

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
CALIFORNIA

Hannonen v. McCloskey

No. 3:24-CV-02408-BEN-BLM (S.D. Cal. May 5, 2025) · No. 3:24-CV-02408-BEN-BLM · Decided May 6,
2025

OPINION

Hannonen v. McCloskey

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 LEENA HANNONEN, an individual; Case No.: 3:24-CV-02408-BEN-BLM AGNES
BRADSHAW, an individual, 12

ORDER GRANTING DEFENDANTS’

Plaintiff,

13 MOTION TO DISMISS

v. PLAINTIFFS’ FIRST AMENDED

14

COMPLAINT

MARK McCLOSKEY, an individual; 15 TIMOTHY M. RYAN, an individual; 16 ANDREW J.
MASE, an individual; MATTHEW H. AGUIRRE, an individual; 17

THE RYAN LAW FIRM, APC, a

18 California Professional Corporation; and

DOES 5-25,

19 Defendant. 20

21 Before the Court is the Motion to Dismiss the First Amended Complaint (“FAC”) 22 filed by
Defendants Mark McCloskey, Timothy M. Ryan, Andrew J. Mase, Matthew H. 23 Aguirre, and
The Ryan Firm, APC (collectively, “Defendants”) pursuant to Federal Rule 24 of Civil Procedure
12(b)(6). The Court has considered the Motion (ECF No. 13), 25 Plaintiffs’ Opposition (ECF No.
14), Defendants’ Reply (ECF No. 16), and the record in 26 this case. For the reasons set forth, the
Motion is GRANTED, and the FAC is 27 DISMISSED. 28

1 I. BACKGROUND

2 This case arises from Plaintiffs Leena Hannonen and Agnes Bradshaw’s allegations 3 that a
Substitution of Trustee (“SOT”) recorded in San Diego County in 2017 was 4 fraudulently
executed by Defendant Mark McCloskey, a former employee of Specialized 5 Loan Servicing,
LLC. Plaintiffs contend that McCloskey forged a notary’s signature and 6 transmitted the

document from Colorado to California for recording, resulting in an 7 unlawful foreclosure on their property. They further allege that attorneys from The Ryan 8 Law Firm, APC—Timothy M. Ryan, Andrew J. Mase, and Matthew H. Aguirre 9 (collectively, “Attorney Defendants”)—engaged in fraud and racketeering by filing 10 documents referencing the disputed SOT in unrelated litigation. The FAC asserts 11 multiple causes of action, including fraud, identity theft, RICO violations, cancellation of 12 instruments, conversion, and violation of California and federal statutes. 13 Defendants filed their Motion to Dismiss on February 25, 2025 (ECF No. 13), 14 properly noticed for hearing on March 31, 2025. Plaintiff Hannonen filed an opposition 15 on March 18, 2025 (ECF No. 14), and Defendants replied on March 24, 2025. (ECF No. 16 16). The matter was taken under submission without oral argument.

17 II. LEGAL STANDARD

18 Under Federal Rule of Civil Procedure 12(b)(6), a court may dismiss a complaint if it 19 fails to state a claim upon which relief can be granted. To survive dismissal, the 20 complaint must allege facts sufficient to “state a claim to relief that is plausible on its 21 face,” allowing the court to draw a reasonable inference of liability. *Ashcroft v. Iqbal*, 22 556 U.S. 662, 678 (2009). The Court accepts all factual allegations as true, but does not 23 need to accept legal conclusions couched as facts. *Bell Atlantic Corp. v. Twombly*, 550 24 U.S. 544, 555 (2007). As pro se litigants, Plaintiffs’ pleadings are construed liberally. 25 *Haines v. Kerner*, 404 U.S. 519, 520 (1972). However, they must still comply with 26 procedural rules and substantive law. *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987). 27 Leave to amend is denied if the amendment would be futile. *Flowers v. First Hawaiian* 28 Bank, 295 F.3d 966, 976 (9th Cir. 2002) (citations omitted).

