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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 PENNY STAFFORD,

11 Plaintiff,

12 v.

13 SUNTRUST MORTGAGE INC, et al,

14 Defendants.

CASE NO. C12-1877-MJP

ORDER GRANTING MOTIONS
FOR SUMMARY JUDGMENT

15
16 This matter comes before the Court on the motions of Defendants Northwest Trustee
17 Services (Dkt. No. 64), SunTrust Mortgage Inc., MERS, and Federal National Mortgage
18 Association (Dkt. No. 68) for summary judgment. Having reviewed the motions and all related
19 papers, the Court GRANTS the motions.

20 **Background**

21 This is a foreclosure case involving the mortgage on Plaintiff Penny Stafford's home. In
22 2004, Stafford obtained a home loan from SunTrust Mortgage, Inc. (Dkt. No. 1-1 at 23.)
23 SunTrust indorsed the original Note in blank and placed it SunTrust's vault, where it remains.
24 (Dkt. No. 69-3 at 15.) Stafford secured the mortgagee with a deed of trust ("DOT") on the

1 property. (Dkt. No. 1-1 at 27.) The DOT listed the “lender” as SunTrust Mortgage, Inc.; the
2 “Trustee” as Washington Administrative Systems, Inc.; and MERS as a beneficiary in nominee
3 for the original lender SunTrust and its successors and assigns. (Id. at 28.) Within a month, the
4 SunTrust loan was sold to Federal National Mortgage Association (“Fannie Mae”), who still
5 owns it. (Dkt. Nos. 69-5 at 10, 69-4 at 6.) SunTrust continues to service the loan and is
6 contractually authorized to proceed, on Fannie Mae’s behalf with foreclosures. (Dkt. No. 69-4 at
7 15.)

8 A Notice of Default was issued in 2005 to Stafford when she failed to make payments on
9 the loan. (Dkt. No. 1-1 at 48.) Stafford negotiated a forbearance agreement and the foreclosure
10 was discontinued. (Dkt. No. 69-4 at 11.) In 2010, Stafford again stopped making payments on
11 her loan. (Dkt. No. 9-22 at 4.) A Notice of Default was issued by SunTrust through its agent
12 Northwest Trustee Services, Inc. (“NWTS”). SunTrust recorded an appointment as successor
13 trustee on October 12, 2011, in favor of NWTS. NWTS issued two Notices of Trustee Sales.
14 (Dkt. No. 1-1 at 64-67, 110, 112-115, 112-115, 125-129.)

15 In response to the notices, Stafford applied for, but was denied, a loan modification.
16 (Dkt. No. 69-1 at 26.) She also sent seven letters to SunTrust, labeled “Qualified Written
17 Requests” between May and October 2012. (Id. at 146, Dkt. No. 69-2 at 1-132.) SunTrust
18 responded to these letters. (Id.)

19 Stafford sued SunTrust, MERS, Fannie Mae, First American Title Insurance Company,
20 NWTS, West Asset Management, and Foreclosure Link in Snohomish County Superior and
21 Small Claims Courts. (Dkt. No. 1.) The cases were consolidated and Defendants timely removed
22 the case to this Court. (Id.)

1 Before the Court are motions for summary judgment from SunTrust, MERS, and Fannie
2 Mae (Dkt. No. 68) and from NWTs (Dkt. No. 64). Plaintiff never timely filed a response to the
3 motions. Before these motions noted however, Stafford filed for bankruptcy protection. (Dkt.
4 No. 74.) After the bankruptcy stay was lifted and these motions renoted, Plaintiff again did not
5 timely file any opposition. After the motion she noted in February 2014, she filed a response to
6 SunTrust's "notice of no opposition." (Dkt. No. 87.) Defendants SunTrust, MERS, and Fannie
7 Mae move to strike the opposition as untimely. (Dkt. No. 90.)

