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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JUSTIN TEEGARDEN and
KATARZYNA TEEGARDEN, husband
and wife,

Plaintiffs,

v.

MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., et al.,

Defendants.

CASE NO. C14-5731 BHS

ORDER GRANTING
DEFENDANTS MERS AND
BANK OF NEW YORK
MELLON’S MOTION FOR
PARTIAL JUDGMENT ON THE
PLEADINGS

This matter comes before the Court on Defendants Mortgage Electronic Registration Systems, Inc. (“MERS”) and Bank of New York Mellon’s (“Bank”) (collectively “Defendants”) motion for partial judgment on the pleadings (Dkt. 11). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby grants the motion for the reasons stated herein.

1 **I. PROCEDURAL AND FACTUAL BACKGROUND**

2 Plaintiffs Justin and Katarzyna Teegarden (“Teegardens”) are the former owners
3 of real property located in Vancouver, Washington (“Property”). Dkt. 1, Ex. 2 (“Comp.”)
4 ¶ 1.

5 On August 23, 2006, the Teegardens took out a \$204,375 loan from non-party
6 Harbourton Mortgage Investment Corporation. Comp., Ex. A ¶ 5. The loan was secured
7 by a deed of trust on the Property. *Id.* The Teegardens agreed to make regular periodic
8 payments on the loan, with the full amount due no later than September 1, 2036. *Id.*
9 Sometime thereafter, the loan was sold to the Bank. Comp., Ex. B § I.

10 On August 1, 2008, the Teegardens defaulted on their loan. *Id.* ¶ III. On April 16,
11 2014, a notice of trustee’s sale was recorded against the Property. *Id.* ¶ I. The notice
12 included the following provision:

13 Anyone having any objection to the sale on any grounds whatsoever
14 will be afforded an opportunity to be heard as to those objections if they
15 bring a lawsuit to restrain the same pursuant to RCW 61.24.130. Failure to
bring such a lawsuit may result in a waiver of any proper grounds for
invalidating the Trustee’s Sale.

16 *Id.* § IX. The trustee’s sale was scheduled for August 15, 2014. *Id.* ¶ I.

17 On or about August 14, 2014, the Teegardens sued various Defendants, including
18 MERS and the Bank, in Clark County Superior Court. Dkt. 1. The Teegardens’
19 complaint includes several claims to prevent or set aside the foreclosure sale of the
20 Property. Comp. ¶¶ 25, 26, 28. The complaint also includes a claim for slander of title.
21 *Id.* ¶ 27. In conjunction with their suit, the Teegardens recorded a notice of *lis pendens*
22 against the Property. Comp., Ex. C.

1 On September 12, 2014, MERS removed the suit to this Court. Dkt. 1.

2 On September 26, 2014, the Property was sold at a foreclosure sale. Dkt. 12,
3 Declaration of Abraham K. Lorber (“Lorber Dec.”), Ex. A.¹

4 On October 31, 2014, Defendants moved for partial judgment on the pleadings.
5 Dkt. 11. On November 24, 2014, the Teegardens responded. Dkt. 13. On November 28,
6 2014, Defendants replied. Dkt. 15.

7 II. DISCUSSION

8 Defendants move for partial judgment on the pleadings under Federal Rule of
9 Civil Procedure 12(c). Dkt. 11. Defendants argue that the Teegardens’ claims to set
10 aside the foreclosure sale are barred by waiver and should be dismissed with prejudice.
11 *Id.* at 4. Defendants also contend that the Teegardens’ slander of title claim fails as a
12 matter of law and should be dismissed with prejudice. *Id.*

13 A. Rule 12(c) Standard

14 “After the pleadings are closed—but early enough not to delay trial—a party may
15 move for judgment on the pleadings.” Fed. R. Civ. P. 12(c). “Judgment on the pleadings
16 is proper when the moving party clearly establishes on the face of the pleadings that no
17 material issue of fact remains to be resolved and that it is entitled to judgment as a matter
18 of law.” *Hal Roach Studios, Inc. v. Richard Feiner & Co. Inc.*, 896 F.2d 1542, 1550 (9th

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22 ¹ Exhibit A is a true and correct copy of the trustee’s deed, which was publicly recorded.
Lorber Dec. ¶ 2. The Court may take judicial notice of matters in the public record without
converting a motion to dismiss into a motion for summary judgment, as long as the facts noticed
are not subject to reasonable dispute. *Intri-Plex Techs., Inc. v. Crest Grp., Inc.*, 499 F.3d 1048,
1052 (9th Cir. 2007).

