

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:12-cv-565-FL

RAYMOND A. RENFROW,)
)
Plaintiff,)
)
v.)
)
FREMONT HOME LOAN TRUST and)
LITTON LOAN SERVICING,)
)
Defendants.)
)

ORDER

This matter is before the court on the Memorandum and Recommendation (“M&R”) of United States Magistrate Judge Robert B. Jones, Jr., regarding defendants’ motions to dismiss (DE 11, 30). No objections to the M&R have been filed, and the time within which to make any objection has expired. This matter is ripe for ruling.

This civil action was removed by defendants from Wilson County Superior Court on August 24, 2012. Plaintiff, who appears *pro se*, filed a claim for rescission of his home loan pursuant to the Truth in Lending Act (“TILA”), 15 U.S.C. § 1601 et seq., and seeks repossession of his property, which was sold at auction on May 8, 2012, through an action of replevin. As discussed more particularly in the M&R, the court lacks subject-matter jurisdiction to hear plaintiff’s action for replevin, which stems from a state order directing foreclosure sale. Furthermore, plaintiff fails to state a claim for TILA rescission where more than three years has passed since the loan closing, resulting in a time-bar on plaintiff’s claim. TILA has subsumed any common law claims to rescind a mortgage. Therefore, defendants’ motions to dismiss shall be granted.

Upon careful review of the M&R and of the record generally, having found no clear error, the court hereby ADOPTS the recommendation of the magistrate judge as its own (DE 33), and, for the reasons stated therein, defendants' motions to dismiss are GRANTED (DE 11, 30). The clerk of court is directed to close this case.

SO ORDERED, this the 10th day of July, 2013.

A handwritten signature in black ink, reading "Louise W. Flanagan". The signature is written in a cursive, flowing style.

LOUISE W. FLANAGAN
United States District Judge