[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 18-13123
Non-Argument Calendar

D.C. Docket Nos. 3:17-cv-00564-TJC; 3:15-bkc-02731-PMG

In re:

SHA'RON A. SIMS

Debtor.

SHA'RON A. SIMS,

Plaintiff-Appellant,

versus

WELLS FARGO BANK N.A.,
WELLS FARGO & COMPANY,
THE UNNAMED PASS TRUSTS,
a.k.a. Mortgage Loans Trusts,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(July 16, 2019)

Before MARTIN, ROSENBAUM, and NEWSOM, Circuit Judges.

PER CURIAM:

Sha'Ron Sims, a Chapter 13 debtor proceeding *pro se*, appeals the district court's order affirming the bankruptcy court's dismissal of her adversary proceeding because she failed to state a claim upon which relief could be granted. We affirm.

I.

The relevant background is this. In 2007, Sims borrowed money from a mortgage lender to purchase a home and, at the same time, executed a promissory note and a mortgage agreement authorizing the foreclosure sale of the property in the event of default. Sims defaulted some time later, prompting Wells Fargo Bank N.A. ("Wells Fargo"), which had acquired the mortgage in 2012, to initiate foreclosure proceedings in Florida state court in June 2015. In response, Sims filed for Chapter 13 bankruptcy, which automatically stayed the foreclosure case.

In 2016, in the bankruptcy case, Sims filed an adversary proceeding against Wells Fargo, Wells Fargo & Company, Inc., and "Unnamed Pass Trusts (a/k/a Mortgage Loans Trusts)," alleging violations of federal and state laws against racketeering. *See* 18 U.S.C. §§ 1962, 1964; Fla. Stat. § 895.03(3). According to Sims's third amended complaint, the operative pleading, Wells Fargo acquired the mortgage in June 2012, after which it transferred the mortgage to a pass-through trust so that the mortgage could be securitized and sold to investors. As part of that

arrangement, Wells Fargo and the trust entered into a master pooling and servicing agreement (the "PSA"), which required Wells Fargo as servicer to "advance all principal and interest payments of the underlying mortgage to the trust." Sims attached to her complaint a copy of what she claimed to be a copy of the PSA.

Sims's allegations of wrongdoing all stem from her interpretation of the PSA. Despite admitting that she fell behind on mortgage payments, Sims believed that the mortgage was not in default because Wells Fargo, as servicer, had "advanced" the mortgage payments to the trust, as holder of the mortgage, pursuant to the PSA. And because the loan was not in default and she had no agreement with Wells Fargo to repay the advances, her theory goes, Wells Fargo lacked the authority to demand full payment of the outstanding loan balance and arrearages or to go forward with foreclosure. Based on this interpretation, Sims contended that Wells Fargo had made various false statements in the state-court and bankruptcy-court cases, and that it had conspired with the pass-through trust to wrongly convert ownership of her home.

The bankruptcy court granted Wells Fargo's motion to dismiss the adversary proceeding. While noting that Wells Fargo disputed whether Sims's mortgage was subject to any pooling and service agreement, the bankruptcy court concluded that, even accepting Sims's allegations as true, she had failed to state a plausible claim to relief. The bankruptcy court found that any advances Wells Fargo made under the PSA did not, as Sims contended, satisfy her repayment obligations under her note

and mortgage or nullify her pre-bankruptcy-petition default under her loan documents. Sims appealed the dismissal to the district court, which affirmed for the reasons stated in the bankruptcy court's order. Sims now appeals to this Court.[1]

II.

As the second court of review in bankruptcy cases, we examine the judgment of the bankruptcy court independently of the district court. *Senior Transeastern Lenders v. Official Comm. of Unsecured Creditors (In re TOUSA, Inc.)*, 680 F.3d 1298, 1310 (11th Cir. 2012). We review legal determinations made by either court *de novo*. *Id.*

Whether a complaint states a viable claim for relief is a question of law we review *de novo*.[2] *Starship Enters. of Atlanta, Inc. v. Coweta Cty.*, 708 F.3d 1243, 1252 (11th Cir. 2013). We accept all factual allegations in the complaint as true and view them in the light most favorable to the plaintiff. *Id.* "We are not, however, required to accept the labels and legal conclusions in the complaint as true." *Edwards v. Prime, Inc.*, 602 F.3d 1276, 1291 (11th Cir. 2010). To withstand dismissal, a plaintiff must plead sufficient facts to state a claim for relief that is

[1] We DENY as moot Sims's motion to supplement the record to include the bankruptcy court's dismissal order because that order is already part of the record.

[2] The provision of the Federal Rules of Civil Procedure authorizing dismissal for failure to state a claim, Fed. R. Civ. P. 12(b)(6), is applicable in bankruptcy cases under Bankruptcy Rule 7012(b). Fed. R. Bankr. P. 7012(b); *Rosenberg v. DVI Receivables XIV, LLC*, 818 F.3d 1283, 1288 (11th Cir. 2016) (explaining that "the Federal Civil Rules only apply to the extent they have been explicitly incorporated by the Federal Bankruptcy Rules").

plausible on its face. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). We liberally construe *pro se* pleadings. *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998).

III.

