

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 27, 2017

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JAN M. RENFROE,

No. 2:17-CV-0194-SMJ

Plaintiff,

v.

ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS
BANK OF AMERICA, N.A. AND
BANK OF NEW YORK MELLON'S
MOTION TO DISMISS

QUALITY LOAN SERVICE CORP.
OF WASHINGTON; BANK OF
AMERICA, N.A., successor by merger
to BAC Home Loans Servicing, LP,
f/k/a Countrywide Home Loans
Servicing, LP; CITIBANK, N.A., as
trustee of NRZ Pass-Through Trust VI;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.;
and BANK OF NEW YORK
MELLON, as trustee on behalf of the
Certificateholders of the CWHEQ Inc.,
CWHEQ, Revolving Home Equity
Loan Trust Series 2006-C,

Defendants.

I. INTRODUCTION

A deed of trust is a security instrument in which legal title in real property is transferred to a third-party trustee who then holds it as security for a debt between the borrower and the lender. The deed of trust is said to “follow the note” so that the holder of the note is the beneficiary under the deed of trust. The

1 beneficiary under a deed of trust has the power to initiate a nonjudicial foreclosure
2 upon the borrower’s default.

3 In 2005, Ms. Renfroe and her husband executed a deed of trust against their
4 home in Oroville, WA as security for a loan with Eagle Home Mortgage. The note
5 securing the deed subsequently changed possession several times. In 2014, Bank
6 of America—acting as trustee under the Deed of Trust—commenced a nonjudicial
7 foreclosure proceeding against Ms. Renfroe’s Oroville home.

8 Ms. Renfroe filed this action in Okanogan Superior Court to halt the
9 foreclosure proceedings. Her complaint names multiple defendants and alleges a
10 host of errors with the foreclosure process. These allegations include that
11 Defendants violated the Deed of Trust Act by failing to identify the true
12 beneficiaries in the foreclosure documents and engaged in unfair or deceptive
13 practices in violation of the Consumer Protection Act. Ms. Renfroe seeks
14 declaratory and injunctive relief as well as damages and quiet title in her favor.

15 Defendants Bank of America, N.A. (Bank of America) and The Bank of
16 New York Mellon, as trustee on behalf of the Certificateholders of the CWHEQ
17 Inc., CWHEQ, Revolving Home Equity Loan Trust Series 2006-C (New York
18 Mellon) (collectively, Defendants) move to dismiss each of Ms. Renfroe’s claims
19 against them for failure to state a claim upon which relief can be granted. Because
20 the nature of the alleged wrongdoing is not proper for declaratory judgment, the

1 Court grants Defendants’ motion to dismiss on this claim. The Court further
2 grants the motion to dismiss the DTA and CPA claims against New York Mellon,
3 but not against Bank of America. Finally, the Court denies Defendants’ motion to
4 dismiss the quiet title action.

5 **II. BACKGROUND**

6 In 2016, Jan Renfroe brought an action in Okanogan Superior Court to
7 delay foreclosure proceedings initiated under a Deed of Trust. ECF. No. 9. The
8 Deed of Trust originated in 2005, when Ms. Renfroe and her then-husband Rand
9 Renfroe took out a loan with Eagle Home Mortgage, Inc. (Eagle Home). ECF No.
10 1-1 at 1. The Note was secured by a Deed of Trust against the Renfroes’ home in
11 Oroville, Washington (the Oroville Property). ECF No. 5-2. The Deed of Trust
12 identifies the Renfroes as borrowers, Eagle Home as the lender, and lists
13 Mortgage Electronic Registration Systems, Inc. (MERS) as beneficiary and
14 lender’s nominee. *Id.* at 1–2.

15 Ms. Renfroe fell behind on her home loan payments in 2011, triggering the
16 beneficiary’s right to direct a non-judicial foreclosure sale under the Deed of
17 Trust. ECF No. 1-1 at 4. By 2011, however, neither MERS nor Eagle Home
18 retained an interest in the Note or Deed of Trust. Sometime after origination, the
19 Note was sold to the Federal National Mortgage Association (“Fannie Mae”). ECF
20 No. 1-1 at 5. In 2014, Bank of America sent Ms. Renfroe a Notice of Default. *Id.*

1 The Notice identified Fannie Mae as the debt owner and Bank of America as the
2 loan servicer. *Id.* In 2015, Bank of America appointed Quality Loan Service Corp.
3 of Washington (Quality) to serve as successor trustee and continue the
4 foreclosure. ECF No. 5-4.

