

IN THE UNITED STATES DISTRICT COURT  
 FOR THE MIDDLE DISTRICT OF GEORGIA  
 COLUMBUS DIVISION

LORETTA WRIGHT,	*	
	*	
Plaintiff,	*	
	*	
vs.	*	
	*	CASE NO. 4:16-CV-87 (CDL)
BANK OF AMERICA and DEUTSCHE	*	
BANK TRUST COMPANY,	*	
	*	
Defendants.	*	

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O R D E R

Presently pending before the Court is Defendants' motion to dismiss Plaintiff Loretta Wright's amended complaint. For the reasons set forth below, the motion (ECF No. 34) is granted.

MOTION TO DISMISS STANDARD

"To survive a motion to dismiss" under Federal Rule of Civil Procedure 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). The complaint must include sufficient factual allegations "to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. In other words, the factual allegations must "raise a reasonable expectation that discovery will reveal evidence of" the plaintiff's claims. *Id.* at 556. "Rule 12(b)(6) does not permit dismissal of a well-pleaded

complaint simply because 'it strikes a savvy judge that actual proof of those facts is improbable.'" *Watts v. Fla. Int'l Univ.*, 495 F.3d 1289, 1295 (11th Cir. 2007) (quoting *Twombly*, 550 U.S. at 556). In ruling on a motion to dismiss, the Court may consider exhibits attached to the complaint. *Brooks v. Blue Cross & Blue Shield of Florida, Inc.*, 116 F.3d 1364, 1368 (11th Cir. 1997) (per curiam).

#### FACTUAL ALLEGATIONS

Wright, who is proceeding *pro se*, filed a complaint that failed to articulate a short and plain statement of her claims as required under Federal Rule of Civil Procedure 8(a)(2). The Court permitted Wright to file an amended complaint, and the Court instructed Wright that the amended complaint must set forth "exactly what claims Wright is pursuing" and "basic factual allegations that support each claim." Order 3, Jan. 5, 2017, ECF No. 25. Wright filed an amended complaint, but she still has not clearly articulated the factual bases for her claims. Defendants seek dismissal of the amended complaint.

Wright contends that she was injured because of the actions of Defendants Bank of America and Deutsche Bank National Trust Company. Am. Compl. 4, ECF No. 32. Based on the amended complaint and its attachments, Wright alleges that she executed a security deed on certain real property as security for a loan from the Secretary of Veterans Affairs. Am. Compl. Ex C,

Security Deed, ECF No. 32-3. The security deed was transferred to Deutsche Bank, and Bank of America serviced the loan. Wright appears to acknowledge that she fell behind on her loan payments, and she alleges that Bank of America refused "all reasonable offers on numerous occasions in any amount to bring current any deficiency." Am. Compl. ¶ 4(3)). She did not allege any specific facts about the deficiencies or her efforts to cure them.

In 2014, the property was sold in a non-judicial foreclosure proceeding. *Id.* ¶ 4(1); Am. Compl. Ex. B, Deed Under Power, ECF No. 32-2. Wright did not allege any specific facts about the non-judicial foreclosure proceeding. And in 2016, Wright was evicted from the property. Am. Compl. Ex. A, Writ of Possession & Judgment, ECF No. 32-1. Wright did not allege any specific facts about the events giving rise to her eviction.

#### DISCUSSION

Wright appears to be attempting to raise seven claims. The Court will address each one in turn.

First, Wright tries to assert a claim against Defendants based on the non-judicial foreclosure process, which Wright alleges "violates the Constitution." Am. Compl. ¶ 4(1). Wright did not allege any facts regarding the non-judicial foreclosure proceeding in her case, and she did not state how it violated

the Constitution. In addition, Wright did not allege any facts to suggest that Defendants were state actors who can be subject to such constitutional claims. For these reasons, Wright's constitutional claim based on the non-judicial foreclosure process fails.