1 III. DISCUSSION

2 The First Amended Complaint (“FAC”) is both procedurally and substantively 3 deficient in ways that preclude any claim from surviving dismissal under Federal Rule of 4 Civil Procedure 12(b)(6). Although Plaintiffs allege serious misconduct stemming from 5 the 2017 execution and recording of a Substitution of Trustee (“SOT”) by Defendant 6 Mark McCloskey—and its later use in litigation by the Attorney Defendants—the claims 7 are untimely, barred by immunity doctrines, or fail to meet applicable pleading standards. 8 The combination of expired limitations periods, application of California’s litigation 9 privilege, lack of standing, and insufficient factual allegations renders the FAC legally 10 inadequate. Amendment would be futile for the following reasons. 11 Plaintiffs’ claims against McCloskey are time-barred. The FAC alleges that 12 McCloskey executed and transmitted the disputed SOT for recording on or about

13 September 18, 2017. Although Plaintiff Hannonen contends she discovered the alleged 14 forgery in 2022 (FAC ¶ 26), this assertion is contradicted by judicially noticeable filings 15 from a 2018 wrongful foreclosure action Hannonen filed in San Diego Superior Court. 16 That earlier lawsuit specifically challenged the trustee’s authority and referenced the 17 same SOT. (See Request for Judicial Notice, Ex. 3, at 9.) The Court may properly 18 consider these public records under *MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 19 (9th Cir. 1986), and Branch

v. Tunnell, 14 F.3d 449, 454 (9th Cir. 1994). Under well- 20 established law, “[a] claim accrues when the plaintiff knows or has reason to know of the 21 injury.” Bitarafan v. Claremont Police Dep’t, 2024 U.S. Dist. LEXIS 192881, at *5 (C.D. 22 Cal. Oct. 23, 2024). Hannonen’s 2018 court filing demonstrates actual or constructive 23 knowledge of the alleged injury no later than December 24, 2018. Her reliance on the 24 discovery rule is therefore unavailing. Furthermore, the FAC fails to allege any post- 25 2018 conduct by McCloskey that would qualify as active concealment, a requirement for 26 tolling under the fraudulent concealment doctrine. See Regents of Univ. of Cal. v. 27 Superior Court, 20 Cal. 4th 509, 533 (1999). 28 /// 1 Each of Plaintiffs’ claims against McCloskey is governed by a limitations period that 2 has expired. Fraud is subject to a three-year statute of limitations under Cal. Civ. Proc. 3 Code § 338(d). RICO claims must be brought within four years, as established in Agency 4 Holding Corp. v. Malley-Duff & Assocs., 483 U.S. 143, 156 (1987). Identity theft claims 5 under Cal. Civ. Code § 1798.93 and unfair competition claims under Cal. Bus. & Prof. 6 Code § 17208 both carry four-year limitations periods. Conversion claims are limited to 7 three years under Cal. Civ. Proc. Code § 338(b), while FDCPA claims are limited to one 8 year under 15 U.S.C. § 1692k(d), and claims under the Rosenthal Act must also be filed 9 within one year per Cal. Civ. Code § 1788.30(f). Quantum meruit actions are governed 10 by two years, as explained in Reeve v. Meleyco, 46 Cal. App. 5th 1092, 1000 (Ct. App. 11 2020), and cancellation of instruments must be brought within four years, per Costa 12 Serena Owners Coalition v. Costa Serena Architectural Comm., 175 Cal. App. 4th 1175, 13 1195 (Ct. App. 2009). This action was filed on December 20, 2024, nearly six years after 14 Plaintiffs had notice of the underlying facts. No equitable tolling applies, considering 15 Hannonen’s prior litigation on the same facts. See Wu v. Sunrider Corp., 2018 U.S. Dist. 16 LEXIS 227591, at *15 (C.D. Cal. May 22, 2018). Thus, all claims against McCloskey 17 are untimely, and any amendment would be futile. 18 The claims against the Attorney Defendants, while not time-barred, are barred by 19 California’s absolute litigation privilege, codified at Civil Code § 47(b). Plaintiffs allege 20 that these Defendants engaged in fraud and racketeering by submitting pleadings 21 referencing the disputed SOT in unrelated litigation. (FAC ¶ 3.) However, the litigation 22 privilege applies to all communications made in judicial or quasi-judicial proceedings by 23 litigants or other participants authorized by law, when made to achieve the objects of the 24 litigation and with some logical connection to the action. Silberg v. Anderson, 50 Cal. 3d 25 205, 212 (1990).¹ California courts have afforded this privilege an expansive reach, 26 27 1 “The usual formulation is that the privilege applies to any communication (1) made in 28 1 emphasizing that it is absolute, even if inequitable. Id. at 214. As the court confirmed in 2 Steinmeyer v. Lab. Corp. of Am. Holdings, 676 F. Supp. 3d 851, 860 (S.D. Cal. 2023), the 3 privilege shields litigation conduct—even when allegedly fraudulent—so long as the 4 communications are related to judicial proceedings. 5 Plaintiffs do not allege that the Attorney Defendants executed the SOT, notarized 6 documents, or participated in foreclosure activity. Rather, Plaintiffs allege they are 7 attorneys who filed documents in litigation. The privilege,