1 Cir. 1990). The standard applied on a Rule 12(c) motion is essentially the same as that
2 applied on a Rule 12(b)(6) motion for failure to state a claim: “the allegations of the non-
3 moving party must be accepted as true, while the allegations of the moving party which
4 have been denied are assumed to be false.” *Id.* The Court, however, is not required to
5 accept as true mere legal conclusions unsupported by alleged facts. *Ashcroft v. Iqbal*,
6 556 U.S. 662, 681 (2009). To survive a motion to dismiss, the complaint “must contain
7 sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its
8 face.” *Id.* at 678 (internal quotation marks omitted). “A claim has facial plausibility
9 when the plaintiff pleads factual content that allows the court to draw the reasonable
10 inference that the defendant is liable for the misconduct alleged.” *Id.*

11 When considering a motion for judgment on the pleadings, the Court may consider
12 material which is properly submitted as part of the complaint without converting the
13 motion into a motion for summary judgment. *See Lee v. City of Los Angeles*, 250 F.3d
14 668, 688 (9th Cir. 2001). The Court may also “take into account documents whose
15 contents are alleged in a complaint and whose authenticity no party questions, but which
16 are not physically attached to the plaintiff’s pleading.” *Knievel v. ESPN*, 393 F.3d 1068,
17 1076 (9th Cir. 2005) (internal quotation marks omitted). Further, the Court may take
18 judicial notice of matters in the public record without converting a motion to dismiss into
19 a motion for summary judgment, as long as the facts noticed are not subject to reasonable
20 dispute. *Intri-Plex Techs.*, 499 F.3d at 1052.

1 **B. Defendants' Motion**

2 **1. Claims to Set Aside the Foreclosure**

3 Defendants argue that the Teegardens' claims to set aside the foreclosure sale are
4 barred by waiver. Dkt. 11 at 5. In response, the Teegardens argue that they preserved
5 their right to challenge the foreclosure by filing a notice of *lis pendens*. Dkt. 13 at 4. The
6 Teegardens also contend that Defendants' right to enforce the deed of trust is barred by
7 RCW 4.16.040's statute of limitations. *Id.* at 1–2.

8 The Washington Deed of Trust Act governs the procedures and requisites for
9 nonjudicial foreclosure sales. *Vawter v. Quality Loan Serv. Corp.*, 707 F. Supp. 2d 1115,
10 1121 (W.D. Wash. 2010). “The sole method to contest and enjoin a foreclosure sale is to
11 file an action to enjoin or restrain the sale in accordance with RCW 61.24.130.” *CHD,*
12 *Inc. v. Boyles*, 138 Wn. App. 131, 137 (2007). Under RCW 61.24.130, the Court may not
13 grant an order restraining a foreclosure sale unless the individual seeking the order gives
14 the trustee five days notice and deposits the requisite payments with the Court. RCW
15 61.24.130. An individual waives his right to challenge a foreclosure sale when he “(1)
16 received notice of the right to enjoin the sale, (2) had actual or constructive knowledge of
17 a defense to foreclosure prior to the sale, and (3) failed to bring an action to obtain a court
18 order enjoining the sale.” *Frizzell v. Murray*, 179 Wn.2d 301, 306–07 (2013).

19 In this case, the Teegardens waived their right to contest the foreclosure sale. The
20 Teegardens received notice of the foreclosure sale and were advised of their right to
21 enjoin the sale. *See Comp.*, Ex. B § IX. The Teegardens also had actual knowledge of
22 their defenses to the foreclosure prior to the sale. *See Comp.* Although the Teegardens'

1 | complaint sought an injunction to prevent the sale, the Teegardens did not seek an order
2 | to restrain the sale in accordance with RCW 61.24.130. The Teegardens have therefore
3 | waived their right to contest the sale. *See Frizzell*, 179 Wn.2d at 308, 310.