Second, Wright summarily alleges that the Security Deed violates her "civil rights under the Civil Rights Act of 1964." Am. Compl. ¶ 4(2). In general, the Civil Rights Act of 1964 prohibits discrimination based on protected characteristics, such as race, in several contexts. See generally Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241. Wright did not make any factual allegations in support of this "civil rights" claim, and the claim fails for that reason.

Third, Wright alleges that the Security Deed "constitute[s] an adhesion contract," Am. Compl. ¶ 5, although she also asserts that she did not have a contract with either Defendant, *id.* ¶ 6. Wright did not allege any other facts on this point, and it is not clear what relief she is seeking based on this allegation. "And, in any event, the fact that a contract is adhesive does not, standing alone, render the contract unenforceable." *Realty Lenders, Inc. v. Levine*, 649 S.E.2d 333, 336 (Ga. Ct. App. 2007). For these reasons, any claim based on the allegedly adhesive nature of the Security Deed fails.

Fourth, Wright claims that Bank of America violated the terms of the Security Deed "by refusing all reasonable offers on numerous occasions in any amount to bring current any deficiency." Am. Compl. ¶ 4(3). Wright did not point to any specific provisions of the Security Deed that were allegedly violated. The Court notes that under the Security Deed, a default occurs if there is a payment deficiency unless that deficiency is "made good" before the due date of the next payment. Security Deed 2 ¶ 2. Wright appears to acknowledge that there was a deficiency on her account, but she did not allege that any deficiency was "made good" before her next payment was due. And she did not allege any other facts to suggest that Bank of America violated the terms of the Security Deed. Accordingly, this claim fails.

Fifth, Wright claims that Bank of America "releged on a TARP agreement." Am. Compl. ¶ 4(3). The Court construes this allegation as an attempt to assert a claim under the Troubled Asset Relief Program ("TARP"). The Eleventh Circuit has held that there is no private right of action under TARP, so this claim fails. *Molina v. Aurora Loan Servs., LLC*, 635 F. App'x 618, 626 (11th Cir. 2015).

Finally, Wright asserts that Bank of America violated the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. §§ 2601-2617, and the Truth in Lending Act ("TILA"), 15

U.S.C. § 1601 *et seq.*, by refusing “numerous short sales.” Am. Compl. ¶ 4(3). It is not clear which provision of RESPA Wright contends Bank of America violated. Under RESPA, a loan servicer must respond to borrower inquiries “for information relating to the servicing of [the borrower’s] loan.” 12 U.S.C. § 2605(e)(1)(A). “The term ‘servicing’ means receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan, including amounts for escrow accounts . . . , and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan.” 12 U.S.C. § 2605(i)(3). RESPA thus does not require a loan servicer to respond to a borrower’s request for approval of a short sale. Also, although RESPA’s regulations set forth procedures for loss mitigation *if* a borrower submits a complete loss mitigation application (which Wright does not allege she did), nothing in the statute or regulations “imposes a duty on a servicer to provide any borrower with any specific loss mitigation option.” 12 C.F.R. § 1024.41(a). For these reasons, Wright’s RESPA claim fails.

Similarly, Wright’s amended complaint does not state a TILA claim. Under TILA, loan servicers must make certain disclosures based on a consumer’s request. See 15 U.S.C. § 1641(f)(2). But Wright does not allege that Bank of America failed to make these

disclosures. Rather, she alleges that Bank of America "refused numerous short sales." Am. Compl. ¶ 4(3). Wright did not cite—and the Court did not find—any TILA provision that requires a loan servicer to agree to a short sale of a property subject to a mortgage. Accordingly, her TILA claim fails.

CONCLUSION

In summary, although the Court gave Wright an opportunity to amend her complaint so that she could articulate her claims clearly and set forth a factual basis for each claim, Wright's amended complaint does not state a claim upon which relief can be granted. Defendants' motion to dismiss (ECF No. 34) is therefore granted.

IT IS SO ORDERED, this 7th day of April, 2017.

S/Clay D. Land  
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CLAY D. LAND  
CHIEF U.S. DISTRICT COURT JUDGE  
MIDDLE DISTRICT OF GEORGIA