therefore, immunizes them 8 from all state law claims. 9 In addition to these procedural defects, the FAC suffers from substantive pleading 10 deficiencies. The fraud claims fail to meet the heightened requirements of Federal Rule 11 of Civil Procedure 9(b), which demands specific allegations of the “who, what, when, 12 where, and how” of the alleged fraudulent conduct. *Yazdanpanah v. Sacramento Valley 13 Mortg. Grp.*, No. C 09-02024, 2009 U.S. Dist. LEXIS 111557, at *8 (N.D. Cal. Dec. 1, 14 2009); *Swartz v. KPMG LLP*, 476 F.3d 756, 764–65 (9th Cir. 2007). Plaintiffs do not 15 identify any fraudulent statement made directly to them or show that they relied on the 16 SOT to their detriment. Instead, the FAC alleges reliance by third parties. But California 17 law requires actual reliance by the plaintiff. *Lazar v. Superior Court*, 12 Cal. 4th 631, 18 638 (1996). 19 The RICO claim under 18 U.S.C. § 1962(c) is also deficient. A valid RICO claim 20 requires allegations of an enterprise and a “pattern” of racketeering activity, meaning at 21 least two predicate acts and continuity. *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1481 22 (9th Cir. 1997). Plaintiffs rely on a single incident involving the allegedly fraudulent 23 24 25 law; (3) to achieve the objects of the litigation; and (4) that have some connection or logical relation to the action.” “[The] principal purpose of section 47(b) is to afford 26 litigants. . .the utmost freedom of access to the courts without fear of being harassed 27 subsequently by derivative tort actions.” *Id.* at 213. Additionally, “California courts have given the privilege an expansive reach and held that the privilege is absolute, even if 28 1 SOT. No other predicate acts are alleged, and Plaintiffs fail to establish any direct injury, 2 which is essential for RICO standing. See *Canyon Cty. v. Syngenta Seeds, Inc.*, 519 F.3d 3 969, 980 (9th Cir. 2008). Like the fraud claim, the RICO claim is also time-barred. 4 The identity theft claims under Cal. Civ. Code § 1798.93 are inadequately pleaded. 5 While Plaintiffs allege that McCloskey forged Bradshaw’s name, they do not allege that 6 Defendants obtained credit, goods, or services through unauthorized use of Plaintiffs’ 7 information, as required under Cal. Civ. Code § 1798.92. Moreover, Hannonen lacks 8 standing to assert claims based on any alleged injury to Bradshaw. 9 The claims for cancellation of instruments and “title theft” also fail as a matter of 10 law. California courts require borrowers to allege tender of the outstanding mortgage 11 debt before seeking to invalidate foreclosure-related documents. *Armendariz v. JP 12 Morgan Chase Bank N.A.*, No. 11cv137 (AJB), 2011 U.S. Dist. LEXIS 166548, at *12– 13 13 (S.D. Cal. Nov. 10, 2011). Plaintiffs do not allege tender. Additionally, the SOT is 14 presumed valid under Cal. Civ. Code § 2934a(d)(4), and Plaintiffs have not shown that 15 they have borrower standing to challenge it. See *Saterbak v. JPMorgan Chase Bank*, 16 N.A., 245 Cal. App. 4th 808, 815 (2016). 17 The statutory claims under California’s Homeowner Bill of Rights, specifically 18 Cal. Civ. Code §§ 2923.55 and 2924.17 are inapplicable here. These provisions apply 19 only to claims brought against mortgage servicers. Defendants are not alleged to be 20 mortgage servicers, and even if they were, the purported 2012 violation predates the 21 enactment of section 2923.55 in 2013. See *Valbuena v. Ocwen Loan Servicing, LLC*, 237 22 Cal. App. 4th 1267, 1272 (2015). 23 The Fair Debt Collection Practices Act and Rosenthal Act claims are also deficient. 24 Only entities engaged in

