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UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Jennifer L. Wilson, Plaintiff, *v.* Residential Capital, LLC, et al. Defendants.	Adv. Proc. 12-01936 (MG)
In re RESIDENTIAL CAPITAL, LLC, *et al.*, Debtors	Case No. 12-12020 (MG) Chapter 11 Jointly Administered

THE RESCAP LIQUIDATING TRUST'S
REPLY IN SUPPORT OF THE DEBTORS' MOTION FOR DISMISSAL OF ADVERSARY PROCEEDING PURSUANT TO BANKRUPTCY RULE 7012(b) AND FRCP 12(b)(1) AND 12(b)(6) OR, IN THE ALTERNATIVE, PERMISSIVE ABSTENTION PURSUANT TO 28 U.S.C. §1334(c)(1)

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TO THE HONORABLE MARTIN GLENN
UNITED STATES BANKRUPTCY JUDGE:

The ResCap Liquidating Trust (the "Liquidating Trust"), established pursuant to the terms of the *Second Amended Joint Chapter 11 Plan Proposed by Residential Capital, LLC, et al. and the Official Committee of Unsecured Creditors* [Docket No. 6030] (the "Plan")[1] confirmed in the above captioned bankruptcy cases (the "Chapter 11 Cases"), on behalf of Residential Capital, LLC and its affiliated post-effective date debtors (collectively, the "Debtors") hereby submits this reply (the "Reply")[2] to the responses of Plaintiff Jennifer Wilson (Docket Nos. 14 and 15, the "MTD Response," Docket Nos. 16 and 17, the "Declaration Response," and collectively, the "Responses") to the *Debtors' Motion for Dismissal of Adversary Proceeding Pursuant to Bankruptcy Rule 7012(b) and FRCP 12(b)(1) and 12(b)(6) or, In the Alternative, Permissive Abstention Pursuant to 28 U.S.C. §1334(c)(1)* [Docket No. 4] (the "Motion to Dismiss"). In support of the Reply, the Liquidating Trust respectfully represents as follows:[3]

PRELIMINARY STATEMENT

1. Each of Plaintiff's Responses fails to adequately address the arguments raised by the Defendants. For the reasons set forth herein and in the Motion to Dismiss, Plaintiff's Adversary Proceeding should be dismissed with prejudice.

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[1] The Plan was confirmed by order of this Court dated December 11, 2013 [Docket No. 6065] and the effective date of the Plan occurred on December 17, 2013 [Docket No. 6137]. The Plan provides for the creation and implementation of the Liquidating Trust. Among other things, the Liquidating Trust is responsible for winding down the affairs of the Debtors. *See* Plan, Art. IV.B.

[2] Capitalized terms not defined in this Reply shall have the meaning ascribed to such terms in the Motion to Dismiss.

[3] To the extent not addressed herein, the Liquidating Trust incorporates by reference all arguments made by the Debtors in the Motion to Dismiss.

RECENT BACKGROUND

2. The Debtors filed the Motion to Dismiss on January 7, 2013, and Plaintiff filed the Responses on March 14, 2013. On April 2, 2013, the Debtors filed the Notice of Applicability of the Order Approving Mandatory Supplemental AP Procedures. [Docket No. 5]. The parties subsequently engaged in settlement discussions but were unable to reach a resolution.

3. During the fourteen month period following the filing of the Motion to Dismiss, the United States District Court for the Middle District of North Carolina (the "MDNC Court") dismissed similar claims raised by Plaintiff in that forum. As detailed in the Motion to Dismiss, SunTrust acted as the sub-servicer of Plaintiff's mortgage loan, and Debtor Residential Funding Company, LLC ("RFC") was the master servicer for Plaintiff's mortgage loan. In May 2011, Plaintiff filed a complaint against SunTrust, Debtor RFC, and others in the MDNC Court, seeking damages relating to the foreclosure, an order setting aside the Order (defined below) that allowed the foreclosure sale, and an order directing a rescission of the Deed of Trust and all recorded foreclosing documents. Recently, the MDNC Court issued a Judgment and Order dismissing the MDNC Action against all defendants (except RFC due to the bankruptcy).[4]

REPLY TO MTD RESPONSE

A. The Bankruptcy Court Has Jurisdiction to Hear the Motion to Dismiss

4. Plaintiff commenced this Adversary Proceeding by filing the Complaint in the Bankruptcy Court on November 9, 2012 [Docket No. 1] (the "Complaint"). In the Complaint, Plaintiff requested a jury trial and indicated that (i) the Court has jurisdiction pursuant to 28 U.S.C. § 1334, and (ii) the action constitutes a "non-core" proceeding pursuant to 28 U.S.C.

[4] Copies of the Magistrate Judge's Recommendations and the MDNC Court's Judgment and Order are annexed hereto as Exhibit 1.

§ 157(c), (d), and (e). See Complaint, ¶ 2-5. However, Plaintiff failed to include a statement in the Complaint indicating whether Plaintiff does or does not consent to the entry of final orders or judgments by the Bankruptcy Court, as required by Rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). The Liquidating Trust submits that Plaintiff should be directed to comply with the mandate of Bankruptcy Rule 7008.

5. On January 7, 2013, the Debtors filed the Motion to Dismiss, acknowledging that this is a non-core proceeding and consenting, in accordance with Bankruptcy Rule 7012(b) and Local Rule 7012-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the Southern District of New York, to entry of a final order or judgment by the Court if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution. See Motion to Dismiss, ¶ 1.

6. On March 14, 2013, Plaintiff filed the Responses to the Debtors' Motion to Dismiss, stating for the first time that Plaintiff does not consent to the jurisdiction of the Bankruptcy Court.[5] However, at no point did Plaintiff file a motion in the Adversary Proceeding to withdraw the reference to the Bankruptcy Court, nor did Plaintiff file a motion for stay relief to pursue the claims in another jurisdiction.

7. Even if Plaintiff were to seek to withdraw the reference on the basis that Plaintiff seeks a jury trial and does not consent to the Bankruptcy Court's jurisdiction, case law indicates

[5] The Liquidating Trust has interpreted Plaintiff's jurisdictional argument to relate to the scope of the Bankruptcy Court's authority to enter a final order or judgment in this Adversary Proceeding. To the extent Plaintiff intends to argue that the Court does not have personal jurisdiction over her, the Liquidating Trust argues that by filing the Complaint in the Bankruptcy Court, Plaintiff has submitted to the jurisdiction of this Court. See Buckley v. Bayrock Mortg. Corp., No. 09-CV-1387, 2010 U.S. Dist. LEXIS 10636, at *16 (N.D. Ga. Jan. 12, 2010) ("When a plaintiff files a lawsuit, [she] submits to the personal jurisdiction of the Court in which the action is filed.").

that these factors do "'not compel withdrawing the reference until the case is ready to proceed to trial'" Lehman Bros. Holdings, Inc. v. JPMorgan Chase Bank, N.A. (In re Lehman Bros. Holdings, Inc.), 480 B.R. 179, 194-195 (S.D.N.Y. 2012) (quoting Schneider v. Riddick (In re Formica Corp.), 305 B.R. 147, 150 (S.D.N.Y. 2004)). See also Walker, Truesdell, Roth & Assocs. v. Blackstone Group, L.P. (In re Extended Stay, Inc.), 466 B.R. 188, 205 (S.D.N.Y. 2011) (holding that plaintiff's argument that "there will no doubt be jury trial issues" does not support plaintiffs' motion for withdrawal); Enron Power Mktg., Inc. v. City of Santa Clara (In re Enron Power Mktg., Inc.), No. 02 Civ. 7964, 2003 U.S. Dist. LEXIS 189, at *22 (S.D.N.Y. Jan. 8, 2003) ("A rule that would require a district court to withdraw a reference simply because a party is entitled to a jury trial, regardless of how far along toward trial a case may be, runs counter to the policy of favoring judicial economy that underlies the statutory scheme governing the relationship between district courts and bankruptcy courts.") (quotations omitted).

