

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

PATTIE BUSBY,

Plaintiff,

v.

BANK OF AMERICA, N.A., et al.,

Defendants.

Case No. 3:14-cv-410

Judge Thomas M. Rose  
Magistrate Judge Michael R. Merz

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**ORDER OVERRULING BUSBY’S OBJECTIONS (DOC. 33) TO THE  
REPORT AND RECOMMENDATIONS; OVERRULING BUSBY’S  
OBJECTIONS (DOC. 40) TO THE SUPPLEMENTAL REPORT AND  
RECOMMENDATIONS; DENYING BUSBY’S MOTION FOR LEAVE TO  
FILE A SECOND AMENDED COMPLAINT (DOC. 32); ADOPTING THE  
MAGISTRATE JUDGE’S REPORT AND RECOMMENDATIONS (DOC. 31)  
AND SUPPLEMENTAL REPORT AND RECOMMENDATIONS (DOC. 36)  
IN THEIR ENTIRETY; AND TERMINATING THIS CASE**

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This matter is before the Court on the Objections (Docs. 33, 40) filed by Plaintiff Pattie Busby (“Busby”) to the Magistrate Judge’s Report and Recommendations (Doc. 31) and Supplemental Report and Recommendations (Doc. 36), both of which recommend that the Court grant the Motions to Dismiss of Defendants Reimer, Arnovitz, Cherek & Jeffrey Co., L.P.A. (the “Reimer Law Firm”) (Doc. 7) and Bank of America N.A. as successor to BAC Home Loans Servicing L.P., Mohit Pathan, and Mortgage Electronic Registration Systems, Inc. (the “Bank of America Defendants”) (Doc. 10) and dismiss Busby’s Complaint with prejudice. In addition, the Magistrate Judge recommends that the Court deny Busby’s Motion For Leave To File Second Amended Complaint (“Motion to Amend”) (Doc. 32) as futile.

For the reasons stated below, the Court overrules Busby’s Objections (Docs. 33, 40) and

adopts the Report and Recommendations (Doc. 31) and Supplemental Report and Recommendations (Doc. 36) in their entirety. Accordingly, Busby's Complaint (Doc. 1) is dismissed with prejudice and her Motion to Amend (Doc. 32) is denied.

### **BACKGROUND**

Busby, who is proceeding *pro se* in this lawsuit, filed the Complaint on December 1, 2014. (Doc. 1.) Busby's claims relate to a foreclosure action filed on December 22, 2009, captioned *BAC Home Loan Servicing L.P. v. Jimmy Busby, et al.*, on the docket of the Montgomery County Court of Common Pleas, Case No. 2009 CV 10420. (*Id.*, PageID 4-16.) In that action, Defendant Bank of America N.A.'s predecessor in interest foreclosed on residential property allegedly owned by Busby. (*Id.*) The Reimer Law Firm represented Bank of America N.A.'s predecessor in interest in the foreclosure action. (*Id.*)

In this case, Busby alleges that the Bank of America Defendants and the Reimer Law Firm engaged in unlawful conduct in the foreclosure action – and, more generally, in the handling of her mortgage on the residential property at issue – that makes them liable for violations of the Racketeer Influence and Corrupt Organizations Act, 18 U.S.C. §§ 1961, et seq., violations of the Ohio Consumer Sales Practices Act, Ohio Rev. Code § 1345.01, et seq., falsification under Ohio Revised Code § 2912.13(G), common law fraud, civil conspiracy, and breach of the covenant of good faith and fair dealing and “unlawful dual tracking.” (*Id.*, ¶¶ 98-148, 149-58, 159-64, 165-76, 177-87, 188.) Busby also accuses the Reimer Law Firm of violating the Fair Debt Collection Practices Act, 15 U.S.C. § 1692a. (*Id.*, ¶¶ 82-97.)

