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UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Derrick Lytle,	:	
	:	Adv. Proc. 12-02069 (MG)
Plaintiffs,	:	
	:	
v.	:	
	:	
GMAC Mortgage LLC, et al.	:	
	:	
Defendants.	:	
In re	:	
	:	Case No. 12-12020 (MG)
RESIDENTIAL CAPITAL, LLC, *et al.*,	:	
	:	Chapter 11
	:	
Debtors	:	Jointly Administered

DEFENDANT KATRINA JORDAN'S MOTION FOR DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(b)(6)

Defendant Katrina Jordan ("Ms. Jordan") moves the Court to dismiss the above-referenced adversary proceeding (the "Adversary Proceeding") commenced by Derrick Lytle ("Plaintiff") pursuant to Rule 12(b)(6) of the Federal Rule of Civil Procedure (the "Rules"), as made applicable by Rule 7012 of the Federal Rules of Bankruptcy Procedure, as follows:

1212020130121000000000005

Procedural History

1. On May 14, 2012, Residential Capital, LLC and certain of its direct and indirect subsidiaries (collectively, the "ResCap Debtors") filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code in this Court. Pursuant to the *Order Under Bankruptcy Rule 1015 Authorizing Joint Administration of Debtors' Chapter 11 Cases* entered by this Court on May 14, 2012 [Docket No. 59], the ResCap Debtors' Chapter 11 cases are being jointly administered and under Case No. 12-12020 (MG).

2. On December 19, 2012, Plaintiff filed a complaint [Docket No. 1] (the "Complaint") initiating this instant adversary proceeding against Ms. Jordan and other defendants.

3. A summons and notice of a pretrial conference (the "Summons") was issued with respect to this adversary proceeding on December 21, 2012 [Docket No. 3]. The Summons provides that the deadline to respond to the Complaint is January 21, 2013.[1]

Factual History

4. On or about April 17, 2009, Plaintiff and Lakeysha Lytle executed a note in favor of Birmingham Bancorp Mortgage Corporation ("Birmingham Bancorp") in the amount of $155,275.00 (the "Note"). (*See* Complaint, Exhibit "B").

5. The Note is secured by the real property known as 5082 Luna Negra Drive, Orlando, Florida 32811 (the "Property"), pursuant to a *Mortgage* (the "Mortgage") executed contemporaneously with the Note and recorded electronically. (*See* Complaint, Exhibit "B").

[1] Though the Summons provides for thirty days to respond, the thirtieth day would be Sunday, January 20, 2013. So pursuant to Federal Rule of Civil Procedure 6(a)(3), the deadline to respond is Monday, January 21, 2013. It is also important to note that the electronic docket on PACER indicates that the deadline to respond to the Complaint is January 22, 2013.

6. In the Mortgage, Mortgage Electronic Registration Systems, Inc. ("MERS") is named as (a) a nominee of Birmingham Bancorp and Birmingham Bancorp's successors and assigns and (b) a beneficiary, solely as nominee for Birmingham Bancorp and Birmingham Bancorp's successors and assigns. (*See* Complaint, Exhibit "B").

7. The Mortgage was subsequently assigned to GMAC Mortgage, LLC, as evidenced by that certain *Assignment of Mortgage* executed on April 6, 2010 (the "Assignment"). (*See* Complaint, Exhibit "E"). On September 29, 2010, at 10:50 a.m., the Assignment was recorded in the land records of Orange County, Florida, Document Number 20100241576, Book 10036, Page 6531. *Id*.

8. On April 16, 2012, Defendant Katrina Jordan, as Vice President of MERS, in its capacity as Nominee for Birmingham Bancorp, its successors and assigns, executed that certain *Corrective Assignment of Mortgage* (the "Corrective Assignment"). (*See* Complaint, Exhibit "D"). On April 27, 2012, at 3:26 p.m., the Corrective Assignment was recorded in the land records of Orange County, Florida, Document Number 20120223579, Book 10368, Page 4685. (*See* Complaint, Exhibit "D").

