

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

KELLY ZAHRAKKA,

Plaintiff,

v.

Case No. 2:20cv208

U.S. BANK NATIONAL ASSOCIATION,

and

TRUSTEE SERVICES OF VIRGINIA, LLC,

Defendants.

ORDER

This matter comes before the court on Defendant Trustee Services of Virginia, LLC's ("Trustee Services") converted Motion for Summary Judgment, filed on October 22, 2020, ECF No. 36, and Defendant U.S. Bank National Association's ("U.S. Bank") Motion for Judgment on the Pleadings, filed on December 7, 2020, ECF No. 46.

Trustee Services filed a Motion to Dismiss on October 22, 2020, seeking to dismiss Count Four of the Amended Complaint for failure to state a claim. ECF No. 36. On December 7, 2020, U.S. Bank filed a Motion for Judgment on the Pleadings relying on the same underlying facts to contend that Count Three failed to state a claim. ECF No. 46. Plaintiff responded to both motions on December 21, 2020. ECF No. 50.

This court referred the Motion to Dismiss and Motion for Judgment on the Pleadings to United States Magistrate Judge Douglas

E. Miller pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b), to conduct necessary hearings, including evidentiary hearings, if necessary, and to submit to the undersigned district judge proposed findings of fact, if applicable, and recommendations for the disposition of the motions. ECF Nos. 41, 51.

In an Order issued on December 16, 2020, the court converted Trustee Service's Motion to Dismiss to a Motion for Summary Judgment to consider matters outside the pleadings. ECF No. 48. The Magistrate Judge filed the Report and Recommendation ("R&R"), ECF No. 52, on January 8, 2021, which recommends granting Trustee Services' Motion for Summary Judgment, ECF No. 36, and U.S. Bank's Motion for Judgment on the Pleadings, ECF No. 46, and therefore dismissing with prejudice Counts Three and Four of Plaintiff's Complaint. See R&R at 12. As these are the only claims remaining in the Amended Complaint, the Magistrate Judge recommended that the court dismiss the entire case with prejudice. Id. By copy of the R&R, the parties were advised of their right to file written objections to the findings and recommendations made by the Magistrate Judge. Id. at 12-13. No objections were filed.

Accordingly, the court **ADOPTS AND APPROVES IN FULL** the findings and recommendations set forth in the Magistrate Judge's thorough and well-reasoned R&R. ECF No. 52. The court **GRANTS** Defendant Trustee

Services' Motion for Summary Judgment, ECF No. 36, and Defendant U.S. Bank's Motion for Judgment on the Pleadings, ECF No. 46. Counts Three and Four of Plaintiff's Amended Complaint, ECF No. 30, are therefore **DISMISSED WITH PREJUDICE**. Because there are no remaining counts in the Complaint, the case is **DISMISSED WITH PREJUDICE**.

The Clerk is **DIRECTED** to send a copy of this Order to counsel for all parties.

IT IS SO ORDERED.

/s/
Rebecca Beach Smith
Senior United States District Judge



REBECCA BEACH SMITH
SENIOR UNITED STATES DISTRICT JUDGE

January 28, 2021