8 Analysis

9 A. Legal Standard

10 Summary judgment is proper only if the pleadings, the discovery and disclosure materials on
11 file, and any affidavits show that there is no genuine issue as to any material fact and that the
12 movant is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). The moving party is
13 entitled to judgment as a matter of law when the nonmoving party fails to make a sufficient
14 showing on an essential element of a claim in the case on which the nonmoving party has the
15 burden of proof. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

16 A motion for summary judgment should not be granted simply because there is no
17 opposition, even if the failure to oppose violated a local rule. Henry v. Gill Indus., 983 F.2d 943,
18 950 (9th Cir. 1993). Rather, the moving party must demonstrate the absence of genuine issues of
19 material fact, regardless of whether the party against whom the motion for summary judgment is
20 directed has filed any opposition. Cristobal v. Siegel, 26 F.3d 1488, 1491 (9th Cir. 1994).

21 B. Motion to Strike

22 Defendants move to strike Plaintiff's response to the motions as untimely. (Dkt. No. 90.)
23 Under this Court's local rules, Plaintiff's response was due on February 24, 2014. LCR 7(d)(3).
24

1 Plaintiff waited until after Defendants' reply and the motion had noted on February 28, 2014, to
2 file any response. (Dkt. No. 87.) She did not seek leave to file a late response nor offer any
3 explanation for her tardiness. As such it was untimely and the Court GRANTS the motion to
4 strike. Although the Court does not consider the late response, it considers the exhibits attached
5 where they appear elsewhere in the record, like those attached to the declaration of Plaintiff.

6 C. Deed of Trust Act

7 Plaintiff's Deed of Trust Act ("DTA") claims are (1) allegations that none of the Defendants
8 could initiate foreclosure proceedings because they neither held the note or were a beneficiary
9 under the DOT; (2) the initiation of foreclosure proceedings was wrongful; and (3) the use of
10 MERS was intended to deceive Plaintiff about who owned her loan. (Dkt. No. 1-1 at 15.)
11 Although a foreclosure sale was schedule for Plaintiff's home, it was eventually cancelled. (Id.
12 at 14.) She seeks unspecified damages for these alleged pre-foreclosure irregularities. (Id. at 20-
13 21.)

14 This Court addressed a nearly identical claim in Frias v. Asset Forfeiture Servs., Inc., Case
15 No. C13-0760-MJP, Dkt. No. 48 at 3 (W.D.Wash. Sept. 25, 2013). In Frias, this Court
16 concluded that Washington law is unclear about whether a claim exists for damages under the
17 DTA in the absence of a completed trustee's sale and certified questions to the Washington
18 Supreme Court asking: 1) whether a plaintiff may state a claim for damages related to a breach
19 of the DTA in the absence of a completed trustee's sale; and 2) if so, what principles govern his
20 or her claim under the CPA and the DTA. This Court is still waiting for the Washington
21 Supreme Court's answers.

22 The Court finds no reason to stay these proceedings in anticipation of the Frias opinion
23 because there are no genuine issues of material fact as to any of Stafford's DTA claims.
24

1 First, she claims that SunTrust initiated foreclosure proceedings without the authorization
2 of Fannie Mae and without authority under the DTA. (Dkt. No. 1-1 at 14.) But the record before
3 this Court shows that SunTrust has held the Note, indorsed in blank, in its vault since 2004.
4 (Dkt. No. 71 at 4.) As such, it was entitled to appoint NWTS to commence foreclosure
5 proceedings. See RCW 61.24.005(2); McDonald v. OneWest Bank, FSB, 2013 WL 858178, 4
6 (W.D.Wash. March 7, 2013). Even if Fannie Mae has an interest in the loan, the SunTrust, as
7 the holder of the Note, has the authority to enforce it. Corales v. Flagstar Bank, FSB, 22 F.Supp.
8 1102, 1107 (W.D.Wash. 2011). Thus, Stafford's claims that SunTrust could not enforce the
9 DOT or that NWTS was improperly appointed lack any genuine issues of material fact.

10 Nor is there any factual dispute that the initial Notice of Default was defective. Plaintiff
11 alleges "Northwest Trustee knew or should have known that SunTrust was not the owner or
12 holder of the subject Promissory Note and Deed of Trust on October 28, 2010." (Dkt. No. 1-1 at
13 9.) As described above, this claim has no merit. SunTrust held the Note when the notices were
14 issued. Stafford's similar claims regarding the Notice of Trustee's Sale and Amended Notice of
15 Trustee Sale fail too by this same reasoning. (Id. at 12-13.) Additionally, NWTS was entitled to
16 rely on the Washington Contract Declaration as proof of SunTrust's compliance with the DTA.
17 See Trujillo v. Northwest Trustee Services, Inc., 326 P.3d 768 (2014).

