

Gloria Estilloire v. Wells Fargo Bank, NA, et al
SACV 16-1563 JVS (KESx)

TENTATIVE Order Re Defendants' Motion to Dismiss and Motion to Strike

Three motions are at issue.

First, Defendants Quality Loan Service Corporation (“Quality Loan”) and Daniel Goulding (“Goulding”) move to dismiss Plaintiff Gloria Estilloire’s (“Estilloire”) first amended complaint. (Mot., Docket No. 37.) Quality Loan and Goulding also requested judicial notice of several documents. (Req. Jud. Ntc., Docket No. 38.)

Second, Defendants Wells Fargo Bank, N.A.; Wells Fargo Bank, N.A., as trustee on behalf of the Harborview Mortgage Loan Trust Mortgage Loan Pass-Through Certificate, series 2007-1, erroneously sued and served as “Wells Fargo Bank, N.A., John G. Stumpf as individual and as Chairman & Chief Executive Officer of Wells Fargo Bank, N.A.” (together, “Wells Fargo”); and John G. Stumpf (“Stumpf”) move to dismiss Estilloire’s first amended complaint. (Mot., Docket No. 57.) Along with their motion, Wells Fargo and Stumpf have requested judicial notice of several documents. (Req. Jud. Ntc., Docket No. 58.)

Third, Wells Fargo and Stumpf have moved to strike Estilloire’s first amended complaint. (Mot., Docket No. 59.)

The three motions were initially scheduled for a hearing on November 14, 2016. (Min., Docket No. 86.) However, Estilloire did not oppose any of the motions, and she made an oral motion to continue the motions. (Id.) The Court granted Estilloire’s oral motion and continued the hearing for the three motions to December 12, 2016. (Id.)

On November 28, 2016, Estilloire submitted an opposition to the three motions. (Opp’n, Docket No. 90.) Within her opposition, Estilloire also requested judicial notice. (Id.) Wells Fargo and Stumpf replied. (Reply, Docket No. 89.) Quality Loan and Goulding replied. (Reply, Docket No. 91.)

On December 7, 2016, Estilloire filed an opposition to reply of Wells Fargo

and Stumpf. (Opp’n, Docket No. 92.) However, her filing was untimely, so the Court strikes it.

For the following reasons, the Court **grants** the motions to dismiss. Because the Court grants the motions to dismiss, the Court **dismisses** Wells Fargo and Stumpf’s motion to strike as moot.

I. BACKGROUND

A. Judicial Notice

A court may take judicial notice of facts that are readily determinable from accurate sources. Fed. R. Evid. 201(b)(2). Judicial notice is appropriate for (1) county land records, (2) court proceedings if those proceedings have a direct relation to the matter at issue, and (3) forms filed with the Securities and Exchange Commission (“SEC”). See U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992); Rosal v. First Fed. Bank of Cal., 671 F. Supp. 2d 1111, 1121 (N.D. Cal. 2009); Patel v. Parnes, 253 F.R.D. 531, 546 (C.D. Cal. 2008). In addition, a court may take judicial notice of publicly available newspaper and magazine articles and web pages that “indicate what was in the public realm at the time, not whether the contents of those articles were in fact true.” Von Saher v. Norton Simon Museum of Art at Pasadena, 592 F.3d 954, 960 (9th Cir. 2010).

Wells Fargo and Stumpf request that the Court takes judicial notice of fifteen exhibits, which are labeled as exhibits 1–15.¹ (Req. Jud. Ntc., Docket No.