Standard For Rule 12(b)(6) Motions

9. Federal Rule of Civil Procedure 12(b)(6) provides that an action may dismissed for failure to state a claim upon which relief can be granted. The court must accept the plaintiff's factual allegations as true, drawing all reasonable inferences in the plaintiff's favor. *Bernheim v. Litt*, 79 F.3d 318, 321 (2d Cir. 1996). The Court's review is limited to "the facts as asserted within the four corners of the complaint, the documents attached to the complaint as exhibits, and any documents incorporated in the complaint by reference." *McCarthy v. Dun & Bradstreet Corp.*, 482 F.3d 184, 191 (2d Cir. 2007).

10. To survive a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). If as a matter of law "the complaint cannot state any set of facts *that would entitle the plaintiff t*o relief," a claim should be dismissed. *See Cal. Pub. Emps.' Ret. Sys. v. N.Y. Stock Exchange, Inc. (In re NYSE Specialists Sec. Litig.)*, 503 F.3d 89, 95 (2d Cir. 2007).

11. "While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citations omitted). A plaintiff must allege a factual predicate concrete enough to warrant further proceedings. *See, e.g., DM Research v. Coll. of Am. Pathologists*, 170 F.3d 53, 55-56 (1st Cir. 1999). The mere "possibility that a plaintiff might later establish some set of undisclosed facts to support recovery" is insufficient to survive a Rule 12(b)(6) challenge. *Twombly*, 550 U.S. at 562 (internal quotation marks and brackets omitted).

12. Bald assertions, subjective characterizations, or legal conclusions, which are not entitled to the assumption of truth. *Hirsch v. Arthur Andersen & Co.*, 72 F.3d 1085, 1088, 1092 (2d Cir. 1995). A court considering a motion to dismiss can disregard conclusory allegations and judge the complaint only on well-pleaded factual allegations. *Starr v. Sony BMG Music Entm't*, 592 F.3d 314, 321 (2d Cir. 2010); *see also Papasan v. Allain*, 478 U.S. 265, 286 (1986) (On a motion to dismiss, courts "are not bound to accept as true a legal conclusion couched as a factual allegation."). As noted by the United States Supreme Court:

> Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not

> unlock the doors of discovery for a plaintiff armed with nothing more than conclusions . . . . [O]nly a complaint that states a plausible claim for relief survives a motion to dismiss . . . . Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires a reviewing court to draw on its judicial experience and common sense . . . . But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not "show[n]" – "that the pleader is entitled to relief."

Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009) (citations omitted).

13. Although complaints drafted by *pro se* plaintiffs are to be "construed liberally," claims asserted by *pro se* plaintiffs must nonetheless be supported by specific and detailed factual allegations sufficient to provide the court and the defendant with "a fair understanding of what the plaintiff is complaining about and . . . whether there is a legal basis for recovery." *Iwachiw v. N.Y. City Bd. of Elections*, 126 Fed. Appx. 27, 29 (2d Cir. 2005) (citations omitted).

Argument

14. The Complaint fails to state a claim against Ms. Jordan upon which relief may be granted because Plaintiff's claims against Ms. Jordan are conclusory and do not state the alleged fraudulent conduct with particularity.

15. Plaintiff alleges that Ms. Jordan "submitted fraudulent assignments to force an illegal foreclosure on Plaintiff's property." (Complaint, ¶ 4). Without mentioning Ms. Jordan by name, Plaintiff alleges that the Corrective Assignment was fraudulent. *Id.* ¶ 15. The Complaint contains no other factual allegations as to Ms. Jordan's execution of the Corrective Assignment, which was her only involvement in the events the Plaintiff complains of. Plaintiff's allegations of "fraudulent assignments" and "illegal foreclosures" are precisely the type of conclusory statements that must be rejected under Federal Rule of Civil Procedure 12(b)(6). Accordingly, all claims and allegations against Ms. Jordan are due to be dismissed.

Conclusion

For the foregoing reasons, Ms. Jordan respectfully moves to dismiss Plaintiff's Complaint against her in its entirety and with prejudice.

Respectfully submitted this the 21st day of January, 2013.

/s/ Christopher L. Hawkins
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CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of this motion upon:

Derrick Lytle
5082 Luna Negra Drive
Orlando, Florida 32811

by placing a copy of same in the United States Mail via certified mail, return receipt requested, and addressed to their regular mailing addresses on this 21st day of January, 2013.

/s/ James P. Watkins
James P. Watkins