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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

MIKHAIL V. CHAMANAeva, *et al.*,
Plaintiffs,
v.
RECONTRUST COMPANY, *et al.*,
Defendants.

Case No. 2:12-CV-00403-KJD-CWH

ORDER

Before the Court is the Motion to Dismiss (#7) filed by Defendant Recontrust Company. Plaintiffs have filed a response (#12).

Also before the Court is Plaintiffs’ Motion to Remand (#9) to which Defendant has filed a response (#11).

I. Background

Plaintiffs own real property located at 7631 Chaumont Street, Las Vegas, Nevada (the “Property”). On October 26, 2005, Plaintiffs obtained a \$402,000 loan from Countrywide Home Loans to refinance a previous mortgage on the property. The loan was secured by a first

1 position deed of trust (“Deed of Trust”) which was recorded on October 31, 2005. The Deed of Trust
2 expressly provides that MERS is the beneficiary’s nominee under the deed of trust with the power to
3 act on the beneficiary’s behalf.

4 On August 20, 2009, MERS assigned the deed of trust to HSBC Bank USA, National
5 Association, as Trustee for Luminent Mortgage Trust 2006-2 Trust Fund (“HSBC”). On August 20,
6 2009, HSBC substituted Defendant ReconTrust as trustee under the deed of trust

7 Plaintiffs defaulted on the loan in December of 2008 by failing to make the payment due on
8 December 1, 2008. Defendant recorded a Notice of Default and Election to Sell on August 20, 2009.
9 Subsequently the first Notice of Default was rescinded. Defendant recorded a second Notice of
10 Default on August 10, 2010. Plaintiffs failed to cure their default and did not elect to participate in
11 the Nevada Foreclosure Mediation Program. On October 26, 2010, the Foreclosure Mediation
12 Program issued a certificate allowing the foreclosure to proceed.

13 On February 12, 2012, Defendant provided notice that the Property would be sold at a
14 trustee’s sale March 8, 2012. However, on February 27, 2012, Plaintiffs filed this action in the
15 Eighth Judicial District Court and recorded a lis pendens on the property. The action was removed
16 here on March 12, 2012. The Complaint alleges causes of action for: (1) Deceptive Trade Practices
17 and (2) Violations of NRS Chapter 107 and request Declaratory and Injunctive relief.

18 II. Discussion

19 A. Motion to Remand

20 Plaintiffs argue that this Court should realign the parties such that ReconTrust is the plaintiff
21 for purposes of removal. Plaintiffs cite two United States Supreme Court decisions to support their
22 argument: Chicago, R.I. & P.R. Co. v. Stude, 346 U.S. 574 (1954) and Mason City & Fort Dodge
23 R.R. Co. v. Boynton, 204 U.S. 570 (1907). In each of these cases, the Court realigned the parties
24 because state law had classified the parties in a manner inconsistent with federal law. See Stude, 346
25 U.S. at 579–80; Boynton, 204 U.S. at 579–80. Here there is no conflict between state and federal law
26 in terms of party classification. Plaintiffs have played the role of plaintiff throughout this action by

1 instituting the case in state court and seeking various forms of relief. Accordingly, the Court declines
2 to realign the parties and holds that ReconTrust is properly classified as the defendant.

3 B. Legal Standard for Motion to Dismiss

4 A court may dismiss a plaintiff’s complaint for “failure to state a claim upon which
5 relief can be granted.” Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide “a short
6 and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P.
7 8(a)(2); Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). While Rule 8 does not require
8 detailed factual allegations, it demands “more than labels and conclusions” or a “formulaic
9 recitation of the elements of a cause of action.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
10 (citations omitted). “Factual allegations must be enough to rise above the speculative level.”
11 Twombly, 550 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient
12 factual matter to “state a claim to relief that is plausible on its face.” Iqbal, 556 U.S. at 678 (citation
13 omitted).

14 In Iqbal, the Supreme Court clarified the two-step approach district courts are to apply when
15 considering motions to dismiss. First, a district court must accept as true all well-pled factual
16 allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth.
17 Id. at 1950. Mere recitals of the elements of a cause of action, supported only by conclusory
18 statements, do not suffice. Id. at 1949. Second, a district court must consider whether the factual
19 allegations in the complaint allege a plausible claim for relief. Id. at 1950. A claim is facially
20 plausible when the plaintiff’s complaint alleges facts that allows the court to draw a reasonable
21 inference that the defendant is liable for the alleged misconduct. Id. at 1949. Where the complaint
22 does not permit the court to infer more than the mere possibility of misconduct, the complaint has
23 “alleged—but not shown—that the pleader is entitled to relief.” Id. (internal quotation marks
24 omitted). When the claims in a complaint have not crossed the line from conceivable to plausible,
25 the complaint must be dismissed. Twombly, 550 U.S. at 570.