¹ (1) Deed of Trust recorded on December 27, 2006, in the Fresno County Recorder’s Office as Document No. 2006-0269582 (Exhibit 1); (2) Promissory Note, dated December 12, 2006 (Exhibit 2); (3) Grant Deed recorded on December 27, 2006, in the Fresno County Recorder’s Office as Document No. 2006-0269580 (Exhibit 3); (4) Grant Deed recorded on July 10, 2008, in the Fresno County Recorder’s Office as Document No. 2008-0098998 (Exhibit 4); (5) Quitclaim Deed recorded on April 19, 2013, in the Fresno County Recorder’s Office as Document No. 2013-0057127 (Exhibit 5); (6) Substitution of Trustee recorded on May 4, 2012, in the Fresno County Recorder’s Office as Document No. 2012-0063114 (Exhibit 6); (7) Notice of Default recorded on May 4, 2012, in the Fresno County Recorder’s Office as Document No. 2012-0063115 (Exhibit 7); (8) Notice of Trustee’s Sale recorded on August 8, 2012, in the Fresno County Recorder’s Office as Document No. 2012-0111030 (Exhibit 8); (9) Complaint filed on November 27, 2012, in the Fresno County Superior Court in Case No. 12CECG03752 (Exhibit 9); (10) Notice of Entry of Dismissal filed on March 10, 2015, in the

58.)

In addition, Quality Loan and Goulding request that the Court takes judicial notice of nine documents, which are labeled as exhibits A–I.² However, exhibits A–C and E–H are identical to the documents that Wells Fargo and Stumpf have submitted in their request for judicial notice. (Req. Jud. Ntc., Docket No. 58.) Therefore, the Court will only address Quality Loan and Goulding’s exhibits D and I.

Estillore also requests judicial notice of five documents, which are labeled as exhibits A–E.³

Fresno County Superior Court in Case No. 12CECG03752 (Exhibit 10); (11) Plaintiff’s Chapter 7 Bankruptcy Petition, filed on April 1, 2015, in Case No.15-11283 (Exhibit 11); (12) Plaintiff’s summary of schedules filed in her Chapter 7 Bankruptcy action, filed on April 15, 2015 (Exhibit 12); (13) the docket from Plaintiff’s Chapter 7 Bankruptcy action, filed on April 15, 2014, in Case No. 15-11283 (Exhibit 13); (14) the Wells Fargo Trust’s Motion for Relief from the automatic stay (except the exhibits thereto), filed on April 5, 2016, in Case No. 15-11283 (Exhibit 14); (15) Order granting in part and denying in part as moot Motion for Relief from the automatic stay, filed on May 17, 2016, in Case No. 15-11283 (Exhibit 15).

² (1) Deed of Trust dated December 12, 2006, and recorded with the Fresno County Recorder’s Office on December 27, 2006 as Instrument Number 2006-0269582 (Exhibit A); (2) Substitution of Trustee recorded with the Fresno County Recorder’s Office on May 4, 2012 as Instrument Number 2012-0063114-00 (Exhibit B); (3) Notice of Default recorded with the Fresno County Recorder’s Office on May 4, 2012 as Instrument Number 2012-0063115-00 (Exhibit C); (4) Notice of Trustee Sale recorded with the Fresno County Recorder’s Office on July 7, 2016 as Instrument Number 2016- 0087417-00 (Exhibit D); (5) Docket for Fresno County Superior Court Case Number 12CACG03752 filed on November 27, 2012 (Exhibit E); (6) Docket for Eastern District of California, Bankruptcy Court, for Bankruptcy Case Number 15-11283 (Exhibit F); (7) Exhibits in Support of Motion for Relief from Automatic Stay filed in Bankruptcy Case Number 15-11283 (Exhibit G); (8) Order Granting in Part, Denying in Part Motion for Relief From the Automatic Stay (Exhibit H); (9) Adversary Complaint filed in the Eastern District of California, Bankruptcy Court, as Case Number 15-01155 (Exhibit I).

³ (1) Corporation Assignment of Deed of Trust (CADOT) from MERS as Nominee for Countrywide Bank, N.A. to Wells Fargo Bank, N.A. as Trustee for Harborview Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2007-1 (WFBNA). Dates 10.14.2009, by Leticia Quintana, alleged Assistance Secretary for MERS and Notarized by Janet L. Koch on 11.12.2009, recorded on 12.18.2009, in Fresno County, California, (Exhibit A); (2) Substitution of Trustee by Select Portfolio Servicing, Inc. (SPS) as alleged attorney in fact for WFBNA and