18 Finally, Stafford contends that MER's involvement itself voids any foreclosure efforts
19 because it is not a proper beneficiary. (Dkt. No. 1-1 at 14-15.) Numerous courts have rejected
20 this argument and this Court does so too. See Walker v. Quality Loan Serv. Corp., 176 Wn.
21 App. 294, 322-23 (2013), Wasson v. Sorenson, 179 Wn. App. 1004 (2014).

1 In sum, the Court finds no genuine issue of material fact for trial on Stafford's claim of
2 presale irregularities in violation of the DTA. The Court GRANTS summary judgment in favor
3 of SunTrust, MERS, Fannie Mae, and NWTS on the wrongful foreclosure and DTA claims.

4 D. Consumer Protection Act

5 Plaintiff asserts a violation of the Consumer Protection Act ("CPA"). To prevail in a
6 CPA claim, the plaintiff must prove (1) an unfair or deceptive act or practice, (2) occurring in
7 trade or commerce, (3) affecting the public interest, (4) injury to a person's business or property,
8 and (5) causation. Panag v. Farmers Ins. Co. of Wash., 166 Wn.2d 27 (2009).

9 Against NWTS, Plaintiff fails to show it engaged in an unfair or deceptive act. Stafford
10 alleges in her complaint that NWTS should have known SunTrust was not the actual holder of
11 the Note and that instead Fannie Mae owned the Note. (Dkt. No. 101- at 16.) As described
12 above, SunTrust held the note and NWTS could legally commence foreclosure proceedings. See
13 RCW 61.24.030(7). Nor is there any merit to Stafford's claims that NWTS acted deceptively
14 when it alleged MERS was the beneficiary because the notices themselves never identified
15 MERS as the beneficiary.

16 Plaintiff's claim also fails on the elements of injury and causation. Plaintiff suggests she
17 would have modified her loan, if she had known of Fannie Mae's ownership before June 21,
18 2012. (Dkt. No. 87 at 12.) Plaintiff offers only speculation to support this contention. Nelson v.
19 Pima Cmty. Coll., 83 F.3d 1075, 1081-82 (9th Cir. 1996)("[M]ere allegation and speculation do
20 not create a factual dispute for purposes of summary judgment.") Even in the light most
21 favorable to her as the non-moving party, Plaintiff fails to show a genuine issue of material fact
22 for trial. Likewise, Plaintiff fails to show MERS's role in these transactions or disclosure of
23 Fannie Mae's ownership of the note proximately caused any of these speculated injuries.

1 The Court GRANTS summary judgment on Plaintiff’s CPA claim in favor of the moving
2 Defendants.

3 E. Little RICO

4 The Criminal Profiteering Act gives a civil cause of action to a person injured in his
5 “person, business, or property by an act of criminal profiteering that is part of a pattern of
6 criminal profiteering, or by an offense defined in [several criminal statutes].” RCW §
7 9A.82.100(1)(a). In addition, to show a pattern under the Criminal Profiteering Act, a plaintiff
8 must also show relationship plus continuity. State v. Barnes, 85 Wn. App. 638, 667 (1997).

9 Here, the record contains nothing to support Plaintiff’s Little RICO claim. The moving
10 Defendants’ role in Ms. Stafford’s loan consists of origination, servicing that loan, and sending
11 her notices regarding her foreclosure. These acts fall well short of the requirements for a civil
12 conspiracy under RCW 9A.82. The Court GRANTS summary judgment on this claim in favor
13 of Defendants.

