

1 WO
2
3
4
5

6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Helen E. Reader,

10 Plaintiff,

11 v.

12 Bank of America NA, et al.,

13 Defendants.
14

No. CV-11-02461-PHX-FJM

ORDER

15 The court of appeals has asked us to "reconsider Reader's claims for promissory
16 estoppel" in light of its intervening opinion in *Corvello v. Wells Fargo Bank*, 728 F.3d
17 878(9th Cir. 2013) and to "reconsider [Reader's claim for violation of Ariz. Rev. Stat.
18 sec. 33-420] in light of intervening state case law." Mandate at 3 (Doc. 28-1). It also
19 remanded Reader's request for injunctive relief which in turn was dependent on the
20 reconsideration of the two remanded substantive claims. *Id.* at 4. In all other respects,
21 our prior dismissal was affirmed. We gave the parties an opportunity to engage in
22 discovery and motion practice on the two remanded issues. Scheduling Order of October
23 23, 2014 (Doc. 32).

24 We now have before us "Defendants' Motion for Summary Judgment" (Doc. 45),
25 "Statement of Facts" (Doc. 46), "Plaintiff's Cross Motion for Summary Judgment" (Doc.
26 54), "Statement of Facts" (Doc. 55), "Defendants' Opposition" (Doc. 60), "Controverting
27 Statement of Facts" (Doc. 61), "Plaintiff's Reply" (Doc. 62), "Plaintiff's Response and
28 Objection to Defendants' Second Pleading of a Statement of Facts" (Doc. 63), and,

1 "Plaintiff's Request for Mandatory Judicial Notice" (Doc. 64). We note that plaintiff is
2 proceeding pro se and has misapprehended the rules relating to motion practice. Instead
3 of filing a Response to Defendants' Motion for Summary Judgment, she filed a Cross
4 Motion. But the Cross Motion was out of time because it was not filed within the Rule
5 16 Scheduling Order's deadline for filing motions for summary judgment. She also
6 exceeded the page limits without leave of court. Without excusing these violations, and
7 for the sole purpose of resolving this case on its merits, we construe plaintiff's cross
8 motion as a response to defendants' motion for summary judgment. We acknowledge
9 that as a practical matter it makes little difference. We note also that plaintiff's papers fail
10 to acknowledge the limited nature of the remand. We address only the remanded claims.
11 All other contentions and arguments are precluded by the prior order of dismissal
12 affirmed on appeal.

13 I. Promissory Estoppel/*Corvello*

14 *Corvello* holds that a bank is required to offer a permanent modification to a
15 borrower who completes all its obligations under a trial period plan unless the bank
16 timely notifies the borrower that the borrower does not qualify for a modification.
17 Defendants contend that they, indeed, did notify plaintiff that she did not qualify. They
18 rely on a letter dated November 1, 2010 they sent to plaintiff stating that her "loan is not
19 eligible for a Home Affordable Modification because we are unable to create an
20 affordable payment equal to 31% of your reported monthly gross income without
21 changing the terms of your loan beyond the requirements of the program." Exhibit B to
22 Affidavit of Melissa Davidson (Doc. 46-2, at 22). Although plaintiff asserts that she did
23 not receive the letter, Cross Motion at 25, her assertion is not under oath. Moreover, she
24 acknowledges under oath that she was informed of her denial of modification "after she
25 contacted BANA on or about March 2010." Plaintiff Helen E. Reader Affidavit,
26 paragraph 7 at 2 (Doc. 55). There is thus no genuine issue of material fact over the
27 bank's notification that plaintiff did not qualify. This means that under *Corvello* the bank
28 was not required to offer plaintiff a permanent modification even if she completed her

1 obligations under the trial period plan.

2 II. A.R.S. sec. 33-420

3 A Notice of Trustee Sale, a Notice of Substitution of Trustee, and an Assignment
4 of Deed of Trust are interests in property within the meaning of A.R.S. sec. 33-420.
5 *Stauffer v. US Bank National Assoc.*, 308 P.3d 1173 (Ariz. App. 2013). A property
6 owner has standing under A.R.S. sec. 33-420. *Sitton v. Deutsche Bank National Trust*
7 *Co.*, 311 P.3d 237 (Ariz. App. 2013). But the misrepresentations must be material to the
8 property owner or else there is no claim under the statute. *Id.* at paragraphs 27 and 28.
9 Here, as in *Sitton*, plaintiff's obligations arise under the note. "Her liability on the note
10 remained the same no matter who was assigned as beneficiary, or when. The
11 misrepresentations in the recorded assignments were therefore immaterial to her as a
12 matter of law." *Sitton* at paragraph 33. Thus, plaintiff is not helped by intervening
13 developments in Arizona law.

14 III. Request for Injunctive Relief

15 Plaintiff's request for injunctive relief against the trustee's sale is dependent upon
16 the remaining two substantive claims. But, as we have shown, defendants are entitled to
17 summary judgment on the remaining claims. Accordingly, defendants are entitled to
18 summary judgment on the request for injunctive relief as well.

19 IV. Conclusion

20 Because there are no genuine issues of material fact and because defendants are
21 entitled to judgment as a matter of law, it is ORDERED GRANTING defendants' Motion
22 for Summary Judgment (Doc. 45), and DENYING plaintiff's Cross Motion for Summary
23 Judgment (Doc. 54).

24 All pending hearings and deadlines are vacated. The Clerk is directed to terminate
25 this case and enter final judgment in favor of defendants.

26 Dated this 3rd day of August, 2015.

27 

28 Frederick J. Martone
Frederick J. Martone
Senior United States District Judge