Here, Wells Fargo and Stump's exhibits 1–8 are property records, several of which Estillore has attached to her complaint. (Req. Jud. Ntc., Docket No. 58.) In addition, Quality Loan and Goulding's exhibit D is a county record. (Req. Jud. Ntc., Docket No. 38.) Also, Wells Fargo and Stump's exhibits 9–15 are court documents. (Req. Jud. Ntc., Docket No. 58.) Quality Loan and Goulding's exhibit I are court documents. (Req. Jud. Ntc., Docket No. 38.) Estillore's exhibits A–C are county records. (Opp'n, Docket No. 90.) Estillore's exhibit D is a form filed with the SEC. (Id.) Lastly, Estillore's exhibit E is a news article. (Id.)

Accordingly, the Court **grants** Wells Fargo and Stumpf's request for judicial notice of exhibits 1–15. In addition, the Court **grants** Quality Loan and Goulding's request for judicial notice of exhibits D and I. The Court also **grants** Estillore's request for judicial notice of exhibits A–D.

B. Factual Background

On May 4, 2012, Quality Loan recorded a notice of default and election to sell under the deed of trust concerning property at 2068 W. San Bruno Avenue, Fresno, California 93711. (Req. Jud. Ntc. Ex. 7, Docket No. 58 at 49.)

On November 27, 2012, Estillore filed a complaint in the Fresno Superior Court against Wells Fargo, SPS, and Quality Loan. (Req. Jud. Ntc. Ex. 9, Docket No. 58 at 57.) The court dismissed that case without prejudice on February 27, 2015. (Req. Jud. Ntc. Ex. 10, Docket No. 58 at 65.)

On August 24, 2016, Estillore filed a complaint in this Court, which recites

executed by Randall Wessman, alleged Document Control Officer on 4.24.12, wherein Defendant Quality Was allegedly substituted as Trustee (Exhibit B);(3) Limited Power of Attorney allegedly from WFBNA to SPS, allegedly executed by Elizabeth A. Brewster, an alleged Vice President (Exhibit C); (4) Page 1 of 26 from SEC, File No. 222-130961-37, wherein HarborView 2007-1 filed a 10-D form indicating their commencement as a securitized Trust (Exhibit D); (5) March 12, 2014, Article by New York Post re WFBNA's 150-page Wells Fargo Foreclosure Attorney Procedure Manual, created November 9, 2011 and updated February 24, 2014, outlining how WFBNA had detailed internal procedures to fabricate foreclosure papers on demand (Exhibit E).

seven causes of action against Quality Loan, Goulding, Wells Fargo, and Stumpf (collectively, “Defendants”): (1) fraud and/or concealment; (2) negligent misrepresentation; (3) Unfair Business Practices in violation of California Business and Professions Code § 17200, et seq., (the “UCL”); (4) declaratory relief; (5) cancellation of instruments in violation of California Civil Code § 3412; (6) violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692(g)(a), (the “FDCPA”); and (7) wrongful foreclosure. (Compl., Docket No. 10.)

Estillore’s central argument in her complaint is that Defendants fraudulently executed several documents: (1) the promissory note, (2) the deed of trust, (3) the substitution of trustee, (4) the limited power of attorney, and (5) the assignment of deed of trust (together, “real estate documents”). (Compl., Docket No. 10 ¶¶ 6, 7, 49.)

II. LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. A plaintiff must state “enough facts to state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A claim has “facial plausibility” if the plaintiff pleaded facts that “allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 663 (2009).

In resolving a 12(b)(6) motion under Twombly, a court must follow a two-step approach. Id. at 679. First, a court must accept all well-pleaded factual allegations as true, but “[t]hread-bare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.” Id. at 677. Furthermore, a court must not “accept as true a legal conclusion couched as a factual allegation.” Id. at 677–78 (quoting Twombly, 550 U.S. at 555). Second, assuming the veracity of well-pleaded factual allegations, a court must “determine whether they plausibly give rise to an entitlement to relief.” Id. at 664. This determination is context-specific, requiring a court to draw on its experience and common sense, but there is no plausibility “where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct.” Id.