5 In December of 2016, Quality issued a Notice of Trustee's Sale. ECF No.
6 5-7. By this time, however, the Note had again changed hands. After Bank of
7 America issued the Notice of Default, the Note was sold to Citibank as Trustee for
8 NRZ Pass-Through Trust VI (Citibank). *See id.* Nationstar Mortgage, LLC
9 (Nationstar) served as Citibank's servicing agent and Quality remained as trustee.
10 *Id.* The 2016 Notice of Trustee's Sale identified Quality as the trustee under the
11 Deed of Trust and Citibank as the beneficiary. *Id.*

12 Before the auction date set in the Notice of Trustee's Sale, Ms. Renfroe
13 brought an action in state court seeking declaratory relief, an injunction stopping
14 the foreclosure sale, and quiet title. ECF No. 1-1. Defendants removed the action
15 to this Court. ECF No. 1. Defendants Bank of America and New York Mellon
16 now move for dismissal under Federal Rule of Civil Procedure 12(b)(6). ECF No.
17 7. Defendants also request this Court take judicial notice of several public records
18 so that the Court may consider them in conjunction with Defendants' motion to
19 dismiss. ECF No. 8.

1 **III. JUDICIAL NOTICE**

2 Defendants request this Court take judicial notice of the following: Notice
3 of Trustee’s Sale (ECF No. 8-1), Assignment of Deed of Trust (ECF No. 8-2),
4 Assignment of Deed of Trust (ECF No. 8-3), Assignment of Deed of Trust (ECF
5 No. 8-4), Deed of Trust (ECF No. 8-5), Deed of Trust (ECF No. 8-6), and
6 Declaration of Jan M. Renfroe in Support of Motion to Restrain Sherriff’s Sale
7 and Obtain Restraining Order, filed in *Renfroe v. Quality Loan Service Corp. of*
8 *Washington et al.*, Case No. 17-2-00156-4, Okanogan County Superior Court
9 (ECF No. 8-7).

10 Federal Rule of Evidence Rule 201 permits courts to take judicial notice of
11 adjudicative facts. The Court may take judicial notice of a fact that is not subject
12 to reasonable dispute because it (1) is generally known within the trial court’s
13 jurisdiction or (2) can be accurately and readily determined from sources whose
14 accuracy cannot be reasonably questioned. Fed. R. Evid. 201. The Court may take
15 judicial notice of publicly recorded documents. *Id.*

16 Because they are publicly recorded documents, judicial notice is proper as
17 to all of Defendants’ requested documents (ECF Nos. 8-1 through 8-6) except the
18 Declaration of Jan M. Renfroe (ECF No. 8-7). Ms. Renfroe’s declaration was filed
19 in a separate, though related, action before a different court. ECF No. 8-7. The
20 assertions contained therein are neither generally known within this jurisdiction

1 nor readily subject to indisputable verification. *Id.* This Court therefore declines to
2 notice the assertions contained in Ms. Renfroe’s declaration, ECF No. 8-7.

3 **IV. MOTION TO DISMISS**

4 **A. Motion to Dismiss Standard**

5 A claim may be dismissed pursuant to Rule 12(b)(6) either for lack of a
6 cognizable legal theory or failure to allege sufficient facts to support a cognizable
7 legal theory. *Taylor v. Yee*, 780 F.3d 928, 935 (9th Cir. 2015). “Threadbare
8 recitals of the elements of a cause of action, supported by mere conclusory
9 statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). To
10 survive a motion to dismiss under Rule 12(b)(6), a complaint must allege “enough
11 facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v.*
12 *Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible on its face when “the
13 plaintiff pleads factual content that allows the court to draw the reasonable
14 inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S.
15 at 678.

