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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 IN RE CICELY NICOLE BREWSTER,
12 Debtor.

Case No. 5:13-cv-505-ODW

Bankruptcy Case No. 6:12-bk-33284-DS
Adversary Case No. 6:12-ap-1442-DS

13
14 CICELY NICOLE BREWSTER,
15 Appellant,
16 v.

ORDER

17 DEUTSCHE BANK NAT'L TRUST CO.
18 AS TRUSTEE FOR AMERICAN HOME
19 MORTGAGE ASSETS TRUST 2007-1, et
al.,
Appellees.

20 **I. INTRODUCTION**

21 Appellant Cicely Nicole Brewster appeals to this Court an order from the
22 bankruptcy court dismissing her Adversary Complaint under Federal Rule of
23 Bankruptcy Procedure 7012(b) and Federal Rule of Civil Procedure 12(b)(6). As
24 discussed herein, the Court **AFFIRMS** the judgment below.

25 **II. JURISDICTION**

26 This Court has jurisdiction to hear appeals for judgments, orders, and decrees
27 entered in intra-district bankruptcy cases referred under 28 U.S.C. § 157. 28 U.S.C.
28 § 158. The judgment in this adversary proceeding is final, and was entered in a

1 bankruptcy proceeding within this District. Accordingly, the judgment is appealable
2 to this Court under 28 U.S.C. § 158.

3 **III. BACKGROUND**

4 On October 30, 2006, Appellant Cicely Nicole Brewster refinanced the
5 mortgage to her Moreno Valley property with a loan for \$384,750, in favor of
6 American Brokers Conduit. (Appellees' Br. 2.) This loan was secured through a
7 promissory note, and Brewster signed a Deed of Trust for the property to American
8 Brokers Conduit. (*Id.*) On August 1, 2011, this note was transferred to Deutsche
9 Bank National Trust Co., acting as trustee for the Securitized Trust American Home
10 Mortgage Assets Series 2007-1. (*Id.* at 3.) Brewster defaulted on the loan and on
11 August 16, 2011, a Notice of Default was recorded against the property. (*Id.*) The
12 property was eventually sold at a foreclosure sale on June 7, 2012. (*Id.*)

13 In Brewster's bankruptcy proceedings, she filed an Adversary Complaint on
14 November 5, 2012, against Appellees alleging seven state-law claims, along with
15 federal claims for violations under the Truth in Lending Act ("TILA") and the Real
16 Estate Settlement Procedures Act ("RESPA"), and rescission under TILA. The
17 bankruptcy court dismissed the federal claims with prejudice and declined to exercise
18 jurisdiction over the remaining state-law claims. This appeal followed.

19 **IV. ISSUES ON APPEAL**

20 Liberally construing the issues on appeal, Brewster appeals to this Court to
21 review (1) the dismissal of the claim for damages under TILA; (2) the dismissal of the
22 claim for damages under RESPA; (3) the dismissal of the claim for rescission under
23 TILA; (4) the dismissal of the federal claims without leave to amend; (5) the dismissal
24 of the state-law claims; and (6) the dismissal of all claims with respect to the absent
25 defendant American Brokers Conduit.

26 **V. LEGAL STANDARD**

27 A bankruptcy court's legal conclusions are reviewed de novo and its factual
28 findings are reviewed for clear error. *In re Hamada*, 291 F.3d 645, 649 (9th Cir.

1 2002). A court’s factual determination is clearly erroneous if it is illogical or
2 implausible, or if it lacks “support in inferences that may be drawn from facts in the
3 record.” *United States v. Hinkson*, 585 F.3d 1247, 1261 (9th Cir. 2009) (en banc)
4 (quoting *Anderson v. City of Bessemer*, 470 U.S. 564, 577 (1985)).