14 F. Fair Debt Collection Practices Act

15 Stafford’s Fair Debt Collection Practices Act (“FDCPA”) claims also fail. The FDCPA does
16 not apply to those efforts related to a non-judicial foreclosure sale. See McDonald v. OneWest
17 Bank, FSB, 2012 WL 55147, * 4 n. 6 (W.D.Wash. Feb. 21, 2012). Moreover, SunTrust acquired
18 the loan before Plaintiff defaulted, thus falling within another exemption to the term “debt
19 collectors.” See section 1692(6)(F); Beaton v. JPMorgan Chase Bank N.A., 2013 WL 1282225,
20 3 (W.D.Wash. March 26, 2013). As to MERS, it took no actions to collect a debt, the predicate
21 act for a FDCPA. Michelson v. Chase Home Finance, LLC, 2012 WL 3240241, *5 (W.D.Wash.
22 Aug. 7, 2012). Finally, to the extent Plaintiff’s claim is premised on Fannie Mae’s
23 communication with Stafford in April 27, 2011, or NWTS’s issuance of a Notice of Default in
24

1 2010, it is time barred. A FDCPA claim must be filed within one-year of the alleged violation.
2 15 U.S.C. §1692k(d).

3 The Court GRANTS summary judgment in favor of SunTrust, Fannie Mae, MERS, and
4 NWTS on the FDCPA claim.

5 G. Quiet Title

6 In Washington, quiet title and cloud of title actions are governed by RCW 7.28.010. “RCW
7 7.28.010 requires that a person seeking to quiet title establish a valid subsisting interest in
8 property and a right to possession thereof.” Wash. Sec. & Inv. Corp. v. Horse Heaven Heights,
9 Inc., 132 Wn. App. 188, 195 (2006). Accordingly, to maintain a quiet title action against a
10 mortgagee, a plaintiff must first pay the outstanding debt on which the subject mortgage is based.
11 Thein v. Recontrust Co., N.A., 2012 WL 527530, at *2 (W.D.Wash. Feb.16, 2012).

12 Plaintiff fails to show she has paid the outstanding debt on the Note. On the contrary, the
13 record before this Court shows she defaulted on her loan and has not continued to make
14 payments. (Dkt. No. 69-1 at 19.) Moreover, none of the moving Defendants have asserted an
15 interest in the property, an essential element of a quiet title claim. (Dkt. No. 64 at 15.)
16 Plaintiff’s quiet title claim fails as a matter of law.

17 H. RESPA

18 Plaintiff asserts a RESPA claim against only SunTrust for the May 11, 2012 letter. (Dkt.
19 No. 9-17 at 8-13.)

20 RESPA provides in pertinent part:

21 If any servicer of a federally related mortgage loan receives a qualified written
22 request from the borrower (or an agent of the borrower) for information relating
23 to the servicing of such loan, the servicer shall provide a written response
24 acknowledging receipt of the correspondence within 20 days (excluding legal
public holidays, Saturdays, and Sundays) unless the action requested is taken
within such period.

1 12 U.S.C. § 2605(e)(1)(A). A “Qualified Written Request” (“QWR”) is defined as a written
2 document including the name and account of the borrower and “includes a statement of the
3 reasons for the belief of the borrower, to the extent applicable, that the account is in error or
4 provides sufficient detail to the servicer regarding other information sought by the borrower.” 12
5 U.S.C. § 2605(e)(1)(B). A QWR is not, however, a demand for first hand evidence regarding the
6 original promissory note. Segle v. PNC Mortg. 2011 WL 1098936, at *4 (W.D.Wash. March
7 25, 2011).

8 Here, Stafford’s May 11, 2012 letter does not qualify as a QWR. It contains no statement
9 regarding how she believed her account was in error. (Dkt. No. 69-1 at 150.) Instead, it is a
10 demand letter regarding her original promissory note and loan. But even if that was not the case,
11 SunTrust reasonably responded to the letter in a timely matter and providing her with the
12 information requested. (Dkt. No. 69-2 at 10.)

13 Because there is no genuine issue of material fact as to Plaintiff’s RESPA claim,
14 summary judgment is GRANTED in favor of SunTrust.

15 **Conclusion**

16 The Court finds no genuine issue of material fact for trial on Plaintiff’s DTA claims, CPA
17 claims, FDCPA claims, Little RICO claims, Quiet Title claims, and RESPA claims against
18 Fannie Mae, SunTrust, MERS, and NWTs. Defendants’ motions for summary judgment (Dkt.
19 Nos. 64, 68) are GRANTED.

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1 The clerk is ordered to provide copies of this order to all counsel.

2 Dated this 31st day of July, 2014.

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4 Marsha J. Pechman
5 Chief United States District Judge

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