8. Bankruptcy courts may hear core matters and non-core matters that are "otherwise related" to a case under title 11, but they may only enter a final order and judgment in core proceedings unless the parties consent. 28 U.S.C. § 157(c). For non-core proceedings, the Court may submit proposed findings of fact and conclusions of law to the district court, which may then exercise final adjudicative power after reviewing *de novo* any matters to which a party timely and specifically objects. 28 U.S.C. § 157(c)(1). See also Messer v. Bentley Manhattan Inc. (In re Madison Bentley Assocs., LLC), 474 B.R. 430, 437 (S.D.N.Y. 2012) ("The authority of a bankruptcy court to issue recommendations on findings of facts and conclusions of law survives Stern.").

B. The Adversary Proceeding is Duplicative of the Claims Resolution Process

9. Each of the claims asserted in the Complaint arose prior to the Petition Date, and to the extent Plaintiff seeks monetary damages, such claims should be addressed as part of the

claims resolution process, along with the thousands of other prepetition claims asserted against the Debtors' estates.

10. The Debtors served Plaintiff with a notice of the Bar Date on or before October 4, 2012. See Motion to Dismiss, ¶ 7, Ex. 2. However, the Liquidating Trust's review of the claims register indicates that Plaintiff did not file a proof of claim in the Debtors' bankruptcy cases. Plaintiff has been on notice of this fatal defect since at least January 7, 2013, when the Debtors raised the issue in their Motion to Dismiss, yet Plaintiff has done nothing in the past fourteen months to address this issue. Plaintiff's failure to file a proof of claim should not serve as grounds to avoid dismissal of the Adversary Proceeding. "[T]he only appropriate way to assert a claim against a debtor's estate is through the timely filing of a properly executed proof of claim. To permit persons who fail to file proofs of claim to maintain an adversary proceeding to assert their claims against the debtor would be fundamentally unfair to those creditors who have complied with the filing requirements of the Code and the Rules." Dade Cnty Sch. Dist. v. Johns-Manville Corp. (In re Johns-Manville Corp.), 53 B.R. 346, 354 (Bankr. S.D.N.Y. 1985). While Plaintiff is subject to the Bar Date order, nothing prevents Plaintiff from otherwise seeking appropriate relief from this Court by motion practice.

11. Accordingly, the Adversary Proceeding should be dismissed because it is duplicative of the claims resolution process.

C. The Adversary Proceeding Should be Dismissed Pursuant to Bankruptcy Rule 7012, FRCP 12(b)(1), and the Rooker-Feldman Doctrine

12. In the MTD Response, Plaintiff focuses on the use of the term "inextricably intertwined" in the Rooker-Feldman cases[6] and their progeny and asserts that Court in Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280 (2005) "parks *Feldman's* use of 'inextricably intertwined' in a non-threshold part of the disposition." See MTD Response, ¶ 35 (citing Exxon Mobil and Davani v. Va. Dep't of Transp., 434 F.3d 712 (4th Cir. 2006)). However, in Plaintiff's lengthy discussion of these cases, Plaintiff fails to note the Davani court's determination that "if the state-court loser seeks redress in the federal district court for the injury caused by the state-court decision, his federal claim is, by definition, 'inextricably intertwined' with the state-court decision, and is therefore outside of the jurisdiction of the federal district court." Davani, 434 F.3d at 719.

13. Moreover, Plaintiff acknowledges the application of the Rooker-Feldman doctrine to "[1] cases brought by state court losers [2] complaining of injuries caused by state-court judgments [3] rendered before the district court proceedings commenced and [4] inviting district court review and rejection of those judgments." Exxon Mobil, 544 U.S. at 284. See Complaint, ¶ 32-33.

14. Here, all four elements of the Rooker-Feldman doctrine are satisfied. Plaintiff is complaining of the injury from losing her home in the state court foreclosure proceeding, which was completed despite Plaintiff's unsuccessful efforts to oppose the foreclosure prior to the commencement of the Adversary Proceeding (MTD Response, ¶ 13), and Plaintiff seeks for this

[6] The Rooker-Feldman doctrine is premised upon two United States Supreme Court decisions: Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) and District of Columbia Court Appeals v. Feldman, 460 U.S. 462 (1982).

Court to, *inter alia*, (i) award her monetary damages; (ii) find "that defendants take nothing by way of their foreclosure sale;" and (iii) "'ORDER' defendants Residential Capital, LLC and Residential Funding Company, LLC surrender the Genuine "NOTE" dated January 18, 2007 and bearing MIN # 1000104-0039041983-4;". See Complaint, ¶ 104.

15. Indeed, in this Adversary Proceeding, each of Plaintiff's claims challenges the findings and decisions of the Superior Court of North Carolina, Cabarrus County (the "Superior Court") and therefore is barred by the Rooker-Feldman doctrine.

16. First, on January 25, 2010, the Assistant Clerk of the Superior Court entered an order authorizing the foreclosure and determining that SunTrust Bank was the holder of the Note sought to be foreclosed. See Order, 09 SP 1613, dated as of January 25, 2010 (a copy of which is annexed to the Motion to Dismiss as Exhibit 5, and for ease of reference, annexed hereto as Exhibit 2, the "Order") (finding "[t]hat SunTrust Bank is the holder of the note sought to be foreclosed and it evidences that this is a valid debt owed by Jennifer L. Wilson."). However, in each cause of action in the Complaint, Plaintiff's claims are grounded in her belief that SunTrust is not the true note holder. See e.g., Complaint, First Cause of Action ¶ 69, 73; Second Cause of Action ¶ 75, 83; Third Cause of Action ¶ 86, 90; Fourth Cause of Action ¶ 93, 94, 98.

17. Second, each cause of action in the Complaint relates to the damages suffered by Plaintiff due to the loss of her home, which occurred by way of the foreclosure sale that was authorized by the Order. See e.g., Complaint, First Cause of Action ¶ 73 ("… that directly resulted in monetary damages and the loss of Wilson's home by way of a foreclosure sale"); Second Cause of Action ¶ 84 ("… damaged Wilson resulting in the loss of her home."); Third Cause of Action ¶ 91 ("… damaged Wilson resulting in the loss of her home."); Fourth Cause of

Action ¶ 99 ("… damaged Wilson resulting in monetary damages and the loss of her home."). Thus, by the Adversary Proceeding, Plaintiff is effectively challenging the state court decision.