5 Dismissal for failure to state a claim is a legal conclusion and is reviewed de
6 novo. *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1040 (9th Cir.
7 2011). The application of statutes of limitations is also a legal conclusion and is
8 reviewed de novo, but the determination of equitable tolling is reviewed for abuse of
9 discretion. *Huynh v. Chase Manhattan Bank*, 465 F.3d 992, 1003 (9th Cir. 2006).

10 Denying leave to amend a complaint is reviewed for an abuse of discretion.
11 *Gompper v. VISX, Inc.*, 298 F.3d 893, 898 (9th Cir. 2002). Similarly, the decision to
12 dismiss supplemental claims once the federal claims have been dismissed is reviewed
13 for an abuse of discretion. *Tritchler v. County of Lake*, 358 F.3d 1150, 1153 (9th Cir.
14 2004).

15 VI. DISCUSSION

16 The Court addresses each of Brewster’s six grounds for appeal in turn.

17 A. TILA violations

18 An action for damages under TILA is subject to a one-year statute of
19 limitations. 15 U.S.C. § 1640(e). A TILA violation occurs, and the statute of
20 limitations begins to run, at the time the loan documents are signed. *King v.*
21 *California*, 784 F.2d 910, 915 (9th Cir. 1986). Nevertheless, the Ninth Circuit has
22 held that for damages, TILA’s remedial purpose may, in appropriate circumstances,
23 permit equitable tolling to suspend the statute of limitations “until the borrower
24 discovers or had reasonable opportunity to discover the fraud or nondisclosures that
25 form the basis of the TILA action.” *Id.* However, equitable tolling focuses primarily
26 on a plaintiff’s *excusable* negligence; it “does not apply when a late filing is due to
27 [the plaintiff’s] failure to exercise due diligence in preserving his legal rights.”
28 *Hensley v. United States*, 531 F.3d 1052, 1058 (9th Cir. 2008).

1 The one-year statute of limitations for TILA bars Brewster's claim because it
2 began to run in 2006, the time the loan documents were signed. Her claim for
3 damages is thus time-barred as a matter of law unless she can allege facts that
4 equitably tolled the statute of limitations.

5 Brewster argues that the statute of limitations is equitably tolled because
6 Appellees failed to make the required disclosures. But this argument fails. Mere
7 allegations of TILA violations do not toll the statute and nothing prevented her from
8 comparing her loan contract and the initial disclosures with TILA's statutory and
9 regulatory requirements. *See Hubbard v. Fidelity Fed. Bank*, 91 F.3d 75, 79 (9th Cir.
10 1996). Brewster presented no facts to demonstrate why the statute of limitations
11 should be equitably tolled. The bankruptcy court was therefore within its discretion to
12 rule that equitable tolling did not apply and that the alleged TILA violations were
13 time-barred.

14 A claim for rescission under TILA is subject to a three-year statute of
15 limitations, calculated from the date of consummation of the transaction or upon the
16 sale of the property, whichever occurs first. 15 U.S.C. § 1635(f). Equitable tolling
17 does not apply to rescission claims under TILA. *Mays v. U.S. Bank Nat'l. Ass'n.*, No.
18 1:09-CV-1586 AWI SMS, 2010 WL 318537, at *4 (E.D. Cal. Jan. 20, 2010); *see*
19 *King*, 784 F.2d at 913 (9th Cir. 1986). Brewster's claim for rescission is barred by the
20 statute of limitations because it began to run in 2006, when she refinanced her
21 mortgage. Thus, the bankruptcy court properly concluded that her rescission claim
22 was time-barred.

