

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

February 10, 2023

Lyle W. Cayce  
Clerk

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No. 21-30200

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SAMANTHA J. JACKSON,

*Plaintiff—Appellant,*

*versus*

STANDARD MORTGAGE CORPORATION; FEDERAL NATIONAL  
MORTGAGE ASSOCIATION; FEDERAL HOME LOAN MORTGAGE  
CORPORATION,

*Defendants—Appellees.*

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Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 6:18-CV-927

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Before GRAVES, HO, and DUNCAN, *Circuit Judges.*

PER CURIAM:\*

Samantha Jackson, pro se, appeals the dismissal of her complaint asserting claims against Standard Mortgage Corporation, Federal National Mortgage Association (Fannie Mae), and Federal Home Loan Mortgage Corporation (Freddie Mac). The magistrate judge dismissed most of Jackson's claims, including all claims against Fannie Mae and Freddie Mac,

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\* This opinion is not designated for publication. See 5TH CIRCUIT RULE 47.5.

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and granted summary judgment in favor of Standard Mortgage on her remaining claim. We AFFIRM for the reasons stated herein.

### **FACTS AND PROCEDURAL HISTORY**

On April 16, 2013, Jackson borrowed \$65,000 from Standard Mortgage Corporation (Standard), mortgaging her property at 221 Tennessee Street in Lafayette, LA. Standard sold the 2013 loan to Fannie Mae but remained the servicer.

Jackson obtained a second mortgage from Standard in the amount of \$86,400 on July 15, 2016. Jackson's first loan was paid in full on July 25, 2016, from this loan. Standard sold the second loan to Freddie Mac on July 28, 2016, but Standard remained the servicer of the loan.

On July 13, 2018, Jackson filed a complaint regarding both loans, asserting that the defendants violated the Truth-in-Lending Act (TILA), 15 U.S.C. § 601 *et seq.*, the Federal Trade Commission Act, 15 U.S.C. § 45, and the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. § 2601 *et seq.* Jackson further asserted breach of contract and a violation of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 *et seq.*, based on the alleged sharing of personal information.

### **DISCUSSION**

On appeal, Jackson challenges the dismissal of the TILA and RESPA claims as untimely and the dismissal of claims for breach of contract pursuant to Federal Rule of Civil Procedure 12(b)(6). She also challenges the magistrate judge's summary judgment rulings and contends that he committed procedural errors and was biased against her. We decline to consider arguments raised for the first time in Jackson's reply brief. *See United States v. Aguirre-Villa*, 460 F.3d 681, 683 n.2 (5th Cir. 2006).

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Jackson opposes the dismissal of the TILA and RESPA claims for untimeliness by arguing she was entitled to equitable tolling. We review a district court's refusal to exercise equitable tolling for an abuse of discretion. *Teemac v. Henderson*, 298 F.3d 452, 457 (5th Cir. 2002). Jackson bears the burden of proof for establishing the application of equitable tolling. *Id.* As Jackson does not show that her failure to comply with the relevant statutes of limitations was caused by circumstances beyond her control, we conclude that the magistrate judge did not abuse his discretion in finding equitable tolling unwarranted. *See id.*; *Menominee Indian Tribe of Wis. v. United States*, 577 U.S. 250, 256-57 (2016).

Rule 12(b)(6) dismissals are proper when a complaint fails to "set forth enough facts to state a claim to relief that is plausible on its face," and we review such rulings de novo. *Childers v. Iglesias*, 848 F.3d 412, 413 (5th Cir. 2017) (internal quotation marks and citations omitted). Because Jackson is a pro se litigant, her pleadings are entitled to liberal construction. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972).

The elements of a claim for breach of contract in Louisiana are that the defendant undertook to perform an obligation, failed to perform it, and thereby caused damages to the plaintiff. *IberiaBank v. Broussard*, 907 F.3d 826, 835 (5th Cir. 2018). Although Jackson objects to Standard Mortgage's practice of crediting her monthly payments on their scheduled due dates, she fails to show that it had a contractual obligation to do otherwise. Jackson also contends that she sufficiently pleaded the violation of a contractual term that generally barred the imposition of fees for holding and applying escrow funds. This argument rests on an implausible reading of a document that Jackson incorporated into her pleadings, and it therefore fails as well. *See Childers*, 848 F.3d at 413; *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

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The next issue is whether the magistrate judge erred in granting summary judgment in favor of Standard Mortgage on a RESPA claim concerning the 2016 loan. A party seeking summary judgment must show “that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a). We review grants of summary judgment de novo. *Cuadra v. Houston Indep. Sch. Dist.*, 626 F.3d 808, 812 (5th Cir. 2010).

The magistrate judge found that Jackson alleged violations of 12 U.S.C. § 2605(e) and (g) but could not prevail under either provision. We agree with the magistrate judge that documents submitted by Standard Mortgage and Jackson herself rebut her allegations concerning subsection (g). The magistrate judge also found that Jackson failed to show either that § 2605(e) was violated or that the violation alleged resulted in actual damages. By not disputing that actual damages are essential to a RESPA claim or that she made no showing of damages, Jackson has abandoned those issues. *See Yohey v. Collins*, 985 F.2d 222, 224-25 (5th Cir. 1993). Jackson has also not addressed the magistrate judge’s determination that she failed to show grounds under Federal Rule of Civil Procedure 56(d) for deferring consideration of the motions for summary judgment, and the mere assertion that she required additional discovery is insufficient to show error. *See Prospect Cap. Corp. v. Mut. of Omaha Bank*, 819 F.3d 754, 757 (5th Cir. 2016).

The record does not support Jackson’s claim that the magistrate judge was biased against her. *See United States v. Brocato*, 4 F.4th 296, 301-02 (5th Cir. 2021). Although Jackson objects to the magistrate judge’s case management in various respects, she fails to show an abuse of discretion. *See Klocke v. Watson*, 936 F.3d 240, 243 (5th Cir. 2019).

Accordingly, we AFFIRM.