On January 30, 2015, the Reimer Law Firm and the Bank of America Defendants each filed a Motion to Dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(6). (Docs. 7 (Reimer Law Firm), 10 (Bank of America Defendants).) Busby filed a consolidated Memorandum in

Opposition on March 10, 2015 (Doc. 15), and the Reimer Law Firm and Bank of America Defendants filed Replies in support of their Motions to Dismiss on March 23, 2015 and March 25, 2015, respectively. (Docs. 23, 27.) With the Court's permission, Busby filed a Surreply on March 31, 2015. (Doc. 30.) On April 3, 2015, Magistrate Judge Michael R. Merz entered the Report and Recommendations, which recommended that the Court grant the Defendants' Motions to Dismiss Busby's Complaint with prejudice. (Doc. 31.) On April 10, 2015, Busby filed the Motion to Amend, which attached her proposed Second Amended Complaint and exhibits. (Doc. 32.) On April 20, 2015, the Reimer Law Firm filed an opposition to Busby's Motion to Amend and Busby filed Objections to the Report and Recommendations. (Doc. 33.) After a preliminary review of the Report and Recommendations and Busby's Objections, on April 21, 2015, the Court entered a Recommittal Order (Doc. 35) that returned this matter to the Magistrate Judge with instructions to enter a supplemental report analyzing the Objections and making recommendations based on that analysis.

On April 22, 2015, Magistrate Judge Merz entered the Supplemental Report and Recommendations, which recommended that the Complaint be dismissed with prejudice and that the Motion to Amend be denied as futile. (Doc. 36.) On May 11, 2015, Busby filed Objections to the Supplemental Report and Recommendations. (Doc. 40.) On May 20, 2015, the Reimer Law Firm filed a response to Busby's Objections. (Doc. 42.) On May 26, 2015, the Bank of America Defendants also filed a response to Busby's Objections. (Doc. 45.) This matter is now ripe for review.

### **REVIEW**

As required by 28 U.S.C. § 636(b) and Federal Rules of Civil Procedure Rule 72(b), the District Judge completed a *de novo* review of the record in this case. Upon review, the Court

finds that Busby's Objections (Docs. 33, 44) to the Report and Recommendations and Supplemental Report and Recommendations are not well-taken, and they are hereby OVERRULED.

The Court agrees with the analysis in the Report and Recommendations concluding that Busby's claims against the Bank of America Defendants are barred by *res judicata*. (Doc. 31, PageID 922.) When sued in the foreclosure action in state court, Busby and her husband did not file an answer to the complaint and the Common Pleas Court entered a default judgment against them. *BAC Home Loans Servicing LP v. Busby*, 2013-Ohio-1919, 2013 Ohio App. LEXIS 1800 (2nd Dist. May 10, 2013). As Busby's claims against Bank of America in this case arise out of the same transaction involved in the foreclosure action, they were mandatory counterclaims in that case under Ohio R. Civ. P. 13(A). Busby is therefore barred from bringing her claims against Bank of America in this case under the doctrine of *res judicata*. (Doc. 31, PageID 920-23, citing, among others, 28 U.S.C. § 1738 (federal courts must give state court judgments the same effect as they would be afforded in the rendering state); *Grava v. Parkman Twp.*, 73 Ohio St. 3d 379 (1995) (setting forth the doctrine of *res judicata* and claim preclusion under Ohio law).)

As for the claims against the Reimer Law Firm, the Court agrees that they are barred by the relevant statutes of limitations. In her Objection to the Report and Recommendations, Busby asserts that the actions of the Defendants in this civil action constitute "crimes so serious there is no statute of limitations." (Doc. 33, PageID 1038.) However, she fails to cite any legal authority to support this proposition. The analysis of the applicable statutes of limitations in the Report and Recommendations (Doc. 31, PageID 924-26) is correct and requires no further discussion here.

Busby raises a number of other objections beyond the case-dispositive issues discussed above. None of Busby's objections, however, can overcome the application of *res judicata* and

the statutes of limitations to her claims in this case. Nor can Busby save her claims by amending her Complaint. The Court therefore also agrees with the Magistrate Judge's denial of Busby's Motion to Amend (Doc. 32) as futile. (Doc. 36, PageID 1060-61.)

The Magistrate Judge's Report and Recommendations (Doc. 31) and Supplemental Report and Recommendations (Doc. 36) are adopted in their entirety.

### **CONCLUSION**

The Court **OVERRULES** Busby's Objections (Doc. 33) to the Report and Recommendations (Doc. 31) and Objections (Doc. 40) to the Supplemental Report and Recommendations (Doc. 36). The Court **ADOPTS** the Report and Recommendations (Doc. 31) and Supplemental Report and Recommendations (Doc. 36) in their entirety, and hereby **DISMISSES** Busby's Complaint (Doc. 1) with prejudice. Busby's Motion to Amend (Doc. 32) is **DENIED**.

**DONE and ORDERED** in Dayton, Ohio, this Wednesday, June 3, 2015.

s/Thomas M. Rose

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THOMAS M. ROSE  
UNITED STATES DISTRICT JUDGE