18. Rooker, Feldman and their progeny bar plaintiffs from using federal courts as a mechanism to appeal state court rulings, particularly where there is a means of appeal expressly provided under state law. See Washington v. Wilmore, 407 F.3d 274, n. 3 (4th Cir. 2005). Here, Plaintiff did not pursue the means available under North Carolina law to appeal[7] or enjoin[8] the foreclosure. Plaintiff has attempted instead to use the Bankruptcy Court, in addition to the North Carolina federal district courts, as a means for obtaining relief, but Plaintiff cannot now appeal the Order in this forum. This is precisely the kind of litigation that is intended to be barred under the Rooker-Feldman doctrine, and accordingly, the Complaint should be dismissed.

D. The Adversary Proceeding Should Be Dismissed Pursuant to Bankruptcy Rule 7012(b) and FRCP 12(b)(6)

19. In addition, the Adversary Proceeding should be dismissed pursuant to Bankruptcy Rule 7012(b) and FRCP 12(b)(6) because Plaintiff has failed to state a claim upon which relief can be granted.

1. Breach of Contract Claims

20. Plaintiff fails to state a claim for breach of contract. A party seeking to recover for breach of contract "must allege [1] the existence of a contract between plaintiff and defendant, [2] the specific provisions breached, [3] the facts constituting the breach, and [4] the amount of

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[7] Chapter 45 of the North Carolina General Statutes provides parties with the right to appeal within ten (10) days of the clerk's order allowing foreclosure, and the appeal must be filed in the superior court division of the county where the foreclosure is occurring. See N.C. Gen. Stat. § 45-21.16 (d1), (e).

[8] North Carolina statutes also provide that an injunction may be granted by a judge of the state superior court division upon any "equitable ground which the court may deem sufficient" to restrain foreclosure proceedings where equitable grounds exist to stop the foreclosure, however, any such injunction must be sought before the rights of the parties become "fixed.". See N.C. Gen. Stat. § 45-21.34.

damages resulting to plaintiff from such breach." Cantrell v. Woodhill Enters., Inc., 160 S.E. 2d 476, 481 (N.C. 1968). In each of the Complaint and Responses, Plaintiff fails to allege that the Defendants are party to any contract, fails to allege any plausible facts to support an actionable breach, and fails to allege any damages *resulting from* such breach.

21. In the MTD Response, Plaintiff claims to have detailed the contractual breaches in 64 paragraphs of the Complaint, and in particular, Plaintiff refers to paragraphs 73, 84, 91, and 99 of the Complaint to show that these breaches resulted in damages—that her reliance on the "mendacious documents" filed by SunTrust resulted in the loss of her home. However, Plaintiff fails to explain how her reliance on any of the Notice of Acceleration, Appointment of Substitute Trustee, and Assignment of Note and Deed of Trust resulted in the loss of her home. Instead, Plaintiff merely offers conclusory statements that do not meet the pleading standards. While facts on a motion to dismiss must be accepted as alleged in the complaint, this does not automatically extend to 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 (2d Cir. 1995). See also Starr v. Sony BMG Music Entm't, 592 F.3d 314, 321 (2d Cir. 2010) (a court considering a motion to dismiss can disregard conclusory allegations and judge the complaint only on well pleaded factual allegations).

22. The Liquidating Trust maintains that Plaintiff lost her home because she failed to make her monthly mortgage payments as contractually required under the Note. Notably, at no point in the Complaint or the Responses does Plaintiff assert that she was current on her monthly mortgage payments or otherwise dispute that she was in default under the Note.

23. Accordingly, Plaintiff's breach of contract claims fails.

2. Unfair and Deceptive Trade Practices Act Claims

24. Plaintiff also fails to state a claim for violation of the North Carolina General Statutes ¶ 75-1.1. In the Complaint and MTD Response, Plaintiff asserts that SunTrust filed an allegedly "fraudulent" proof of claim in Plaintiff's Bankruptcy Case, which constituted "a deceptive act in or affecting commerce," and Plaintiff's reliance on such act resulted in monetary damages and the loss of Plaintiff's home. See Complaint ¶ 99; MTD Response ¶ 46. However, Plaintiff fails to acknowledge that the Superior Court found that SunTrust was the holder of the Note, which means that SunTrust could enforce the Note and Deed of Trust and therefore file a proof of claim. Moreover, Plaintiff fails to allege how SunTrust's filing of the proof of claim resulted in the loss of her home and/or caused any other injury.

25. Accordingly, Plaintiff's unfair and deceptive trade practices act claim fails because Plaintiff fails to state a claim upon which relief can be granted.

REPLY TO DECLARATION RESPONSE

26. The Liquidating Trust disputes each of the arguments in Plaintiff's Declaration Response.

27. Notably, while Plaintiff objects to the Scoliard Declaration on the basis that the declarant lacks personal knowledge of the facts and the statements therein constitute hearsay, Plaintiff does not dispute any of the facts set forth in the Scoliard Declaration or in the Motion to Dismiss. Indeed, the facts in this adversary proceeding remain undisputed.

28. On a motion to dismiss under FRCP 12(b)(6), a court may consider "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). A court must accept the plaintiff's factual allegations as true, drawing all reasonable inferences in the plaintiff's favor. See Bernheim v.

Litt, 79 F.3d 318, 321 n.1 (2d Cir. 1996). While the Debtors annexed copies of certain documents (including the Note) to the Motion to Dismiss for the Court's ease of reference, the Note that was annexed by Plaintiff to the Complaint is deemed to be a true and correct copy for purposes of the Motion to Dismiss.

29. In addition, the Liquidating Trust asserts that the statements in the Scoliard Declaration, which are offered to support the summary of facts relating to the Property and the Foreclosure set forth in the Motion to Dismiss, meet the hearsay exceptions set forth in Rule 803(14) and (15) of the Federal Rules of Evidence relating to records of documents affecting an interest in property and statements in documents affecting an interest in property, respectively.

30. For these reasons, Plaintiff's Declaration Response should be overruled.

Accordingly, for the reasons set forth herein, the Debtors respectfully request that the Court grant the Motion to Dismiss and grant such other and further relief as it deems just and proper.

Dated: March 7, 2014
New York, New York

/s/ Norman S. Rosenbaum

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Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JENNIFER L. WILSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	1:11CV390
	)	
SUNTRUST BANK, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

The instant matter comes before the undersigned United States Magistrate Judge for a recommended ruling on: (1) Motions [sic] to Dismiss of Defendant Substitute Trustee Services, Inc. (Docket Entry 7); (2) Motions [sic] to Dismiss of the Law Firm of Hutchens, Senter & Britton, P.A. (Docket Entry 10); (3) Motion to Dismiss of Defendant Jennifer F. Thomas (Docket Entry 28); and (4) SunTrust Mortgage, Inc., SunTrust Bank, and Residential Funding Company, LLC's Motion to Dismiss for Lack of Subject Matter Jurisdiction (Docket Entry 60). (See Docket Entry dated Aug. 16, 2011.) For the reasons that follow, the Court should grant the foregoing Motions in that the Court should dismiss Plaintiff's state law claims for lack of jurisdiction. Alternatively, the Court should dismiss Plaintiff's third, fourth, and seventh causes of action pursuant to the Rooker-Feldman doctrine and Plaintiff's first,

second and fifth causes of action for failure to state a claim upon which relief can be granted.[1]

