2020 Mont. B.R. 130

**UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF MONTANA**

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| In re<br><br>**LEILANI HOPE RICKERT**,<br><br>Debtor(s). | Case No. **18-60937-13** |
| **LEILANI HOPE RICKERT,**<br><br>Plaintiff(s).<br><br>-vs-<br><br>**SPECIALIZED LOAN SERVICING, LLC, BENJAMIN J. MANN, BRIAN PORTER, NATALIE LEA, MUKTA SURI, and FEDERAL HOME LOAN MORTGAGE CORPORATION,**<br><br>Defendant(s). | Adv. No. **20-01003-BPH** |

# O R D E R

At Butte in said District this 9th day of April, 2020.

Plaintiff commenced this Adversary Proceeding on March 6, 2020.[1] Defendants filed a Motion to Dismiss ("Motion") on March 18, 2020, at ECF No. 4. Defendants seek dismissal of

[1] Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all "Rule" references are to the Federal Rules of Bankruptcy Procedure, and all "Civil Rule" references are to the Federal Rules of Civil Procedure. All references to "ECF No." are to the numbers assigned to the documents filed in the case as they appear on the docket maintained by the Clerk of Court.

this case under Civil Rule 12(b)(6). Defendants' Motion is accompanied by a memorandum in support, and a Memorandum and Judgment entered by the Bankruptcy Appellate Panel of the Ninth Circuit ("BAP") on March 9, 2020. Plaintiff opposes Defendants' Motion at ECF No. 8. Plaintiff's response sets the matter for hearing, but Plaintiff requests in her response that the Court make a ruling without a hearing given the COVID-19 pandemic. Defendants filed a reply at ECF No. 9.

**I. The Standard to be applied under Civil Rule 12(b)(6).**

In addressing a Civil Rule 12(b)(6) challenge, the Court accepts all nonconclusory factual allegations in the complaint as true, *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555-556, 127 S.Ct. 1955 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949-50 (2009)), and construes the pleading in the light most favorable to the nonmoving party. *Tanner v. Heise*, 879 F.2d 572, 576 (9th Cir. 1989). "[D]ismissal without leave to amend is improper unless it is clear, upon de novo review, that the complaint could not be saved by any amendment." *Schneider v. California Department of Corrections*, 151 F.3d 1194, 1196 (9th Cir. 1998) (quoting *Chang v. Chen*, 80 F.3d 1293, 1296 (9th Cir. 1996)).

To survive a motion to dismiss under Civil Rule 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.'" *Iqbal*, 556 U.S. at 378, 129 S.Ct. at 1949 (citing *Twombly*, 550 U.S. at 570.) "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a 'probability requirement,' but it asks for more than a sheer possibility that a defendant has acted unlawfully. *Id.*

Following the Supreme Court's decision in *Iqbal*, the Ninth Circuit explained:

> [W]e begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. We disregard threadbare recitals of elements of a cause of action, supported by mere conclusory statements. After eliminating such unsupported legal conclusions, we identify well-pleaded factual allegations, which we assume to be true, and then determine whether they plausibly give rise to an entitlement to relief. To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face; that is, plaintiff must plead factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.
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> [*Telesaurus VPC, LLC v. Power*, 623 F.3d 998, 1003 (9th Cir. 2010)] (citations, alterations and internal quotation marks omitted); *see Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 1949, 173 L.Ed.2d 868 (2009).

*Alvarez v. Chevron Corp.*, 656 F.3d 925, 930-31 (9th Cir. 2011) (quoting *Telesaurus*).

Later in *Levitt v. Yelp! Inc.*, 765 F.3d 1123, 1135 (9th Cir. 2014), quoting *Starr v. Baca*, 652 F.3d 1202, 1216 (9th Cir. 2011), the Ninth Circuit settled on a two-step process for evaluating pleadings:

> First, to be entitled to the presumption of truth, allegations in a complaint or counterclaim may not simply recite the elements of a cause of action, but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively. Second, the factual allegations that are taken as true must plausibly suggest an entitlement to relief, such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continued litigation.

In essence, Plaintiff's factual allegations mirror and duplicate her objection to the SLS proof of claim. Even if, under the liberal standard afforded pro se litigants, Plaintiff satisfied the first element of the test, Plaintiff cannot "plausibly suggest an entitlement to relief."

To be clear, this Court does not conclude that the complaint gives Defendants fair notice that enables them to defend themselves against all the different allegations and claims Plaintiff may be asserting. At best, Plaintiff's allegations challenge SLS' standing and assert some ongoing fraud on the court by SLS and their counsel, claims that have already been adjudicated

and reviewed on appeal. At worst, Plaintiff's complaint is an amalgamation of citations to disparate statutes and cases that the Defendants must ferret through to find some thread, or theory to defend against. Defendants engaged in this exercise and grouped Plaintiff's claims in seven buckets. The first bucket, "claims addressed by the BAP" is discussed below. However, the remaining 6 buckets, Defendants have persuasively argued in the Motion that the complaint reflects, "a scattershot, 'kitchen sink' approach that deprives Defendants of an ability to meaningfully understand and respond to them," or are otherwise pled so inadequately that they fail as a matter of law.

