[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 20-13550
Non-Argument Calendar

D.C. Docket No. 9:20-cv-80041-RLR

DEVON ANTHONY BROWN,

Plaintiff-Appellant,

versus

SANTANDER BANK,

Defendant-Appellee.

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

(May 17, 2021)

Before JORDAN, NEWSOM, and ANDERSON, Circuit Judges.

PER CURIAM:

Devon Brown, proceeding *pro se*, appeals the district court's dismissal with prejudice of his amended complaint under the Truth in Lending Act ("TILA"), 15 U.S.C. § 1640 and Section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 45. The district court ruled that Mr. Brown's claims against Santander Bank must be dismissed. The first claim was time-barred under TILA's one-year statute of limitations, and the second claim failed because the FTC Act does not provide a private right of action. Mr. Brown now argues, all for the first time on appeal, that the district court erred in dismissing his amended complaint because it should have (1) equitably tolled the one-year statute of limitations; (2) applied the three-year statute of limitations under 15 U.S.C. § 1635 instead of § 1640's one-year period; or (3) applied the fraud-based "discovery rule."[1]

We review *de novo* a district court's dismissal of a plaintiff's complaint under Rule 12(b)(6) for failure to satisfy the statute of limitations, accepting as true the allegations made in the complaint. *Jackson v. Astrue*, 506 F.3d 1349, 1352 (11th Cir. 2007). We also review the legal question of whether equitable tolling applies *de novo*. *Id*.

Under TILA, all claims must be brought "within one year from the date of the occurrence of the violation." 15 U.S.C. § 1640(e). The violation occurs when the

[1] Mr. Brown does not raise any argument as to the dismissal of his FTC Act claim, and he has thus abandoned any argument as to that issue on appeal. *See Irwin v. Hawk*, 40 F.3d 347, 347 n.1 (11th Cir. 1994) (holding that a *pro se* litigant abandons an issue by failing to challenge it on appeal).

transaction is consummated, and nondisclosure is not a continuing violation for the purposes of the statute of limitations. *See In re Smith*, 737 F.2d 1549, 1552 (11th Cir. 1984).[2]

We have held, however, that TILA's one-year statute of limitations is subject to equitable tolling in certain circumstances. *See Ellis v. GMAC*, 160 F.3d 703, 708 (11th Cir. 1998). The general test for equitable tolling requires the party seeking tolling to prove that (1) he diligently pursued his rights, and (2) an extraordinary circumstance has prevented him from meeting a deadline. *See Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 971 (11th Cir. 2016) (en banc). Equitable tolling is an extraordinary remedy that should be extended only sparingly, and the plaintiff carries the burden to show that such a remedy is warranted. *See Chang v. Carnival Corp.*, 839 F.3d 993, 996 (11th Cir. 2016).

The Supreme Court has "noted the existence of decisions applying a discovery rule in 'fraud cases' that is distinct from the traditional equitable tolling doctrine," and it has stated that this "fraud discovery rule" is also based in equity. *See Rotkiske v. Klemm*, 140 S. Ct. 355, 358 (2019). The Court has also held that the discovery

[2] TILA provides an exception to this rule for other forms of relief specific to certain types of loans tied to real property. *See Christ v. Beneficial Corp.*, 547 F.3d 1292, 1297 (11th Cir. 2008); *see also* 15 U.S.C. §§ 1635(a)–(b); 1640(a)(4). Such TILA claims may be brought within *three* years of the alleged violation. 15 U.S.C. § 1640(e). This exception is inapplicable here because this case involves a vehicle financing agreement.

rule "refers not only to a plaintiff's *actual* discovery of certain facts, but also to the facts that a reasonably diligent plaintiff would have discovered." *Merck & Co., Inc. v. Reynolds*, 559 U.S. 633, 644 (2010).

We will generally not consider issues raised for the first time on appeal. *See Finnegan v. Comm'r of Internal Revenue*, 926 F.3d 1261, 1271 (11th Cir. 2019). Although *pro se* pleadings and briefs are held to a less stringent standard than pleadings drafted by attorneys and will be liberally construed, we may not "serve as de facto counsel for a party [or] rewrite an otherwise deficient pleading in order to sustain an action." *Campbell v. Air Jam. Ltd.*, 760 F.3d 1165, 1168–69 (11th Cir. 2014). Moreover, all litigants in federal court—*pro se* or counseled—are required to comply with the applicable procedural rules. *See Albra v. Advan, Inc.*, 490 F.3d 826, 829 (11th Cir. 2007).

Here, Mr. Brown failed to raise below the arguments he now presents on appeal. He has thus waived them on appeal. *See Finnegan*, 926 F.3d at 1271. Even if Mr. Brown had not waived his arguments regarding equitable tolling and the fraud discovery rule, he did not allege any facts in his amended complaint that would support the applicability of either of these doctrines. We therefore affirm the district court's dismissal with prejudice of Mr. Brown's amended complaint.

AFFIRMED.