23 **B. RESPA violations**

24 RESPA creates a private right of action for only three types of wrongful acts:
25 (1) payment of a kickback and unearned fees for real estate settlement services, 12
26 U.S.C. § 2607(a), (b); (2) requiring a buyer to use a title insurer selected by the seller,
27 12 U.S.C. § 2608(b); and (3) the failure by a loan servicer to give proper notice of a
28 transfer of servicing rights or to respond to a qualified written request ("QWR") for

1 information about the loan, 12 U.S.C. § 2605(f). *Oliver v. U.S. Bank, N.A.*, No. 11–
2 CV–04300–LHK, 2012 WL 2376677, at *6 (N.D. Cal. June 22, 2012). Claims
3 brought under § 2607 or § 2608 are subject to a one-year statute of limitations, while
4 claims brought under § 2605 are subject to a three-year statute of limitations, each of
5 which begins to run when the violation occurs. 12 U.S.C. § 2614.

6 It is unclear which type of wrongful act Brewster pleads in her Complaint. She
7 appears to allege two wrongful acts:

8 The interest and income that Defendants have gained is disproportionate
9 to the situation Plaintiff finds herself in due directly to Defendant’s [*sic*]
10 failure to disclose that they will gain a financial benefit while Plaintiff
11 suffers financially as a result of the loan product sold to Plaintiff. (Am.
12 Compl. ¶ 119.)

12 and

13 Defendants violated RESPA because the payments between the
14 Defendants were misleading and designed to create a windfall. These
15 actions were deceptive, fraudulent[,] and self-serving. (*Id.* ¶ 121.)

16 These RESPA allegations do not fall within one of the three types of wrongful
17 acts articulated above and thus, she fails to state a claim under RESPA. And even if
18 the Court construes her allegations to fall within one of the three types, the statute of
19 limitations would bar her claim because her allegations concern wrongful acts
20 committed at the origination of the loan in 2006.

21 The Court notes that in her appeal brief, Brewster mentions Appellees’ failure
22 to respond to two QWRs that were allegedly sent to the original trustee and substitute
23 trustee in March and May 2012, respectively. But this was raised for the first time in
24 Brewster’s Opposition to the Motion to Dismiss. Brewster’s allegations concerning
25 Defendants’ failure to respond to her QWRs were not in her pleadings, and therefore
26 will be disregarded. A complaint must allege sufficient underlying facts to provide
27 fair notice and enable the defendant to defend itself effectively. *Starr v. Baca*, 652
28 F.3d 1202, 1216 (9th Cir. 2011). The Court is aware that Brewster is representing

1 herself in this matter, but even if the Court construes her Adversary Complaint to
2 include these allegations, her claim fails.

3 RESPA places a duty on loan servicers to respond to borrower inquiries relating
4 to information about the borrower's loan. 12 U.S.C. § 2605(e). This duty is triggered
5 when the servicer receives a QWR from a borrower. 12 U.S.C. § 2605(e)(1)(A).
6 After receiving a QWR, a servicer must acknowledge its receipt within five days and
7 respond to the inquiries within thirty days. 12 U.S.C. § 2605(e)(1), (2). For purposes
8 of RESPA, a QWR is defined as: a written correspondence, other than notice on a
9 payment coupon or other payment medium supplied by the servicer, that—
10 (i) includes, or otherwise enables the servicer to identify, the name and account of the
11 borrower; and (ii) includes a statement of the reasons for the belief of the borrower, to
12 the extent applicable, that the account is in error or provides sufficient detail to the
13 servicer regarding other information sought by the borrower. 12 U.S.C.
14 § 2605(e)(1)(B).

15 Here, Brewster's two substantively identical QWRs requests 45 items,
16 everything from an accounting of how much money is owed to copies of the
17 prospectus offered to investors in the Securitized Trust American Home Mortgage
18 Assets Series 2007-1. (Opp'n to Not. of Mot. and Mot. to Dismiss, Exs. C, D.) These
19 all-encompassing requests for documents and records are not what RESPA
20 contemplates.