1 C. Deceptive Trade Practices

2 The Nevada Deceptive Trade Practices Act (“NDTPA”), codified as NRS § 598, prohibits a
3 seller from making false statements or misrepresentations about his or her goods or services, or
4 failing to disclose material facts about his or her goods or services. See generally NRS § 598.

5 Plaintiffs assert that Defendant violated the NDTPA, specifically citing NRS § 598.0915(5)
6 and (15), and § 598.092(8). The Courts of this District have previously held that NRS § 598 applies
7 only to goods and services and not to real estate loan transactions. See, e.g., Reyna v. Wells Fargo
8 Bank, N.A., 2011 WL 2690087, at *9 (D.Nev. July 11, 2011). Despite the weight of authority to the
9 contrary, Plaintiffs argue that the scope of NRS § 598 should be expanded to include real estate loan
10 transactions. This Court declines to expand the scope of the NDTPA. Accordingly, Plaintiffs’ first
11 cause of action is dismissed.

12 D. Violation of NRS Chapter 107

13 Plaintiffs’ complaint broadly asserts violations of NRS 107 et. seq., without identifying any
14 specific provisions which Defendant is alleged to have violated. Plaintiffs make the conclusory
15 assertion that they “dispute[] the deficiency in performance stated in the Notice of Default” without
16 providing any facts supporting an existence of a legitimate dispute. This bare assertion is insufficient
17 to state a claim.

18 Next, Plaintiffs claim that Defendant failed to provide Plaintiffs with the promissory note
19 during the foreclosure process. The “case law within this district holds that the Nevada law
20 governing nonjudicial foreclosure ... does not require a lender to produce the original note as a
21 prerequisite to nonjudicial foreclosure proceedings.” Byrd v. Meridian Foreclosure Service, 2011
22 WL 1362135, at *2 (D. Nev. April 8, 2011); see also Urbina v. Homeview Lending, Inc., 681
23 F.Supp.2d 1254, 1258 (D.Nev.2010).

24 Finally, Plaintiffs claim that they are entitled to “a declaration that the foreclosure sale is
25 void” because ReconTrust did not have authority to notice and conduct the trustee’s sale. Of course,
26 there has been no trustee’s sale in this case so the Court cannot grant the relief requested. However,

1 Plaintiffs' claim also fails because NRS 107.080(2)(c) allows "beneficiary, the successor in interest
2 of the beneficiary, or the trustee" to effectuate a nonjudicial foreclosure sale. Judicially noticeable
3 documents show that Defendant was duly substituted as trustee by the beneficiary, HSBC on August
4 20, 2009, nearly one year before the notice of default.¹ Accordingly, Plaintiffs have failed to state a
5 claim upon which relief can be granted under NRS 107 et. seq.

6 E. Declaratory Relief, Injunctive Relief, and Attorney's Fees

7 Declaratory relief, injunctive relief, and attorney's fees are remedies, not causes of action or
8 independent grounds for relief. See In re Wal-Mart Wage & Hour Emp't Practices Litig., 490
9 F.Supp.2d 1091, 1130 (D.Nev.2007). As discussed in this order, Plaintiffs have failed to state a claim
10 for which the above remedies could be granted. Accordingly, Plaintiffs' request for declaratory relief,
11 injunctive relief, and attorneys' fees is denied.

12 III. Conclusion

13 **IT IS HEREBY ORDERED** that Defendant's Motion to Dismiss (#7) is **GRANTED**.

14 **IS FURTHER ORDERED** that Plaintiffs' Motion to Remand (#9) is **DENIED**.

15 **IT IS FURTHER ORDERED** that the lis pendens is cancelled, rescinded, and expunged.

16 DATED this 21st day of February 2013.

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20 Kent J. Dawson
21 United States District Judge

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25 ¹ To the extent Plaintiffs attack the validity of the assignment to HSBC, they do not state any facts showing that
26 they have standing to challenge this assignment. See Klamath Water User Protective Ass'n v. Patterson, 204 F.3d 1206,
1210 (9th Cir. 2000) ("Before a third party can recover under a contract, it must show that the contract was made for its
direct benefit – that it is an intended beneficiary of the contract.")