BACKGROUND

The instant action arises primarily out of the foreclosure of Plaintiff's residence. Plaintiff, proceeding pro se, filed a Complaint against SunTrust Bank, SunTrust Mortgage, Inc. ("SunTrust Mortgage"), Residential Funding Company, LLC ("RFC"), The Law Firm of Hutchens, Senter & Britton, P.A. ("HSB"), Substitute Trustee Services, Inc. ("STS"), Jennifer F. Thomas ("Thomas"), and Does 1-10. (See Docket Entry 1.) Although the factual bases for

[1] Residential Funding Company, LLC ("RFC") filed a Notice of Bankruptcy and Suggestion of Automatic Stay (Docket Entry 70) informing the Court that, "[o]n May 14, 2012 [], [RFC] . . . filed [a] voluntary petition[] for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York" (id. at 1) and suggesting that, "[a]s a result . . ., the protections of the automatic stay codified in section 362(a) of the Bankruptcy Code arose with regard to [RFC]" (id. at 2). Because RFC nominally was a party both to the Motion to Dismiss for Lack of Subject Matter Jurisdiction (Docket Entry 60) and RFC's Motion for Judgment on the Pleadings (Docket Entry 61) (as to both of which SunTrust Mortgage, SunTrust Bank and RFC jointly filed a single supporting brief (Docket Entry 62)), the clerk terminated both of those Motions in light of the Notice of Bankruptcy. However, only RFC's Motion for Judgment on the Pleadings (Docket Entry 61) presents grounds for dismissing Plaintiff's sixth cause of action - the sole claim Plaintiff brings against RFC and a claim which involves none of the other Defendants (see Docket Entry 1). Accordingly, in light of the filing of the Notice of Bankruptcy and Section 362 of the Bankruptcy Code, see 11 U.S.C. § 362, the Court should stay any action on RFC's Motion for Judgment on the Pleadings (Docket Entry 61) and thus on Plaintiff's sixth cause of action. However, disposition of the Motion to Dismiss for Lack of Subject Matter Jurisdiction (Docket Entry 60), which, in form, RFC brought along with SunTrust Bank and SunTrust Mortgage, but which raises arguments under the Rooker-Feldman doctrine inapplicable to Plaintiff's claim against RFC (see Docket Entry 62 at 7), should proceed.

Plaintiff's various causes of action are not entirely clear from the face of her Complaint (see id.), Plaintiff has attached a number of documents from which, in conjunction with the allegations in the Complaint,[2] the Court can glean the following background:

In January 2007, Plaintiff executed a promissory note ("Note") naming SunTrust Mortgage as Lender, which was secured by a deed of trust ("Deed of Trust") also naming SunTrust Mortgage. (Docket Entry 1-2; Docket Entry 1-3.) On November 3, 2009, HSB, noting that it "represents SunTrust Bank," who it identified as "the '[N]ote [H]older'" (Docket Entry 1-4 at 2 (emphasis added)), sent Plaintiff a notice pursuant to N.C. Gen. Stat. § 45-21.16(c)(5a) informing Plaintiff that she had "defaulted under the terms of [her] Note and/or the [D]eed of [T]rust securing that Note and that [SunTrust Bank as] the [N]ote [H]older has elected to proceed with a foreclosure action consistent with the terms of the [D]eed of [T]rust and North Carolina State Law" (id.). Only after that notice was sent did SunTrust Mortgage execute an assignment ("Assignment") assigning all of its "rights, title and interest" in the Deed of Trust and the Note secured by the Deed of Trust to

[2] On a motion to dismiss brought under Rule 12(b)(6) of the Federal Rules of Civil Procedure, the Court may properly consider "documents attached to the complaint . . . so long as they are integral to the complaint and authentic." Philips v. Pitt Cnty. Mem'l Hosp., 572 F.3d 176, 180 (4th Cir. 2009).

SunTrust Bank. (Docket Entry 1-7 at 2 (dated Nov. 18, 2009).) The Assignment notes its effective date as March 1, 2007. (Id.)[3]

On October 21, 2009, prior to both the notice from HSB indicating that SunTrust Bank was the Note Holder and the Assignment to SunTrust Bank, SunTrust Bank had executed an appointment of substitute trustee ("Appointment"), which provides:

> SunTrust Bank is the holder of the Note evidencing the entire indebtedness secured by the aforesaid Deed of Trust and desires to substitute [STS], or its successor in interest, as Trustee pursuant to the authority granted by N.C. [Gen. Stat. §] 45-10 and as provided for by the Deed of Trust.

(Docket Entry 1-8 at 2.) Thereafter, by way of a "Notice of Hearing Prior to Foreclosure of Deed of Trust," dated November 30, 2009, STS "notified [Plaintiff] that the [N]ote [H]older intends to commence foreclosure on the Note and Deed of Trust" and that Plaintiff had "the right to appear before the Clerk of Superior Court, Cabarrus County Courthouse, at 2:00 PM on January 22, 2010, where [she] will be afforded the opportunity to show cause why the foreclosure sale should not be held." (Docket Entry 1-10 at 2-3.) On January 25, 2010, Thomas, as Assistant Clerk of Superior Court of Cabarrus County, entered an Order finding, inter alia, that "SunTrust Bank is the holder of the [N]ote sought to be foreclosed"

[3] An affidavit dated October 27, 2009, by a vice president of SunTrust Mortgage attesting to Plaintiff's default states: "The holder of the Note and indebtedness is: SunTrust Bank, c/o SunTrust Mortgage, Inc." (Docket Entry 1-9 at 2.)

and that "[STS] can proceed to foreclose." (Docket Entry 1-5 at 2.)

As a result of these events, the Complaint asserts claims for: (1) "Misrepresentation Breach of Fiduciary Duty" (Docket Entry 1, ¶¶ 17-21); (2) "Malicious Act" (id. ¶¶ 22-28); (3) "Malfeasance - Breach of Oath of Office" (id. ¶¶ 29-34); (4) "Misconduct - Breach of Oath of Office" (id. ¶¶ 35-47); (5) "Material Breach of Contract" (id. ¶¶ 48-73); (6) "Breach of Covenant" (id. ¶¶ 74-84); and (7) "Quiet Title" (id. ¶¶ 85-93).

Much like the factual background contained in the Complaint, however, the allegations of the wrongdoing that support these causes of action are not entirely clear. Plaintiff's first, second and fifth causes of action appear to complain that notices sent to Plaintiff prior to the foreclosure were deficient. Specifically, Plaintiff's first stated cause of action - "Misrepresentation Breach of Fiduciary Duty" - contends that HSB lacked authority to send the initial notice regarding Plaintiff's mortgage on behalf of SunTrust Bank because "the Deed [of Trust] fails to provide the '[N]ote [H]older' with the option to delegate the 'Lender['s]' authority for a Notice of Acceleration . . . ." (Id. ¶ 20.) In other words, Plaintiff apparently contends that, because SunTrust Bank was not the Note Holder at the time of the notification (as the Assignment had not yet been executed), said notification was improper/ineffective or that HSB committed negligent misrepresentation/fraud.