16 Rule 12(b) states that if, on a motion to dismiss for failure to state a claim
17 upon which relief can be granted, matters outside the pleadings are presented and
18 not excluded by the court, the motion shall be treated as one for summary
19 judgment and disposed of as provided in Rule 56. On a motion to dismiss,
20 however, a court may take judicial notice of facts outside the pleadings. *See Sears*,

1 *Roebuck & Co. v. Metro. Engravers, Ltd.*, 245 F.2d 67, 70 (9th Cir. 1956); 5 C.
2 Wright & A. Miller, *Federal Practice & Procedure*, § 1363 at 659–60 (1969).
3 Therefore, on a motion to dismiss a court may properly look beyond the complaint
4 to matters of public record and doing so does not convert a Rule 12(b)(6) motion
5 to one for summary judgment. *See Mack v. S. Bay Beer Distribs., Inc.*, 798 F.2d
6 1279, 1282 (9th Cir. 1986) *abrogated on other grounds by Astoria Fed. Sav. &*
7 *Loan Ass’n v. Solimino*, 501 U.S. 104 (1991).

8 **B. Declaratory judgment is an inappropriate remedy because the alleged**
9 **wrongdoing is neither ongoing nor prospective.**

10 Ms. Renfroe first seeks a declaration that the DTA requires parties to
11 correctly identify the parties seeking foreclosure in a nonjudicial foreclosure
12 action. ECF No. 1-1 at 6. Neither Bank of America nor New York Mellon are
13 pursuing foreclosure of the Oroville Property.

14 Ms. Renfroe’s claims against Bank of America appear to stem from her
15 contention that it failed to identify the proper parties during the time it serviced
16 the loan for Fannie Mae. However, she acknowledges that Bank of America
17 serviced Fannie Mae’s loan only until the loan servicing was transferred to
18 Nationstar in 2016. ECF No. 1-1 at 8. Declaratory judgment is a remedy most
19 appropriate to prevent future or ongoing violations of the law. It is generally
20 inappropriate to remedy past conduct. *See Bayer v. Nieman Marcus Group, Inc.*,
861 F.3d 853 (9th Cir. 2017) (noting that declaratory judgment is inappropriate to

1 merely adjudicate past violations, as opposed to continuing or future violations).
2 The foreclosure proceedings have been stayed in light of pending litigation.
3 Accordingly, the pending litigation—and not declaratory judgment—is the most
4 appropriate remedy with respect to Ms. Renfroe’s claims against Bank of
5 America. The Court therefore declines to issue declaratory judgment on this
6 claim.

7 There is no basis to issue declaratory judgment against New York Mellon
8 on the facts alleged. New York Mellon has played no part in the loan servicing or
9 foreclosure actions at issue. Accordingly, there is no basis for declaratory
10 judgment against New York Mellon and the claim must be dismissed.

11 **C. Ms. Renfroe may be able to establish a CPA or DTA violation by**
12 **Citibank but fails to allege facts sufficient to support a claim under the**
13 **CPA or DTA against New York Mellon.**

14 Ms. Renfroe’s third cause of action alleges defendants violated
15 Washington’s Consumer Protection Act (CPA), Wash. Rev. Code (RCW) § 19.86,
16 by misrepresenting the true holder of the Note, in violation of the DTA. ECF No.
17 1-1 at 7. To establish a prima facie private CPA claim the plaintiff must allege (1)
18 an unfair or deceptive act or practice; (2) that occurs in trade or commerce; (3) an
19 impact on the public interest; (4) injury to the plaintiff in his or her business or
20 property; and (5) a causal link between the unfair or deceptive act and the injury

1 suffered. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 719 P.2d
2 531, 533 (1986).

3 **1. Bank of America**

4 Ms. Renfroe alleges Bank of America failed to identify the true parties
5 seeking foreclosure in the Notice of Default. Specific to Bank of America, Ms.
6 Renfroe alleges that the Notice of Default did not identify the beneficiary or
7 trustee. ECF No. 1-1 at 7. She also alleges that Bank of America engaged in
8 deceptive negotiations that caused her to either forego or misapply payments on
9 her loan. Failure to comply with the requirements for issuing a notice of default
10 under Washington's DTA is a per se unfair or deceptive practice. *See*
11 RCW 61.24.135. The alleged deceptive negotiations and bargaining may also be a
12 sufficient basis for a claim under Washington's CPA.