III. DISCUSSION

Defendants assert that all of Estillore's causes of action are barred by statutes of limitations. (Mot., Docket No. 37-1 at 6; Mot., Docket No. 57 at 4.)

A. Estillore's Fraud and/or Concealment Claim is Barred by the Statute of Limitations

Section 338(d) of the California Code of Civil Procedure states that a cause of action for fraud begins to accrue on the date that a plaintiff discovered the fraud. Once three years have passed from the date of discovery, a plaintiff can no longer sue a defendant for fraud. Id. In contrast, section 337(1) of the California Code of Civil Procedures provides a four year statute of limitations for actions based on a written instrument.

However, where a borrower asserts fraud related to a mortgage, courts have applied the three year statute of limitations for claims sounding in fraud. E.g., Zadrozny v. Bank of New York Mellon, 720 F.3d 1163, 1173 (9th Cir. 2013); Rosenfeld v. JPMorgan Chase Bank, N.A., 732 F. Supp. 2d 952, 971 (N.D. Cal. 2010); In re Menjivar, 2014 WL 308912, at *8 (B.A.P. 9th Cir. Jan. 28, 2014). Similarly, courts have refused to allow borrowers the benefit of the discovery rule when the alleged fraud is contained on the face of the loan documents and there is no allegations of any misrepresentations made to the borrower. See Hubbard v. Fid. Fed. Bank, 91 F.3d 75, 79 (9th Cir. 1996); Perez v. Am. Home Mortgage Servicing, Inc., No. C 12-00932 WHA, 2012 WL 1413300, at *4 (N.D. Cal. Apr. 23, 2012).

Several facts demonstrate that Estillore discovered the alleged fraud in 2012. For instance, on November 27, 2012, Estillore filed a complaint in Fresno County Superior Court against Wells Fargo Trust, SPS, and Quality Loan. (Req. Jud. Ntc. Ex. 9, Docket No. 58 at 57.) In that complaint, Estillore's causes of action arose from her argument that she did not sign the deed of trust. Id. Eventually, Estillore failed to appear in court, so the court dismissed her complaint without prejudice. (Req. Jud. Ntc. Ex. 10, Docket No. 58 at 65.) Therefore, Estillore knew of the alleged fraudulent conduct in 2012.

In addition, Estillore pleaded, in the complaint at issue, several facts

demonstrating that she knew about the alleged fraud in 2012:

Plaintiff in her investigation of the wrongful foreclosure due to forged and fraudulent documents, Plaintiff talked with Lisa Bun of WFB on October 31, 2012, who told Plaintiff the LIMITED POWER OF ATTORNEY (LPOA) FROM WFB WAS UNDER INVESTIGATION BY WFB, CASE NO. SFL53982 AS ELISABETH A. BREWSTER WHO ALLEGEDLY EXECUTED THE LPOA WAS NOT AN EMPLOYEE OF WFB.

In prior and subsequent phone calls by Plaintiff to WFB, Plaintiff was also told by WFB employees: SUE WATTS On November 12, 2012: Mr. Sturges at (800) 869-3557; Mr. Rafaeq Worrell at (800) 869-3557; that ELISABETH A. BREWSTER WAS NOT A WFB EMPLOYEE.

Further, Jessica Wicks, a Loss Modification Supervisor for SPS on August 22, 2012, told Plaintiff that Randall Wessman, the alleged Document Control Officer for SPS, who allegedly authorized the SOT under the FORGED LPOA FROM WFB, WAS A MAIL CLERK.

....

Due to Defendants fraudulent actions, wrongful conduct with regard to non-disclosures of who is the rightful lender or beneficiary since year 2012 up to present time defendants are aware, intentionally and deliberately continue provide wrong address of Wells Fargo Bank.

(Compl., Docket No. 10 ¶¶ 33, 34, 35, 42 (capitalization in original).) Based on these pleaded facts, Estillore had discovered the alleged fraud by 2012.

Because she knew about the fraudulent conduct in 2012, Estillore had until 2015 to file her complaint. However, Estillore filed the complaint at issue on August 24, 2016. (Compl., Docket No. 1.) Therefore, Estillore's first cause of action is time-barred.

