United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
September 10, 2020
Lyle W. Cayce
Clerk

No. 19-50916
Summary Calendar

ELEISA K. JORDAN,

Plaintiff—Appellant,

versus

U.S. BANK HOME MORTGAGE; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INCORPORATED; CMC HOME LENDING, FORMERLY KNOWN AS CORNERSTONE MORTGAGE COMPANY,

Defendants—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:18-CV-197

Before DAVIS, STEWART, and DENNIS, *Circuit Judges*.

PER CURIAM:*

Eleisa Jordan purchased real property in Williamson County, Texas in 2012, through a Federal Housing Authority mortgage loan financed by

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

Cornerstone Mortgage Company ("Cornerstone").[1] Jordan executed a Deed of Trust, naming Mortgage Electronic Registrations Systems, Inc. ("MERS") as the beneficiary and entitling MERS to a lien on the property. MERS then assigned its interest in the Deed of Trust to U.S. Bank National Association ("U.S. Bank").

Facing foreclosure on the property, Jordan brought a host of claims against U.S. Bank, MERS, and Cornerstone. Against all parties, she alleged a claim to quiet title and a breach of duty of good faith and fair dealing under the Uniform Commercial Code as adopted in Texas. She also brought a claim under the Real Estate Settlement Procedures Act alleging that U.S. Bank engaged in "dual tracking." Defendants moved for dismissal under Rule 12(b)(6), and the magistrate judge issued a report recommending their motions be granted. The district court adopted the magistrate judge's recommendation and dismissed Jordan's complaint with prejudice. She timely appealed.

"We review a district court's grant of a motion to dismiss under Rule 12(b)(6) de novo." *Hoffman v. HSPCA et al.*, 955 F.3d 440, 443 (5th Cir. 2020). We agree with the district court that Jordan has failed to state a claim against any defendant.

First, Jordan's quiet-title claims do not pass muster because there is no dispute over title. *See Lance v. Robinson*, 543 S.W.3d 723, 738 (Tex. 2018) (quiet title claims arise when there exists a cloud over the property). Having assigned its rights, Cornerstone has no right, interest, or title to the property, and asserts no adverse claim here. *See Montenegro v. Ocwen Loan Servicing, LLC*, 419 S.W.3d 561, 572 (Tex. App.—Amarillo 2013, pet. denied) (suit to quiet title requires that title to the property is affected by a claim by the

[1] Jordan refers to Cornerstone as "CMC Home Lending" in her complaint.

defendant). As to MERS and U.S. Bank, Jordan's argument rests on MRS not having any interest in the property to assign. But MERS was the mortgagee and thus could assign its interest to U.S. Bank. *See Farkas v. GMAC Mortg., L.L.C.*, 737 F.3d 338, 342 (5th Cir. 2013) (per curiam) (observing that MERS, as a mortgagee, and its assignees were permitted to bring foreclosure actions).

We also reject Jordan's breach of good faith and fair dealing claims against MERS and U.S. Bank because she alleged no facts suggesting that a special relationship existed between the mortgagor and mortgagee here. *See Fed. Deposit Ins. Corp. v. Coleman*, 795 S.W.2d 706, 709 (Tex. 1990) ("The relationship of mortgagor and mortgagee ordinarily does not involve a duty of good faith."). We similarly reject her claim against Cornerstone.

Jordan's dual-tracking claim against U.S. Bank fails as well. Dual tracking occurs when a lender actively pursues foreclosure while simultaneously considering the borrower for loss mitigation options. 12 C.F.R. § 1024.41. We agree with the district court—Jordan has not pled facts that amount to a plausible claim of dual tracking.

Finally, for the first time on appeal, Jordan raises a constitutional challenge to Texas Property Code § 51.002. Because Jordan did not raise this claim before the district court, we need not consider it for the first time on appeal. *See Leverette v. Louisville Ladder Co.*, 183 F.3d 339, 342 (5th Cir. 1999).

The district court's judgement is AFFIRMED.