Plaintiff's second stated cause of action - "Malicious Act" - seemingly asserts that STS's Notice of Hearing Prior to Foreclosure of Deed of Trust was improper (or that STS committed negligent misrepresentation/fraud) because that notice likewise identifies SunTrust Bank as the Note Holder, despite the assertion that: "SunTrust Bank is/was **not** the 'Note Holder' as defined in the NOTE." (Id. ¶ 25 (underlining, bolding, and capitalization in original).)

Similarly, Plaintiff's fifth stated cause of action - "Material Breach of Contract" - asserts again that "[t]he Deed does not provide the '[N]ote [H]older' with the option to delegate the 'Lender['s]' authority for a Notice of Acceleration." (Id. ¶ 53.) However, this version of Plaintiff's claim appears directed at SunTrust Bank and/or SunTrust Mortgage, in that Plaintiff contends that those Defendants "materially breached the Deed of Trust pursuant to paragraph 22 and the NOTE pursuant to paragraph 1" by way of notices identifying SunTrust Bank as the Note Holder. (Id.)

Plaintiff's third, fourth, and seventh causes of action seem to address the state court findings directly. Specifically, Plaintiff's third and fourth stated causes of action - "Malfeasance Breach of Oath of Office" and "Misconduct Breach of Oath of Office" - assert claims against Thomas for improperly issuing the Order authorizing STS to proceed with the foreclosure and for recognizing SunTrust Bank as the Note Holder. (Id. ¶¶ 39-47.) Plaintiff's

seventh stated cause of action - "Quiet Title" - alleges that the Deed of Trust itself is void because "[t]he claim, by SunTrust [Bank], of ownership of the NOTE and Deed of Trust gives rise that the Deed of Trust is separated from the NOTE" and "[t]he separation of the NOTE from the Deed of Trust VOIDS the Deed of Trust." (Id. ¶¶ 90-91.)

Finally, the sole cause of action not based on a Defendant improperly naming SunTrust Bank as Note Holder, Plaintiff's sixth stated cause of action - "Breach of Covenant" - apparently asserts that RFC failed to notify Plaintiff of the transfer of certain servicing responsibilities as required under 12 U.S.C. § 2605(b)(1). (Id. ¶¶ 81-82.) The factual matter related to this claim appears only under the heading of this cause of action and complains that "RFC acquired certain servicing rights and responsibilities with respect to the subject mortgage loan" (id. ¶ 78), as to which it failed to give Plaintiff notice (see id. ¶¶ 74-84).

Defendants have separately filed four Motions to Dismiss contending that Plaintiff's claims fail either pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure because this Court lacks jurisdiction, or pursuant to Rule 12(b)(6) because the Complaint fails to state a claim upon which relief can be granted. (See Docket Entries 7, 10, 28, 60.) Plaintiff has responded to each of Defendants' Motions. (See Docket Entries 38, 40, 65, 67.)

Defendants have not replied. (See Docket Entries dated June 27, 2011, to present.)

JURISDICTION

STS and HSB contend that the Court lacks subject matter jurisdiction over the claims against them because those claims do not present a federal question and supplemental jurisdiction should not apply. (See Docket Entries 8 at 4-5; 11 at 4-5.)[4] In addition, all Defendants argue the Rooker-Feldman doctrine bars Plaintiff's claims. (See Docket Entries 8 at 5-8; 11 at 6-8; 29 at 2-4; 62 at 4-8.) Because jurisdiction presents a threshold question, see Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94 (1998), the Court should address these issues first.

A. Federal Question Jurisdiction

Plaintiff admits that her claims against STS and HSB do not arise under federal law and that diversity of citizenship does not exist between her and STS or HSB. (See Docket Entry 39 at 11 ("Plaintiff's claims with respect to STS are not based upon a federal question and [P]laintiff does not argue this point." (emphasis in original)); id. at 12 ("Plaintiff admits no diversity of citizenship exists between STS and Plaintiff."); Docket Entry 41

[4] Although only STS and HSB raised the issue of federal question jurisdiction (see Docket Entries 8, 11, 29, 62), those arguments apply equally to all state causes of action asserted against the Defendants. Moreover, this Court "has an independent obligation to assess its subject-matter jurisdiction . . . ." Constantine v. Rectors & Visitors of George Mason Univ., 411 F.3d 474, 480 (4th Cir. 2005).

at 11 ("Plaintiff's claims with respect to HSB are not based upon a federal question and plaintiff does not argue this point." (emphasis in original); id. at 12 ("Plaintiff admits no diversity of citizenship exist between HSB and Plaintiff.").) Plaintiff, however, asserts that "[b]ecause the claims against both SunTrust Bank, SunTrust Mortgage [] and [STS and HSB] are so inter-related this Court has 'supplemental jurisdiction.'" (Docket Entry 39 at 12; Docket Entry 41 at 12.)

Federal courts may preside over state law claims in conjunction with federal law claims if said state law claims are "so related to claims in the action within such original jurisdiction that they form part of the same case or controversy . . . ." 28 U.S.C. § 1367(a). "[W]hether the federal-law claims and State-law claims are part of the same case is determined by whether they derive from a common nucleus of operative fact and are such that a plaintiff would ordinarily be expected to try them all in one judicial proceeding." Hinson v. Norwest Fin. S.C., Inc., 239 F.3d 611, 615 (4th Cir. 2001) (internal brackets and quotation marks omitted). A district court may properly decline to exercise supplemental jurisdiction over state law claims that "substantially predominate[] over the claim or claims over which the district court has original jurisdiction." 28 U.S.C. § 1367(c).

Although Plaintiff appears to base her contentions of supplemental jurisdiction on her fifth cause of action which is

asserted against SunTrust Bank and/or SunTrust Mortgage (see Docket Entry 39 at 12; see also Docket Entry 1, ¶¶ 22-28, 48-73), only Plaintiff's sixth cause of action, which is asserted against RFC (see Docket Entry 1, ¶¶ 74-84), arises under federal law and thus can provide the basis for supplemental jurisdiction for Plaintiff's state law claims. In this regard, Plaintiff's state law claims and her claim against RFC do not "derive from a common nucleus of operative fact," Hinson, 239 F.3d at 615. All of Plaintiff's causes of action, with the exception of Plaintiff's sixth cause of action against RFC, address perceived deficiencies in notices related to Plaintiff's foreclosure action and/or the foreclosure action itself specifically with respect to identification of SunTrust Bank as the Note Holder.

Plaintiff's cause of action against RFC is thus not only temporally distinct, but also concerns a Defendant named only in that claim (and includes none of the remaining Defendants); moreover, said cause of action addresses a completely separate scenario in that it complains that "[RFC] did not notice Plaintiff of transfer of certain servicing responsibilities." (Docket Entry 1, ¶ 82 (emphasis omitted).) The only relationship between Plaintiff's state law claims and her claim arising under federal law is a tenuous connection to her mortgage. Accordingly, because Plaintiff's state law causes of action are "separately maintainable and determinable without any reference to the facts alleged or

contentions stated in or with regard to," Hales v. Winn-Dixie Stores, Inc., 500 F.2d 836, 848 (4th Cir. 1974), Plaintiff's federal cause of action against RFC, supplemental jurisdiction does not exist with respect to the remainder of Plaintiff's claims.