4 | The Teegardens nevertheless argue that they adequately preserved their right to
5 | challenge the foreclosure sale by filing a notice of *lis pendens*. Dkt. 13 at 4. This
6 | argument is unpersuasive. As discussed above, RCW 61.24.130 provides “the only
7 | means by which a grantor may preclude a sale once foreclosure has begun with receipt of
8 | the notice of sale and foreclosure.” *Plein v. Lackey*, 149 Wn.2d 214, 226 (2003); *see also*
9 | *Frizzell*, 179 Wn.2d at 310. Accordingly, filing a notice of *lis pendens* is insufficient to
10 | preserve a claim to set aside a foreclosure sale. *See CHD*, 138 Wn. App. at 138
11 | (“[Plaintiff] employed inadequate methods to restrain the sale by filing its declaratory
12 | action and *lis pendens*.”).

13 | The Teegardens also argue that Defendants’ right to enforce the deed of trust is
14 | barred by RCW 4.16.040’s six-year statute of limitations. Dkt. 13 at 1–2. The Court
15 | need not address whether the statute of limitations has run in this case. The Teegardens’
16 | statute of limitations argument challenges the underlying obligations on the Property.
17 | *See id.*; *CHD*, 138 Wn. App. at 139. A party, however, “waives the right to contest the
18 | underlying obligations on the property in foreclosure proceedings when there is no
19 | attempt to employ the presale remedies under RCW 61.24.130.” *In re Marriage of*
20 | *Kaseburg*, 126 Wn. App. 546, 558 (2005). The Teegardens failed to comply with RCW
21 | 61.24.130, and therefore waived their statute of limitations defense. *See CHD*, 138 Wn.
22 | App. at 136–39.

1 In sum, Defendants have established on the face of the pleadings that the
2 Teegardens waived their right to contest the foreclosure sale. The Court grants
3 Defendants' motion on this issue. The Teegardens' claims for injunctive relief,
4 declaratory relief, and quiet title are dismissed with prejudice.

5 **2. Claim for Slander of Title**

6 Defendants also argue that the Teegardens fail to plead sufficient facts to support
7 their claim for slander of title. Dkt. 11 at 6. The Teegardens do not address this
8 argument in their response.

9 In Washington, a slander of title claim has five elements: "(1) false words; (2)
10 maliciously published; (3) with reference to some pending sale or purchase of property;
11 (4) which go to defeat plaintiff's title; and (5) result in plaintiff's pecuniary loss." *Rorvig*
12 *v. Douglas*, 123 Wn.2d 854, 859 (1994). "Slander of title is only available where the
13 defendant has interfered with the plaintiff's sale of the property." *Lapinski v. Bank of*
14 *Am., N.A.*, C13-00925, 2014 WL 347274, at *5 (W.D. Wash. Jan. 30, 2014); *see also*
15 *Pay'n Save Corp. v. Eads*, 53 Wn. App. 443, 448 (1989).

16 Here, the Teegardens fail to plead sufficient facts in their complaint to support
17 their slander of title claim. The Teegardens do not allege that any false words were
18 maliciously published by Defendants. The Teegardens also do not allege that they tried
19 to sell the Property or that Defendants interfered with that sale. The Court therefore
20 grants Defendants' motion on this issue. The Teegardens' claim for slander of title is
21 dismissed with prejudice.

1 **III. ORDER**

2 Therefore, it is hereby **ORDERED** that Defendants' motion for partial judgment
3 on the pleadings (Dkt. 11) is **GRANTED**. The Teegardens' claims for injunctive relief,
4 declaratory relief, quiet title, and slander of title are **DISMISSED with prejudice**.

5 Dated this 17th day of December, 2014.

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8 BENJAMIN H. SETTLE
9 United States District Judge
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