC ¶ 83.)

18 Plaintiff filed the instant action in Los Angeles County
19 Superior Court on February 2, 2011. (Exhibit A to Notice of
20 Removal, Dkt. No. 1.) Defendants removed to this court on March
21 31, 2011, asserting that this court had federal question
22 jurisdiction over Plaintiff's Truth in Lending Act ("TILA") and
23 Real Estate Settlement Procedures Act ("RESPA") claims. Plaintiff
24 filed a First Amended Complaint ("FAC") on April 29, 2011, deleting
25 the RESPA claim. Plaintiff's FAC claims that her Loan was
26 improperly transferred during the securitization process, so none
27 of the Defendants have a legal, equitable, or pecuniary interest in
28 Plaintiff's debt obligation. (FAC ¶¶ 4, 46, 108.) Plaintiff also

1 alleges that various documents, including the Substitution of
2 Trustee, the Notice of Default and the Notice of Sale, were
3 knowingly falsified. (FAC ¶ 15.) As such, Plaintiff argues that
4 the non-judicial foreclosure proceedings initiated against her were
5 unlawful. (See, e.g., FAC ¶¶ 1, 3, 133.) Plaintiff's FAC asserts
6 five causes of action for negligence, negligent infliction of
7 emotional distress, violation of TILA, and violation of various
8 sections of California's Business and Professions Code. (FAC ¶¶
9 197-249.) Defendants now move to dismiss the FAC.

10 **II. Legal Standard**

11 A complaint will survive a motion to dismiss when it
12 "contain[s] sufficient factual matter, accepted as true, to state a
13 claim to relief that is plausible on its face." Ashcroft v. Iqbal,
14 129 S. Ct. 1937, 1949 (2009) (quoting Bell Atl. Corp. v. Twombly,
15 550 U.S. 544, 570 (2007)). When considering a Rule 12(b)(6)
16 motion, a court must "accept as true all allegations of material
17 fact and must construe those facts in the light most favorable to
18 the plaintiff." Resnick v. Hayes, 213 F.3d 443, 447 (9th Cir.
19 2000). Although a complaint need not include "detailed factual
20 allegations," it must offer "more than an unadorned,
21 the-defendant-unlawfully-harmed-me accusation." Iqbal, 129 S. Ct.
22 at 1949. Conclusory allegations or allegations that are no more
23 than a statement of a legal conclusion "are not entitled to the
24 assumption of truth." Id. at 1950. In other words, a pleading that
25 merely offers "labels and conclusions," a "formulaic recitation of
26 the elements," or "naked assertions" will not be sufficient to
27 state a claim upon which relief can be granted. Id. at 1949
28 (citations and internal quotation marks omitted).

1 "When there are well-pleaded factual allegations, a court should
2 assume their veracity and then determine whether they plausibly
3 give rise to an entitlement of relief." Id. at 1950. Plaintiffs
4 must allege "plausible grounds to infer" that their claims rise
5 "above the speculative level." Twombly, 550 U.S. at 555-56.
6 "Determining whether a complaint states a plausible claim for
7 relief" is "a context-specific task that requires the reviewing
8 court to draw on its judicial experience and common sense." Iqbal,
9 129 S. Ct. at 1950.

10 **III. Discussion**

11 A. Fourth Cause of Action: Truth in Lending Act Claim

12 Plaintiff's Fourth Cause of Action alleges that Central
13 Mortgage violated TILA Section 131(g), 15 U.S.C. §1641(g), by
14 failing to provide Plaintiff with notice of the June 8, 2009
15 assignment of the Loan and Deed of Trust to Central Mortgage. (FAC
16 ¶¶ 233-234.) This claim is time barred.

17 A civil action for a TILA violation seeking damages must be
18 brought within one year of the violation. 15 U.S.C. § 1640(e). As
19 a general rule, the limitations period of 15 U.S.C. § 1640(e) "runs
20 from the date of consummation of the transaction." King v.
21 California, 784 F.2d 910, 915 (9th Cir. 1986). It is clear from
22 the face of the FAC that TILA's one-year statute of limitations
23 expired on June 8, 2009.

24 Plaintiff argues that the statute of limitations should be
25 equitably tolled because she did not discover the purported
26 violation until February 2011. (Opp. at 21.) Equitable tolling
27 "might be appropriate in certain circumstances." Id. at 914. This
28 court must examine Plaintiff's claims of fraudulent concealment and

1 equitable tolling "to determine if the general [one-year] rule
2 would be unjust or frustrate the purpose of [TILA] and adjust the
3 limitations period accordingly." Id. at 915.

4 In support of her equitable tolling argument, Plaintiff claims
5 that she never received a copy of the Assignment as required by
6 TILA. (FAC ¶ 236.) Plaintiff alleges that she did not discover
7 that Defendant Central Mortgage had violated TILA by failing to
8 provide notice of the Assignment "until on or about February 2011
9 when she retained counsel and discovered that her mortgage had
10 allegedly been 'assigned' to Central Mortgage." (Id.) Plaintiff
11 further alleges that she could not have, with reasonable diligence,
12 discovered such facts because she did not receive a copy of the
13 Assignment as required by TILA. (Id.; Opp. at 22.)

14 Plaintiff's argument fails. "[T]he mere existence of TILA
15 violations and lack of disclosure does not itself equitably toll
16 the statute of limitations." Garcia v. Wachovia Mortgage Corp.,
17 676 F.Supp.2d 895, 906 (C.D. Cal. 2009). "[A] contrary rule would
18 render the one-year statute of limitations meaningless, as it would
19 be tolled whenever there were improper disclosures." Id.
20 Excepting the lack of disclosure itself, Plaintiff has not shown
21 fraudulent concealment by Central Mortgage or any other
22 circumstance warranting equitable tolling.² Plaintiff's TILA claim
23 is time barred, and must be dismissed.

24

25 ² The court notes that even if Plaintiff's TILA claim were
26 timely, she has not alleged any actual damages resulting from
27 Central Mortgage's failure to provide notice of the assignment.
28 See 15 U.S.C. 1640(a)(1); Beall v. Quality Loan Serv. Corp., 2011
WL 1044148 at *6 (S.D. Cal. 2011) (dismissing TILA claim where
plaintiff failed to allege that assignment of a Deed of Trust
caused actual damages).

1 B. Remaining State Law Claims

2 This case was removed to this court on the basis of federal
3 question jurisdiction. 28 U.S.C. § 1331. The Notice of Removal
4 does not assert that diversity jurisdiction exists. Having
5 dismissed Plaintiff's only federal cause of action, the court
6 declines to exercise supplemental jurisdiction over Plaintiff's
7 remaining state law claims. See 28 U.S.C. § 1367(c)(3); Ove v.
8 Gwinn, 264 F.3d 817, 826 (9th Cir. 2001) ("A court may decline to
9 exercise supplemental jurisdiction over related state-law claims
10 once it has dismissed all claims over which it has original
11 jurisdiction.").

12 **IV. Conclusion**

13 For the reasons stated above, Defendants' Motion to Dismiss is
14 GRANTED. Plaintiff's Fourth Cause of Action is dismissed as time
15 barred. The remaining claims are REMANDED to state court. In
16 addition, the following motions are vacated - docket numbers 37, 38
17 and 41.

18
19
20 IT IS SO ORDERED.

21
22
23 Dated: September 27, 2011


DEAN D. PREGERSON
United States District Judge

24
25
26
27
28