The plausibility of Sims's claims, as she admits, hinges on her interpretation of the alleged PSA between Wells Fargo and the pass-through trust as making Wells Fargo a guarantor of her mortgage loan. *See* Appellant's Br. at 13 ("Sims' claim's plausibility hinges on one factor alone: THE GUARANTY."). Because we conclude that the bankruptcy court properly rejected this interpretation of the PSA, we affirm the dismissal of her claims without wading into the tangled weeds of RICO pleading standards. *See, e.g.*, *Almanza v. United Airlines, Inc.*, 851 F.3d 1060, 1067–68 (11th Cir. 2017).

Both parties appear to agree that Florida law governs our interpretation of the contracts at issue. Under Florida law, the "interpretation of a contract is a question of law subject to de novo review." *Horizons A Far, LLC v. Plaza N. 15, LLC*, 114 So. 3d 992, 994 (Fla. Dist. Ct. App. 2012). Contract interpretation is governed by the intent of the parties, which is "determined from the plain language of the agreement and the everyday meaning of the words used." *Burlington & Rockenbach, P.A. v. Law Offices of E. Clay Parker*, 160 So. 3d 955, 958 (Fla. Dist. Ct. App. 2015). "In interpreting a contract, [c]ourts are not to isolate a single term

or group of words and read that part in isolation; the goal is to arrive at a reasonable interpretation of the text of the entire agreement to accomplish its stated meaning and purpose." *Horizons A Far*, 114 So. 3d at 994 (quotation marks omitted). When the terms of a contract are unambiguous, courts must give effect to those terms. *Talbott v. First Bank Fla. FSB*, 59 So. 3d 243, 245 (Fla. Dist. Ct. App. 2011). Whether a contract is ambiguous is a question of law. *Id.*

Here, we affirm the dismissal of Sims's adversary proceeding largely for the reasons offered by the bankruptcy court. To begin with, the mortgage documents Sims executed define the term "default" as the *borrower's* failure to make required monthly payments. Because it is undisputed that Sims, the borrower, fell behind on her mortgage payments, thereby defaulting, the mortgage documents authorized Wells Fargo to pursue foreclosure to recover the balance due on the loan.

Sims contends that the PSA made Wells Fargo the guarantor of her loan and that Wells Fargo's advance payments under the PSA prevented a default. "A contract of guaranty is the promise to answer for the payment of the debt, default or performance of another." *Amerishop Mayfair, L.P. v. Billante*, 833 So. 2d 806, 809 (Fla. Dist. Ct. App. 2002).

But we agree with the bankruptcy court that several provisions of the PSA, read together and in light of the contract as a whole, make clear that advance payments pursuant to its terms do not satisfy a borrower's repayment obligations

under her note and mortgage. First, the PSA does not list mortgagors or borrowers as parties to or beneficiaries of the agreement, nor does it provide for any reduction of a borrower's liability as a result of a servicer's advance. Second, the PSA specifically authorizes the servicer to enforce the mortgage if the borrower does not make payments when due. And third, the PSA provides that servicers are entitled under the PSA to reimbursement of advances made to the trust from the proceeds of a foreclosure sale. In sum, the PSA evinces no intent to benefit borrowers or reduce their liability on any underlying mortgage loans and, in fact, expressly authorizes servicers to pursue foreclosure in the event of borrower default, notwithstanding any advance payments made, and to recover prior advances made to the trust from proceeds of the sale.

Accordingly, we conclude that the PSA did not make Wells Fargo a guarantor of Sims's mortgage loan and that any advances Wells Fargo made to the trust under the PSA neither prevented a default under the terms of Sims's mortgage documents nor precluded Wells Fargo from pursuing foreclosure. Because Sims's various claims all depend on a contrary interpretation of the PSA, we affirm the bankruptcy court's dismissal for failure to state a plausible claim.

Sims's remaining arguments miss the mark. She contends that the issue of whether the PSA created a guaranty contract was for the jury, but the bankruptcy court properly resolved that issue because the "interpretation of a contract is a

question of law subject to de novo review," *Horizons A Far*, 114 So. 3d at 994, as is the question of whether a contract is ambiguous, *Talbott*, 59 So. 3d at 245. Similarly, because the interpretation of a contract presents a question of law, the bankruptcy court was not required to accept as true Sims's allegation that the PSA created a guaranty contract. That is a legal conclusion, not a factual allegation that must be accepted as true. *See Edwards*, 602 F.3d at 1291 ("We are not . . . required to accept the labels and legal conclusions in the complaint as true.").

Sims also argues that the bankruptcy court failed to consider the significance of a particular provision in the PSA, but "[c]ourts are not to isolate a single term or group of words and read that part in isolation," and we conclude that the bankruptcy court properly interpreted "the text of the entire agreement." *Horizons A Far*, 114 So. 3d at 994. Nothing in the cited provision calls into question the correctness of the bankruptcy court's ruling.

Finally, the district court did not reversibly err in affirming the bankruptcy court's order without offering a full explanation. For starters, we know the district court's reasons for affirming because it expressly stated that it was affirming for the reasons stated in the bankruptcy court's order. In any case, even if the district court failed to provide sufficient explanation, any error is harmless because we exercise *de novo* review of the judgment of the bankruptcy court independently of the district court. *See Starship Enters.*, 708 F.3d at 1252; *In re TOUSA*, 680 F.3d at 1310.

For these reasons, we affirm the dismissal of Sims's adversary proceeding.

AFFIRMED.