the collection of consumer debts may be held liable under 15 25 U.S.C. § 1692a(6) and Cal. Civ. Code § 1788.17. Recording a SOT does not constitute 26 debt collection. McCloskey, as a creditor's employee, is expressly exempt under 15 27 28 1 U.S.C. § 1692a(6)(A). In addition, attorney conduct related to litigation is excluded from 2 liability under the FDCPA, as explained in *Heintz v. Jenkins*, 514 U.S. 291 (1995).² 3 The claim for conversion and violation of Penal Code § 496 similarly fails. 4 Plaintiffs do not allege that Defendants wrongfully took or exercised dominion over any 5 of their personal property. As explained in *Mendoza v. Cont'l Sales Co.*, 140 Cal. App. 6 4th 1395, 1405 (2006), conversion requires proof of actual dominion over property, 7 which is not alleged here. Plaintiffs simply challenge the recording of a document. 8 The quantum meruit claim is likewise implausible. Plaintiffs do not allege that 9 they conferred any benefit on Defendants through services rendered with an expectation 10 of payment. *Port Med Wellness, Inc. v. Conn. Gen. Life Ins. Co.*, 24 Cal. App. 5th 153, 11 180 (2018). Mortgage payments are contractual obligations and cannot give rise to the 12 quasi-contractual claim of quantum meruit. 13 Lastly, the UCL claim fails because Plaintiffs do not allege any economic injury or 14 established entitlement to equitable relief. *Sonner v. Premier Nutrition Corp.*, 971 F.3d 15 834, 842–44 (9th Cir. 2020), holds that equitable claims cannot proceed where legal 16 remedies are available or unalleged. Plaintiffs' UCL theory is wholly derivative of their 17 other failed claims. 18 Taken together, the defects in the FAC are not merely technical; they are legal in 19 nature and incurable. The claims are untimely, barred by privilege, unsupported by 20 standing, and insufficiently pleaded. Leave to amend would serve no useful purpose and 21 is therefore denied. 22 23 /// 24 /// 25 /// 26 27 2 “[A]pplies to a lawyer who ‘regularly,’ through litigation, tries to collect consumer 28

1 CONCLUSION

2 IT IS HEREBY ORDERED that Defendant's Motion to Dismiss (ECF No. 13) is 3 ||} GRANTED. The First Amended Complaint (ECF No. 5) is DISMISSED WITH 4 || PREJUDICE. 5 6 || IT IS SO ORDERED. 7 lyin, 8 || DATED: May 5, 2025

9 HON. ROGER T. BENITEZ

10 United States District Judge 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28