21 Under RESPA, “[t]he term ‘servicing’ means receiving any scheduled periodic
22 payments from a borrower pursuant to the terms of any loan . . . and making the
23 payments of principal and interest and such other payments with respect to the
24 amounts received from the borrower as may be required pursuant to the terms of the
25 loan.” 12 U.S.C. § 2605(i)(3). On the whole, Brewster's QWRs request documents
26 relating to the original loan transaction and its subsequent history, and generally seek
27 information on the validity of the loan and the underlying documents. Such requests
28 do not fall within the confines of RESPA. *Consumer Solutions REO, LLC v. Hillery,*

1 658 F. Supp. 2d 1002, 1014 (N.D. Cal. 2009) (dismissing the plaintiff’s RESPA claim
2 with prejudice after observing that the requirement “[t]hat a QWR must address the
3 servicing of the loan, and not its validity, is borne out by the fact that § 2605(e)
4 expressly imposes a duty upon the loan servicer, and not the owner of the loan.”).

5 Moreover, § 2605 only requires loan servicers to respond to a proper QWR by
6 correcting the account discrepancy, explaining why the account is correct, or if the
7 information is unavailable, by providing contact information for someone who can
8 assist the borrower with her inquiry. 12 U.S.C. §§ 2605(e)(2)(A)–(C). Thus, even if
9 Brewster properly plead Defendants’ failure to respond to her two QWRs, these
10 QWRs request information exceeding the scope of information Defendants were
11 required to provide in response. Therefore, the Court finds no error in the bankruptcy
12 court’s dismissal of this claim.

13 **C. Leave to amend**

14 Denying leave to amend is ordinarily “improper unless it is clear that the
15 complaint could not be saved by any amendment.” *Livid Holdings Ltd. v. Salomon*
16 *Smith Barney, Inc.*, 416 F.3d 940, 946 (9th Cir. 2005). But discretion to deny leave to
17 amend is particularly broad where a plaintiff has previously filed an amended
18 complaint. *Miller v. Yokohama Tire Corp.*, 358 F.3d 616, 622 (9th Cir. 2004).

19 Brewster was given several opportunities to articulate facts to support her
20 claims, including equitable tolling, but was unable to do so. The Court cannot see
21 how she can save her claims from the statute of limitations. Accordingly, the
22 bankruptcy court was within its discretion denying leave to amend her federal claims.

23 **D. Supplemental jurisdiction of state-law claims**

24 A court may decline supplemental jurisdiction over state claims once it has
25 dismissed the federal claims over which it had original jurisdiction. 28 U.S.C.
26 § 1367(c)(3); *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639 (2009). Since
27 the federal claims were dismissed, the bankruptcy court did not abuse its discretion by
28 declining to exercise supplemental jurisdiction over Brewster’s state-law claims.

1 **E. Dismissal of an absent Defendant**

2 Finally, the bankruptcy court did not err by sua sponte dismissing Brewster’s
3 Complaint against American Brokers Conduit. “A District Court may properly on its
4 own motion dismiss an action as to the defendants who have not moved to dismiss
5 where such defendants are in a position similar to that of moving defendants or where
6 claims against such defendants are integrally related.” *Silverton v. Dep’t of the*
7 *Treasury*, 644 F.2d 1341, 1345 (9th Cir. 1981). Although American Brokers Conduit
8 did not move to dismiss the Complaint, the bankruptcy court’s decision to dismiss the
9 Complaint against all Defendants, including American Brokers Conduit, “was not
10 arbitrary, capricious nor an abuse of discretion, but, on the contrary, the decision was
11 fully supported by substantial relevant evidence.” *Id.* American Brokers Conduit was
12 in a position similar to the moving Defendants and the claims were integrally related.
13 Accordingly, the bankruptcy court’s dismissal of the entire Complaint as to American
14 Brokers Conduit was not improper.

15 **VII. DISPOSITION**

16 Accordingly, for the reasons discussed above, the judgment of the bankruptcy
17 court is **AFFIRMED**.

18 **IT IS SO ORDERED.**

19 September 9, 2013

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22 **OTIS D. WRIGHT, II**
23 **UNITED STATES DISTRICT JUDGE**