13 Bank of America argues that the judicially-noticed foreclosure documents
14 and beneficiary declarations establish that it complied with the DTA. *See* ECF No.
15 8-2 (Bank of America as beneficiary assigning interest to Citibank on April 1,
16 2016, after the 2014 Notice of Default identifying Bank of America was issued).
17 Ms. Renfroe alleges that the documents are only facially compliant, but are
18 actually not representative of the true owners and beneficiaries. She makes these
19 allegations "on information and belief."
20

1 District courts in the Ninth Circuit have held that allegations in a complaint
2 based on “information and belief” are sufficient to survive a motion to dismiss as
3 long as there is some plausible basis to support a cause of action. *See, e.g., TV*
4 *Ears, Inc. v. SYK Group, LLC*, No. 16cv867-GPC(WVG), 2016 WL 7336623
5 (S.D. Cal. Dec. 19, 2016); *Bernstein v. Health Net Life Ins. Co.*, No. 12cv717-
6 *AJB(JMA)*, 2013 WL 120954240, at *4 (S.D. Cal. Apr. 4, 2013). The Court is
7 mindful of the fact that CPA actions are necessarily predicated on alleged unfair
8 or deceptive conduct on the part of the defendant. Because she has alleged facts
9 which, if taken as true, permit a plausible ground for relief, Ms. Renfroe is entitled
10 to pursue her claim. Accordingly, Bank of America’s motion to dismiss this claim
11 is denied.

12 **2. New York Mellon**

13 Ms. Renfroe’s claim regarding New York Mellon fails as a matter of law.
14 Ms. Renfroe’s complaint is nearly silent regarding New York Mellon. It states
15 only that New York Mellon is a “nominal defendant who has an interest in the
16 Home.” ECF No. 1-1 at 2. Ms. Renfroe alleges no facts to support any element of
17 a CPA claim against New York Mellon. Accordingly, the CPA claim against New
18 York Mellon is dismissed.

1 **D. Ms. Renfroe has alleged sufficient facts to support her quiet title claim.**

2 Ms. Renfroe’s fourth claim seeks quiet title to the Oroville Property and to
3 bar any of the named defendants from asserting any adverse right to the Oroville
4 Property. ECF No. 1-1 at 10. Defendants argue that they are inappropriate
5 defendants to the quiet title action because “Defendants do not assert title to the
6 Property, but rather only [New York Mellon] asserts a security interest” ECF
7 No. 7 at 12. This argument is flawed because an action to quiet title is appropriate
8 whenever a plaintiff with an interest in property seeks a determination of title. *See,*
9 *e.g., Bavand v. OneWest Bank, F.S.B.*, 309 P.3d 636, 649 (2013) (acknowledging
10 quiet title as an appropriate action to extinguish a lien pursuant to a deed of trust).

11 Defendants further argue that Ms. Renfroe cannot assert a claim for quiet
12 title without first alleging that she has satisfied the outstanding debt. While this is
13 generally the rule, Washington has created a statutory quiet title action for
14 property owners to declare their rights when they believe the statute of limitations
15 on the underlying obligation has expired. RCW 7.28.300. This is the basis upon
16 which Ms. Renfroe brings her quiet title action, and she has alleged sufficient
17 facts to support a plausible basis for this claim. Accordingly, Defendants’ motion
18 to dismiss the quiet title claim is denied.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

V. CONCLUSION

For the reasons discussed, **IT IS HEREBY ORDERED:**

1. Defendants’ Request for Judicial Notice, **ECF No. 8**, is granted in part and denied in part as follows:

A. Defendant’s request for judicial notice as to Notice of Trustee's Sale, dated December 21, 2016, ECF No. 8-1, is **GRANTED**.

B. Defendant’s request for judicial notice as to Assignment of Deed of Trust dated April 1, 2016, ECF No. 8-2, is **GRANTED**.

C. Defendant’s request for judicial notice as to Assignment of Deed of Trust dated June 22, 2012, ECF No. 8-3, is **GRANTED**.

D. Defendant’s request for judicial notice as to Assignment of Deed of Trust dated May 10, 2011, ECF No. 8-4, is **GRANTED**.

E. Defendant’s request for judicial notice as to Deed of Trust dated February 23, 2006, ECF No. 8-5, is **GRANTED**.

F. Defendant’s request for judicial notice as to Deed of Trust dated November 17, 2005, ECF No. 8-6, is **GRANTED**.

G. Defendant’s request for judicial notice as to Declaration of Jan M. Renfroe in Support of Motion to Restrain Sheriff's Sale and Obtain Restraining Order, filed in *Renfroe v. Quality Loan Service Corp. of Washington et al.*, Case No. 17-2-00156-4, in Okanogan County Superior Court, ECF No. 8-7, is **DENIED**.