B. Rooker-Feldman

Even if the Court exercised supplemental jurisdiction over Plaintiff's state law claims, Plaintiff's third, fourth, and seventh causes of action seek de facto appellate review of a state court judgment, which the Rooker-Feldman doctrine bars.

Rooker-Feldman precludes a district court from hearing an action "brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced." Exxon Mobil v. Saudi Basic Indus. Corp., 544 U.S. 280, 281 (2005). It properly applies where: "(1) the federal court plaintiff lost in state court; (2) the plaintiff complains of 'injuries caused by state-court judgments;' (3) the state court judgment became final before the proceedings in federal court commenced; and (4) the federal plaintiff 'invit[es] district court review and rejection of those judgments.'" Willner v. Frey, 243 F. App'x 744, 746 (4th Cir. 2007) (quoting Exxon, 544 U.S. at 284). "In the context of a state court foreclosure proceeding, *Rooker-Feldman* prohibits claims brought in federal court that may succeed only to the extent that the state court wrongly decided the foreclosure action." Poindexter v. Wells Fargo Bank, N.A., No.

3:10cv257-RJC-DLH, 2010 WL 3023895, at *2 (W.D.N.C. July 29, 2010) (unpublished) (internal quotation marks omitted). "[T]he *Rooker-Feldman* doctrine is particularly relevant when there is a means of appeal provided by the state." Radisi v. HSBC Bank USA, Nat'l Ass'n, No. 5:11CV125-RLV, 2012 WL 2155052, at *4 (W.D.N.C. June 13, 2012) (unpublished).

Under North Carolina law, before issuing the Order allowing STS to proceed with the foreclosure, Thomas, as Assistant Clerk of Superior Court of Cabarrus County, had to examine the proffered evidence and find the existence of, in relevant part: (1) a valid debt; (2) default; (3) the right to foreclosure under the instrument; and (4) notice. See N.C. Gen. Stat. § 45-21.16(d). A ruling for Plaintiff on any of her third, fourth, or seventh causes of action directly addresses these findings. Specifically, finding for Plaintiff on her seventh cause of action requires the Court to deem the Deed of Trust void, which would call the entire foreclosure action into question, and finding for Plaintiff on her third or fourth causes of action would require the Court to overturn the ultimate conclusions, embodied in the state court Order (see Docket Entry 1-5), regarding the holder of the Note and the ability of STS to proceed with the foreclosure.

In addition, Plaintiff's third and fourth causes of action include among the relief requested that the Court order "the Clerk of the General Justice Court North Carolina Cabarrus County to Set

Aside the ORDER of Jennifer F. Thomas file/case number 09 SP 1613 and to seal [it] from the general public" (Docket Entry 1, ¶¶ 33(i), 46(i)), and Plaintiff's seventh cause of action includes among the relief requested that the Court order "[RFC] to record a rescission of the Deed of Trust and all recorded foreclosing documents, registered with the Register of Deeds for North Carolina Cabarrus County" (id. ¶ 92(g)). This Court can grant such relief only by effectively overturning the state court foreclosure action. Finally, Plaintiff had the right to appeal the state court findings to the North Carolina district or superior court within ten days of the issuance of Thomas's Order, see N.C. Gen. Stat. § 45-21.16(d1), yet Plaintiff does not appear to have pursued that right.

On these facts, regardless of the correctness of the state court findings and the related foreclosure action, this Court does not represent the appropriate forum for addressing Plaintiff's concerns. The Rooker-Feldman doctrine applies and thus bars this Court from hearing Plaintiff's third, fourth, and seventh causes of action. See SunTrust Mortg., Inc. v. Pippin, No. 5:10CV1-RLV, 2012 WL 5023109, at *4 (W.D.N.C. Oct. 16, 2012) (unpublished) ("A judicial determination has already been made in the state court special proceeding that foreclosure upon the property . . . was, in fact, proper and consistent with applicable North Carolina law. Under the governing statute, [the losing party in that action] had the opportunity to appeal the foreclosure order. . . . Pursuant to

Rooker-Feldman, this [c]ourt may not sit in appellate review of the state court's judgment as to foreclosure."); In re Almanzar, Bankruptcy No. 12-80385C-13D, 2012 WL 4794361, at *3 (Bankr. M.D.N.C. Oct. 9, 2012) (unpublished) ("The state court found in the Foreclosure Order that Bank of America is the holder of the Note. The Assistant Superior Court [clerk] further determined that [the plaintiff] received proper notice of the foreclosure hearing. The Clerk's . . . order permitting foreclosure sale of [the plaintiff's] home was a final 'judicial act' appealable to the appropriate state court within ten days of its entry. . . . *Rooker-Feldman* prohibits this court from now asserting jurisdiction over [the plaintiff's] defenses against foreclosure, because these defenses can succeed only to the extent that [the plaintiff's] foreclosure case was wrongly decided - a determination which would require this court to exercise de facto appellate jurisdiction over the findings of the state court.").[5]

FAILURE TO STATE A CLAIM

Arguably, Rooker-Feldman does not apply to Plaintiff's first, second, and fifth causes of action to the extent they complain of

[5] Plaintiff concedes that the Rooker-Feldman doctrine bars her seventh cause of action for "Quiet Title," but maintains that her other causes of action remain viable. (See Docket Entry 66 at 12 ("The Seventh cause of action for 'QUIET TITLE' is admittedly within the confines of the *Rooker-Feldman* doctrine. All other causes of action in the Complaint fall outside the narrow corridors of the *Rooker-Feldman* doctrine.").) However, as to Plaintiff's third and fourth causes of action, she has cited no pertinent authority to support that contention (see id.) and independent research revealed none.

injuries inflicted as a result of HSB, STS, and SunTrust Bank/SunTrust Mortgage's actions in negligent misrepresentation, fraud and/or breach of contract rather than directly as a result of the state court judgment. See Davani v. Virginia Dep't of Transp., 434 F.3d 712, 713 (4th Cir. 2006) ("[T]he Rooker-Feldman doctrine applies only when the loser in state court files suit in federal district court seeking redress for an injury allegedly caused by the state court's decision itself." (emphasis added)); see also Lance v. Dennis, 546 U.S. 459, 464 (2006) (emphasizing limits on scope of Rooker-Feldman doctrine); Conklin v. Anthou, No. 12-1466, 2012 WL 3802281, at *3 (3d Cir. Aug. 30, 2012) (unpublished) ("[T]o the extent that [the plaintiff] is attempting to solicit direct federal review of the Pennsylvania courts' decisions, he is directly complaining of injuries caused by the state-court judgments and his efforts are therefore barred by *Rooker-Feldman*. But he is not prevented from otherwise attacking the parties to the foreclosure proceedings or alleging that the methods and evidence employed were the product of fraud or conspiracy, regardless of whether his success on those claims might call the veracity of the state-court judgments into question."). Plaintiff appears to argue as much in her briefing. (See Docket Entry 66 at 4 ("[T]his case does not stem from the foreclosure hearing itself or the determination made by the Clerk of Court. Rather, it seeks a determination of the truthfulness (veracity) of various

documentation, that in and of itself, violates the terms of the contract(s) and numerous federal and state statutes.").)