In her opposition, Estillore argues that “[t]he gist of her case against the Defendants is that all of the documents used by Defendants are either void or are fruit of the poisoned void document. Which makes the ‘fruit’ also void.” (Opp’n, Docket No. 90 at 3.) Estillore further states the following:

In this instance we have two (2) sets of documents that are void. First is the alleged Deeds of Trust (DOT), there are four (4) of them that have been submitted by WFBNA to attempt to document their case. The problem is that as I have said from the beginning, I never signed them. My signatures on the multiple DOTs were either forged and/or copied with a cut and past [sic] operation. Further, on the alleged Note, my signature forged and/or copied, doesn’t exist. The signatures on the DOT and the Note are to be signed together and are considered inseparable. There are also much [sic] “hanky panky” on the Notary’s part. I have those documents and can show the Court. And on the Notary Book, there are no thumb prints which are required when notarizing real estate. The second set of documents are those attached as Exhibits cited above.

(Id. at 3–4.) Therefore, Estillore continues to argue that she never signed the real estate documents. However, Estillore has failed to argue why her cause of action is not barred by the statute of limitations.

In conclusion, because Estillore cannot cure the defects in a time-barred claim, the Court **dismisses** Estillore’s first cause of action with prejudice.

B. Estillore’s Negligent Misrepresentation Claim is Barred by the Statute of Limitations

“The statute of limitations that applies to an action is governed by the gravamen of the complaint, not the cause of action pled.” City of Vista v. Robert Thomas Sec., Inc., 84 Cal. App. 4th 882, 889 (2000); see also In re Koebel, No. CV 15-1222 PA, 2016 WL 354865, at *6 (C.D. Cal. Jan. 27, 2016); Thomson v. Canyon, 198 Cal. App. 4th 594, 607 (2011) (“[w]here the gravamen of the complaint is that defendant’s acts constituted actual or constructive fraud, the applicable statute of limitations is the Code of Civil Procedure section 338,

subdivision (d) three-year limitations period . . .”).

Here, Estillore’s negligent misrepresentation claim is based on Defendants’ alleged fraudulent conduct. For instance, she pleaded that “Plaintiff’s [sic] relied on the Defendants representations and had no reason to believe that the Defendants [sic] would make fraudulent, NULL and VOID TRANSACTION.” (Compl., Docket No. 10 ¶ 19 (capitalization in original) (alteration to paragraph spacing).) Therefore, because this claim is based on Estillore’s fraud allegations, this claim is also time-barred.

In conclusion, because Estillore cannot cure the defects in a time-barred claim, the Court **dismisses** Estillore’s second cause of action with prejudice.

C. Estillore’s UCL Claim is Barred by the Statute of Limitations

Claims pursuant to the UCL are governed by a four-year statute of limitations, Cal. Bus. & Prof. Code § 17208, which commences when a plaintiff discovers the facts constituting a violation of the UCL. Aryeh v. Canon Bus. Sols., Inc., 55 Cal. 4th 1185, 1196 (2013).

Here, Estillore learned about the alleged fraud at least by May 4, 2012. (See Compl., Docket No. 10 ¶ 14.) For example, Quality Loan “filed a notice of default and election to sell under the Deed of Trust . . . recorded May 04, 2012 . . .” (Id.) In her declaration that is attached to her complaint, Estillore confirms that “since 2012 [she had] several discussions up to present time with Attorney Daniel Goulding Chief Counsel of Quality Loan Service, regarding the altered/forged DOT, AODOT and SOT.” (Compl. Part 2, Docket No. 10-1 at 2.) Therefore, Estillore’s ability to assert a cause of action under the UCL ended on May 4, 2016.

In conclusion, because Estillore cannot cure the defects in a time-barred claim, the Court **dismisses** Estillore’s third cause of action with prejudice.

D. Estillore’s Request for Declaratory Relief is Barred by the Statute of Limitations

As previously discussed, when fraud is the basis of a cause of action, then the applicable statute of limitations is three years. See, e.g., Thomson, 198 Cal.

App. 4th at 607.