**II. Law of the Case Doctrine.**

Plaintiff cannot establish that she is entitled to relief, because this Court and the BAP already considered Plaintiff's claims against SLS in conjunction with Plaintiff's objection to the SLS proof of claim. "The law of the case doctrine generally precludes reconsideration of an issue that has already been decided by the same court, or a higher court in the identical case." *Rocky Mountain Farmers Union v. Corey*, 913 F.3d 940, 951 (9th Cir. 2019). "[W]hen matters are decided by an appellate court, its rulings, unless reversed by it or a superior court, bind the lower court." *United States v. Houser*, 804 F.2d 565, 567 (9th Cir. 1986). "To show that an issue is not controlled by the law of the case, parties must show that it was not decided explicitly or by necessary implication by a prior decision." *Rocky Mt. Farmers*, 913 F.3d at 951.

Despite having made reasonable allowance for Defendant's pro se status and construing her papers liberally, *see Ozenne v. Bendon (In re Ozenne)*, 337 B.R. 214, 218 (9th Cir. BAP 2006), the complaint repeats, mirrors and duplicates issues that have already been finally adjudicated by this Court and the BAP, both explicitly and implicitly. In her complaint, Plaintiff

seeks damages against the Defendants in the amount of $176,550. In support of her request for damages, Plaintiff avers:

> 94. SLS LLC is not a party in interest in any way in these proceedings.
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> 95. Attorneys Natalie E. Porter, Mukta Suri, Brian J. Porter & Benjamin J. Mann have committed perjury under 18 U.S. Code 1621 by falsifying the truth whether spoken or in writing, concerning these matters that are material to the Defendant, "SLS" proof of claim, pleadings and hearings in regards to this bankruptcy Proceedings.
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> 96. Natalie E. Porter, Mukta Suri, Brian J. Porter & Benjamin J. Mann do not represent FHLMC or SunTrust Mortgage, Inc. and have no valid contract to represent them and all of these defendant have conspired fraudulently though the filing and misrepresentation of forged and fraudulent mortgage assignments before this court in order to obtain money, fees and real property through false pretense and unjust enrichment by deceiving and defrauding this Debtor, this court and the Trustee.
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> 97. Attorney Benjamin J. Mann, Natalie E. Lea, Mutka Suri and Brian J. Porter are not attorneys for and so not represent any valid party in interest in this case that has any valid claim of debt against this Debtor.
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> 98. Benjamin J. Mann, Brian J. Porter and Natalie E. Lea and Mukta Suri have relied upon and misrepresented and conspired to produce and produced to this court false Mortgage Assignments involving FHLMC, Specialized Loan Servicing, LLC, MERS, SunTrust Mortgage, Inc. and others.
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> 99. SLS LLC has violated this Bankruptcy Court's rules by and through BRIAN J PORTER & BENJAMIN J MANN by attempting to collect a bad debt protected by this Bankruptcy, and which is fraudulently contrived since no debt exists between the Plaintiff and the Defendant. Natalie E. Porter, Mukta Suri, Benjamin J. Mann and Brian J. Porter does not subservice for any party in interest in this case.
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> 100. SLS LLC is not a party in interest to this case and has fraudulently misrepresented to this court a nonexistent interest in Debtors' property in order to obtain money, fees and real property from this court, this debtor, FHMLC and the Trustee under false pretenses.

Per a Memorandum of Decision entered April 29, 2019, at ECF No. 144 and an Order entered that same date filed at ECF Nos. 145 through 147 in Debtor's main bankruptcy case, the Court found "SLS ha[d] standing to file its proof of claim as the party entitled to enforce the Deed of

Trust signed by Debtor under Montana law" and granted Specialized Loan Servicing, LLC ("SLS") relief from the automatic stay. The Court also overruled Debtor's objection to SLS's Proof of Claim No. 5. The Court's April 29, 2019, Memorandum of Decision and Order are adopted herein by reference. Debtor appealed the Court's April 29, 2019, Memorandum of Decision and Order to the BAP.

The BAP affirmed this Court's decision. *See* attachments 1 and 2 to Defendants' Motion at ECF No. 4. The BAP succinctly characterized Debtor's position in part as, "Debtor objected to SLS's proof of claim on the ground that SLS is not the real party in interest entitled to enforce the note. . . . She has argued at various times that either Sun Trust or Freddie Mac is the holder of the note . . . ." Later the BAP noted, "Debtor persists in her argument that SLS did not have standing to file a proof of claim in her bankruptcy." And, after reciting in part her various arguments on appeal, including that "SLS committed fraud upon the court," the BAP concluded "there is no basis in law or fact to support any of these arguments." The cognizable portions of Plaintiff's complaint are a reassertion of the very claims and arguments that have already been addressed explicitly and implicitly by this Court and the BAP.

Law of the case doctrine bars Plaintiff from relitigating matters that were previously decided by this Court, and the BAP. Virtually none of the facts alleged by Plaintiff are entitled to any presumption of truth. Further, after considering this Court and the BAP's prior decisions, many of the alleged facts are contrary to the findings and conclusions of those decisions. Plaintiff's complaint is implausible and allowing Plaintiff to amend her complaint would not cure its deficiencies. Accordingly,

IT IS ORDERED that the Motion filed at ECF No. 4 is granted; and this Adversary Proceeding is dismissed.

IT IS FURTHER ORDERED that the hearing on the Motion scheduled for April 28, 2020, is vacated.

BY THE COURT:

Hon. Benjamin P. Hursh
United States Bankruptcy Court
District of Montana