Regardless, to the extent the Court has jurisdiction over these claims, Plaintiff's first, second and fifth stated causes of action - "Misrepresentation Breach of Fiduciary Duty" against HSB, "Malicious Act" against STS, and "Material Breach of Contract" against SunTrust Bank and SunTrust Mortgage, respectively - fail to state a claim upon which relief can be granted. A complaint fails as a matter of law if it does not "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal citations omitted) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007)). In applying this standard, the Supreme Court has reiterated that "[a] document filed pro se is to be liberally construed and a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers." Erickson v. Pardus, 551 U.S. 89, 94 (2007) (internal citations and quotation marks omitted). However, the United States Court of Appeals for the Fourth Circuit has "not read Erickson to undermine Twombly's requirement that a pleading contain more than labels and conclusions," Giarratano v. Johnson, 521 F.3d 298, 304 n.5 (4th Cir. 2008) (internal quotation marks omitted) (applying Twombly standard in dismissing pro se complaint); accord Atherton v. District of Columbia Off. of Mayor,

567 F.3d 672, 681–82 (D.C. Cir. 2009) ("A pro se complaint . . . 'must be held to less stringent standards than formal pleadings drafted by lawyers.' But even a pro se complainant must plead 'factual matter' that permits the court to infer 'more than the mere possibility of misconduct.'" (quoting Erickson, 551 U.S. at 94, and Ashcroft, 556 U.S. at 679, respectively)).

Both Plaintiff's claim for "Misrepresentation Breach of Fiduciary Duty" against HSB and for "Malicious Act" against STS appear to include claims for either negligent misrepresentation or fraud based on notices that Defendants sent to Plaintiff identifying SunTrust Bank as the Note Holder. (See Docket Entry 1, ¶¶ 17-28.) Both of those claims require reliance (or actual deception) and resulting harm or detriment. See Ragsdale v. Kennedy, 286 N.C. 130, 138, 209 S.E.2d 494, 500 (1974) (listing elements of fraud claim); Simms v. Prudential Life Ins. Co. of Am., 140 N.C. App. 529, 532, 537 S.E.2d 237, 241 (2000) (listing elements of negligent misrepresentation claim). Plaintiff fails to allege that she relied on, or was deceived by, any identification of SunTrust Bank as the Note Holder, much less that the foreclosure (or any other detriment) may have resulted from her reliance on those alleged misrepresentations. (See Docket Entry 1.) Rather, the Complaint alleges that "[t]hese specious document(s), instrument(s), and affidavits presumably might mislead any lay person, ACLERK [sic] in this instant case, into believing all the

four elements required by the North Carolina Statutes were met prior to the issuance of an ORDER by ACLERK [sic] to proceed with a non-judicial foreclosure, and unquestionably the record of the court rebuts this presumption." (Id., ¶ 8 (emphasis added).)[6]

Moreover, to the extent Plaintiff's claim for "Misrepresentation Breach of Fiduciary Duty" seeks to assert a claim for breach of fiduciary duty against HSB, as Plaintiff's heading would indicate, Plaintiff similarly fails to allege that the purported action of HSB (i.e., naming SunTrust Bank as the Note Holder) constituted the proximate cause of injury to Plaintiff as that claim requires. (See Docket Entry 1; see also Green v. Freeman, ___ N.C. App. ___, ___, 733 S.E.2d 542, 550-51 (2012) ("This court has held that breach of fiduciary duty is a species of negligence or professional malpractice. Consequently, these claims require proof of an injury proximately caused by the breach of duty." (internal quotation marks and brackets omitted)).)

[6] Additionally, other courts have found similar claims for fraud barred by res judicata even where Rooker-Feldman does not apply. See Sessley v. Wells Fargo Bank, N.A., No. 2:11-cv-348, 2012 WL 726749, at *8-10 (S.D. Ohio Mar. 6, 2012) (unpublished) (finding claims based on fraud against the state court not barred by Rooker-Feldman, but nonetheless barred by Ohio's version of res judicata); Klein v. United States, No. 3:CV-11-2057, 2012 WL 928698, at *15 (M.D. Pa. Feb. 13, 2012) (unpublished) ("We find that [the] [p]laintiff's present fraud claims against [the] [d]efendants . . . are related to the assignment of the mortgage loan to U.S. Bank, as well as the foreclosure action U.S. Bank instituted against [the] [p]laintiff and that [the] [p]laintiff could have asserted his present claims in the . . . foreclosure action.").

Plaintiff's claim for "Material Breach of Contract" against SunTrust Mortgage and SunTrust Bank also fails as a matter of law. The Complaint alleges that SunTrust Bank and SunTrust Mortgage "materially breached the Deed of Trust pursuant to paragraph 22 and the NOTE pursuant to paragraph 1" because neither of those documents "provide the 'note holder' with the option to delegate the 'Lender[']s]' authority for a Notice of Acceleration." (Docket Entry 1, ¶ 53.) As an initial matter, Plaintiff's breach of contract claims against SunTrust Bank appear conflict with her own allegations that SunTrust Bank "has no possessory ownership in the Note or Deed of Trust" (id. ¶ 67), because, to the extent SunTrust Bank is not a party to those documents, it cannot be held liable for any breach. See Justice v. Dimon, No. 3:10cv413, 2011 WL 2183146, at *5 (W.D.N.C. June 6, 2011) (unpublished) ("Breach of contract can not be asserted against a person who was not a party to the contract sought to be enforced."). Regardless, as neither cited provision of the Note or Deed of Trust limits the method by which the Lender provides notice to Plaintiff (see Docket Entries 1-2 at 2; 1-3 at 14), Plaintiff's claims fail.[7]

[7] Within Plaintiff's claim for "Material Breach of Contract," the Complaint appears to offer several theories regarding why the Assignment to SunTrust Bank and the Appointment of STS are defective. (See Docket Entry 1, ¶¶ 56-72.) A finding for Plaintiff in this regard could only lead to the conclusion that "the state court wrongly decided the foreclosure action," Poindexter, 2010 WL 3023895, at *2, and, thus, for reasons discussed above, the Rooker-Feldman doctrine bars any claims based on such theories.

DOES 1-10

As a final matter, Plaintiff fails to allege a claim against Does 1-10. The Complaint's sole reference to Does 1-10 consists of the following:

> The Plaintiff is unaware of all the true names and lawful capacities of all the Defendant(s) sued and/or agents for the Defendant(s) sued herein as DOES 1 through 10, but is informed and believes and thereon alleges that additional defendants may be responsible in some manner for the acts alleged herein and/or discovered at some future date and/or purports to hold or claims to hold a legal or equitable right, title, estate, lien or other interest in the Property, which is subsequent to and subject to the Plaintiff's. Plaintiff therefore sues said [D]efendants by such fictitious names and will seek leave of the Court to amend this Complaint to their true names, capacities and add any additional causes of action that be [sic] ascertained.

(Docket Entry 1, ¶ 10 (emphasis added).)