Here, Estillore's request for declaratory relief is based on Defendants' alleged fraudulent conduct. For instance, Estillore "claims that the NOTES and DOTs are NULL and VOID due to fraudulent purported transfers, while the Defendants claim that the documents are valid and enforceable as is." (Compl., Docket No. 10 ¶ 25 (capitalization in original).) "Plaintiff desires a judicial declaration that . . . [a]ny instrument executed or entered into by Defendants or any of their agents or representative, that purports to be on behalf of Plaintiff are NULL, VOID and unenforceable." (*Id.* ¶ 26 (capitalization in original).) Therefore, Estillore's request is based on Defendants' fraudulent activities, so the three-year statute of limitations applies.

In conclusion, because Estillore cannot cure the defects in a time-barred claim, the Court **dismisses** Estillore's fourth cause of action with prejudice.

E. Estillore's Cancellation of Instruments Claim is Barred by the Statute of Limitations

When fraud is the basis for a cancellation of instruments claim, a three-year statute of limitations applies to the claim. Cornell v. That Certain Instrument Entitled Deed of Trust, No. CIV. 2:12-330(WBS) (CKD), 2012 WL 1869689, at *3 (E.D. Cal. May 22, 2012) (citing Cal. Civ. Proc. Code § 338(d); Zakaessian v. Zakaessian, 70 Cal. App. 2d 721, 725 (1945)).

Here, Estillore's cancellation of instruments claim is based on Defendants' alleged fraud. (*See, e.g.*, Compl., Docket No. 10 ¶¶ 28, 29, 31.) Therefore, this claim is also time-barred.

In conclusion, because Estillore cannot cure the defects in a time-barred claim, the Court **dismisses** Estillore's fifth cause of action with prejudice.

F. Estillore's FDCPA Claim is Barred by the Statute of Limitations

Under 15 U.S.C. § 1692k(d), a plaintiff can bring a claim under the FDCPA one year from the date on which the violation occurs. The discovery rule applies to the FDCPA: the limitations period begins to run when the plaintiff knows or has

reason to know of the injury which is the basis of the action. See *Magnum v. Action Collection Service, Inc.*, 575 F.3d 935, 940 (9th Cir. 2009).

Here, as previously discussed, Quality Loan filed the initial notice of default on May 4, 2012. (See Compl., Docket No. 10 ¶ 14.) Therefore, the last date that Estillore could have filed an action under the FDCPA was on May 4, 2013.

In conclusion, because Estillore cannot cure the defects in a time-barred claim, the Court **dismisses** Estillore's sixth cause of action with prejudice.

G. Estillore's Wrongful Foreclosure Claim is Barred by the Statute of Limitations

As previously discussed, when fraud is the basis of a cause of action, then the applicable statute of limitations is three years. See, e.g. *Thomson*, 198 Cal. App. 4th at 607.

Here, Estillore's wrongful foreclosure claim is based on Defendants' alleged fraud. For example, Estillore pleaded that the Defendants have "no standing to foreclose because Plaintiff provided fraudulent DOT, AODOT, SOT, NOT and NOTS to defendants, they are made aware of the fraudulent documents, defendants have knowledge of the falsity of documents are still intent to foreclose." (Compl., Docket No. 10 ¶ 49.) Therefore, because Estillore's wrongful foreclosure claim is based on fraud, this claim is also time-barred.

In conclusion, because Estillore cannot cure the defects in a time-barred claim, the Court **dismisses** Estillore's seventh cause of action with prejudice.

IV. CONCLUSION

For the aforementioned reasons, the Court **grants** Defendants' motion to dismiss; therefore, all seven causes of action against Defendants are **dismissed**.⁴

IT IS SO ORDERED.

⁴ Given that each of the claims is time-barred, the Court need not examine the additional arguments for dismissal that Defendants address. For example, Estillore cannot appear because she lacks standing; her claims belong to the Chapter 7 Trustee. (See Wells Fargo Mot., Docket No. 57 at 5–6.) In addition, a foreclosure is not a debt collector under the FDCPA. (Id. at 12.)