

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LAURA ANN GENS and TIMOTHY GENS,

Plaintiffs,

v.

COLONIAL SAVINGS, F.A.; ASSOCIATED
BANK, N.A.; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.

Defendants.

Case No. C-11-05526-RMW

**ORDER GRANTING MOTION OF
DEFENDANT ASSOCIATED BANK,
N.A. TO DISMISS SECOND
AMENDED COMPLAINT;
CONTINUING MOTIONS TO
DISMISS BY COLONIAL SAVINGS,
F.A. AND MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.**

[Re Docket Nos. 100, 101, 102]

Plaintiffs Laura A. Gens and Timothy Gens (collectively “Gens”), bring the instant action against defendants, Colonial Savings, F.A., Associated Bank, N.A., and Mortgage Electronic Registration Systems, Inc. (“MERS”). In the Second Amended Complaint (SAC), Gens asserts nine causes of action against defendants arising under federal and state law. Dkt. No. 98 (SAC).

Colonial, MERS, and Associated each filed a motion to dismiss (MTD) or strike the SAC on December 2, 2013. *See* Dkt. Nos. 100 (Colonial MTD), 101 (MERS MTD), 102 (Associated MTD). Colonial and MERS sent a nearly illegible copy of their motions to the Gens, and are required to reserve the motion today. Gens will serve an opposition on Colonial and MERS by January 29, 2014. The court will address these motions on the papers after receipt. With regard to Associated’s

1 MTD, Gens responded on December 19, 2013, as required by the Local Rules. *See* Dkt. Nos. 109,
2 110; Civ. Local Rule 5-5(a)(2).

3 The court previously issued an order dismissing most of Gens’ claims—some with prejudice.
4 *See* Dkt. No. 85 (Order). The court granted Gens leave to amend certain claims, and Gens then filed
5 a SAC with minimal changes and failed to remove the claims dismissed with prejudice. The claims
6 previously dismissed with prejudice are struck from the complaint.¹ The court briefly addresses the
7 remaining claim against Associated.

8 **A. Seventh Cause of Action: Wisconsin Deceptive Trade Practices Act against**
9 **Associated**

10 The court previously dismissed Gens’ cause of action based on the Wisconsin Deceptive
11 Trade Practices Act because Gens failed to allege any fraudulent representations with specificity
12 even though the claim sounded in fraud. Dkt. No. 85, Order at 9. The claim was based on the
13 allegation that “Associated and MERS failed to undergo a diligent underwriting process, properly
14 adjust and disclose facts and a circumstance relating to” Gens’ mortgage and that they “would add
15 outrageous fees, costs, charges etc. while concealing these fees/charges.” Dkt. No. 56, FAC ¶ 63.
16 The court also found the claim was untimely. *Id.*; *see* Wis. Stat. § 100.18(11)(b)(3) (three year
17 statute of limitations).

18 Gens’ current claim under the Wisconsin Deceptive Trade Practices Act is that the July 22,
19 2010 assignment from MERS to Colonial was fraudulent and that an Associated employee made
20 some fraudulent statements about the principal amount owed in 2006. SAC ¶¶ 68, 69, 71. Gens
21 claims that Associated knowingly participated in the 2010 fraud, but there is no support for this
22 other than vague allegations about statements an Associated representative made in an unrelated
23 2006 phone call. Accordingly, the claim against Associated is dismissed for failure to allege the
24 claim with specificity and for being untimely.

25 **ORDER**

26 For the reasons explained above, the court orders as follows with respect to each of the
27 causes of action at issue:

28 _____
¹ These include the following causes of action: first, second, third, eighth, and ninth.
ORDER
Case No. C-11-05526-RMW
LM

- 1 • First Cause of Action - Quiet Title: struck from SAC.
- 2 • Second Cause of Action - Rescission of the Loan: struck from SAC.
- 3 • Third Cause of Action - Rescission of the 2008 Settlement Agreement: struck from SAC.
- 4 • Fourth Cause of Action - Trespass against Colonial: pending ruling on motion to dismiss.
- 5 • Fifth Cause of Action - Conversion against Colonial: pending ruling on motion to dismiss.
- 6 • Sixth Cause of Action - RICO against Colonial: pending ruling on motion to dismiss.
- 7 • Seventh Cause of Action - Wisconsin Deceptive Trade Practices Act: dismissed as to
- 8 defendant Associated; pending ruling as to defendants Colonial and MERS.
- 9 • Eighth Cause of Action - Fair Credit Reporting Act: struck from SAC.
- 10 • Ninth cause of Action - Fair Debt Collection Practices Act: struck from SAC.

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12 Colonial and MERS are required to reserve a copy of their motions on the Gens today. Gens
13 will respond by January 29, 2014, at which time the motions will be submitted on the papers.

14
15 Dated: January 10, 2014

16 
17 Ronald M. Whyte
18 United States District Judge