"John Doe suits are permissible only against 'real, but unidentified, defendants.'" Chidi Njoku v. Unknown Special Unit Staff, No. 99-7644, 217 F.3d 840 (table), 2000 WL 903896, at *1 (4th Cir. 2000) (unpublished) (quoting Schiff v. Kennedy, 691 F.2d 196, 197 (4th Cir. 1982)). Plaintiff's purely speculative assertion does not represent a claim against "real, but unidentified, defendants," Shiff, 691 F.2d at 197, in that it does not allege any acts by or claims against the Doe Defendants. Accordingly, the Court should dismiss Does 1-10 from this action.

CONCLUSION

This Court lacks jurisdiction over all but Plaintiff's sixth cause of action. Moreover, because a finding for Plaintiff on her

third, fourth, or seventh causes of action would require the Court to find that "the state court wrongly decided the foreclosure action," Poindexter, 2010 WL 3023895, at *2, the Rooker-Feldman doctrine bars this Court from hearing those claims. The Complaint otherwise fails to state a claim with respect to the first, second, and fifth causes of action as well as against Does 1-10. Finally, Plaintiff's cause of action against RFC should be stayed in light of RFC's bankruptcy filing.

IT IS THEREFORE RECOMMENDED that the Motions [sic] to Dismiss of Defendant Substitute Trustee Services, Inc. (Docket Entry 7); Motions [sic] to Dismiss of the Law Firm of Hutchens, Senter & Britton, P.A. (Docket Entry 10); Motion to Dismiss of Defendant Jennifer F. Thomas (Docket Entry 28); and SunTrust Mortgage, Inc., SunTrust Bank, and Residential Funding Company, LLC's Motion to Dismiss for Lack of Subject Matter Jurisdiction (Docket Entry 60) be granted in that the Court should dismiss Plaintiff's first, second, third, fourth, fifth, and seventh causes of action for lack of jurisdiction. Alternatively, the Court should dismiss Plaintiff's third, fourth, and seventh causes of action pursuant to the Rooker-Feldman doctrine and Plaintiff's first, second, and fifth causes of action, as well as any claims against Does 1-10, for failure to state a claim upon which relief can be granted.

IT IS FURTHER RECOMMENDED that Plaintiff's sixth cause of action, brought solely against RFC, be stayed in light of RFC's Notice of Bankruptcy (Docket Entry 70).

/s/ L. Patrick Auld
L. Patrick Auld
United States Magistrate Judge

May 23, 2013

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

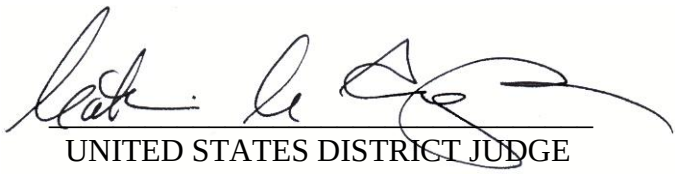
JENNIFER L. WILSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	1:11-CV-390
	)	
SUNTRUST BANK, et al.,	)	
	)	
Defendants.	)	

JUDGMENT

For the reasons set forth in the Order filed contemporaneously with this Judgment,

It is hereby **ORDERED AND ADJUDGED** that this case is **DISMISSED** as to all defendants except Residential Funding Company, LLC.

This the 5th day of July, 2013.



UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JENNIFER L. WILSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	1:11-CV-390
	)	
SUNTRUST BANK, et al.,	)	
	)	
Defendants.	)	

ORDER

The Recommendation of the United States Magistrate Judge was filed in accordance with 28 U.S.C. § 636(b) and, on May 23, 2013, was served on the parties. The plaintiff, Jennifer L. Wilson, filed a document on June 10, 2013, which the Court will treat as objections. (Docket Entry 73.) The Court has reviewed the recommendation de novo as to all matters as to which Ms. Wilson objected and has otherwise reviewed for clear error.

The Court adopts the Recommendation in full. This Court lacks jurisdiction over all but plaintiff's sixth cause of action. Moreover, the Rooker-Feldman doctrine bars this Court from hearing her third, fourth, or seventh causes of action and the Complaint otherwise fails to state a claim with respect to the first, second, and fifth causes of action as well as against Does 1-10. Finally, Plaintiff's cause of action against Residential Funding Company, LLC, should be stayed in light of RFC's bankruptcy filing.

IT IS THEREFORE ORDERED that:

1. The Motions [sic] to Dismiss of Defendant Substitute Trustee Services, Inc. (Docket Entry 7); Motions [sic] to Dismiss of the Law Firm of Hutchens, Senter & Britton,

P.A. (Docket Entry 10); and Motion to Dismiss of Defendant Jennifer F. Thomas (Docket Entry 28) are **GRANTED**;

2. SunTrust Mortgage, Inc., SunTrust Bank, and Residential Funding Company, LLC's Motion to Dismiss for Lack of Subject Matter Jurisdiction (Docket Entry 60) is **GRANTED** as to SunTrust Mortgage, Inc. and SunTrust Bank and held in abeyance as to RFC;
3. Plaintiff's first, second, third, fourth, fifth, and seventh causes of action are **DISMISSED** for lack of jurisdiction; Plaintiff's third, fourth, and seventh causes of action are **DISMISSED** pursuant to the Rooker-Feldman doctrine, and Plaintiff's first, second, and fifth causes of action, as well as any claims against Does 1-10, are **DISMISSED** for failure to state a claim upon which relief can be granted;
4. Plaintiff's sixth cause of action, brought solely against RFC, is **STAYED** in light of RFC's Notice of Bankruptcy (Docket Entry 70).

This the 5th day of July, 2013.

UNITED STATES DISTRICT JUDGE

Exhibit 2

[redacted]

NORTH CAROLINA

CABARRUS COUNTY

IN THE GENERAL COURT OF JUSTICE

BEFORE THE CLERK

In the Matter of the foreclosure of a Deed of Trust executed by Jennifer L. Wilson in the original amount of $296,000.00 dated January 18, 2007, recorded in Book 7295, Page 122, Cabarrus County Registry Substitute Trustee Services, Inc., Substitute Trustee

ORDER
09 SP 1613

THIS CAUSE coming on to be heard before the undersigned Honorable Asst., Clerk of Superi Court of Cabarrus County and having heard the evidence and examined the appropriate affidavits and certified copies documents, makes the following findings of fact:

1. That SunTrust Bank is the holder of the note sought to be foreclosed and it evidences that this is a val debt owed by Jennifer L. Wilson.

2. That said note is now in default and the instrument securing said debt gives the note holder the right to foreclose under a power of sale.

3. That notice of this hearing has been served on the record owners of the real estate and to all other persons against whom the note holder intends to assert liability for the debt.

4. That the debtors have shown no valid legal reason why foreclosure should not commence.

5 ☑ That the underlying mortgage debt is not a subprime loan as defined in G.S. 45-101(4)

OR

☐ The loan is a subprime loan under G.S. 45-101(4) and that the pre-foreclosure notice under G.S. 45-102 was provided in all material respects, and that the periods of time established by Article 11 of this Chapter have elapsed.

NOW, THEREFORE, I find that the Substitute Trustee can proceed to foreclose under the terms of the above described Deed of Trust and give notice of and conduct a foreclosure sale as by statute provided.

This 25th day of June, 2010.

Asst. Clerk of Superior Court

Case No: 1020910