

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)
)
 Sula Adams,)
 Plaintiff,)
)
 vs.)
)
 PennyMac Loan Services, LLC; The)
 United States of America, acting by and)
 through its agency, The Secretary of)
 Housing and Urban Development; Lanier)
 Law Firm, LLC; Abby Robertson;)
 Investors Title Insurance Company;)
 TransUnion; Experian Information)
 Solutions, Inc.; and Equifax, LLC,)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

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 SC Court of Appeals

ORDER OF DISMISSAL

2020CP2304644

This matter came before the Court upon multiple motions. Plaintiff filed a Motion for Temporary Restraining Order ("TRO"). Defendants Lanier Law Firm ("Lanier"); Abby Robertson ("Robertson"); Investors Title Insurance Company ("Investors"); PennyMac Loan Services, LLC ("PennyMac"); United States of American, acting by and through its Agency, The Secretary of Housing and Urban Development ("HUD") filed Motions to Dismiss. Plaintiff informed the Court that she was in settlement negotiations with Defendants TransUnion; Experian Information Solutions, Inc.; and Equifax, LLC. As to Plaintiff's Motion for TRO against HUD, she withdrew her motion pursuant to HUD's agreement not to garnish wages during the pendency of this action.

This action arises out of the failure of Plaintiff to properly satisfy two existing mortgages in connection with the sale of her home. Plaintiff sold her house to a third-party and at the time of the closing on September 30, 2016, there were two mortgages against the property. For some

reason, only one of the mortgages was satisfied from the closing proceeds, which left the other mortgage still outstanding. Plaintiff contends the error was a result of Defendants failure to properly reference both mortgages in the payoff statements. As a result of the outstanding mortgage, HUD sought garnishment of Plaintiff's wages to satisfy the debt. Plaintiff brought this action against all parties involved in the closing for claims of breach of contract, intentional infliction of emotional distress, and unfair trade practices. Subsequently, the current Motions to Dismiss were filed. All of these Motions to Dismiss have various grounds for their dismissal, but all contend that this action was not commenced with the Statute of Limitations. The Court will address the Statute of Limitations action and then address the specific grounds for dismissal related to each Defendant's Motion.

To grant a Motion to Dismiss, the court "must base its ruling solely on allegations set forth in the complaint." *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). "The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." *Marion* at 395, 645 S.E.2d 245, 248. For a Motion to Dismiss, the Court looks at the facts alleged in the light most favorable to the plaintiff to determine whether the plaintiff is entitled to relief on any legal theory. *Marion* at 395, 645 S.E.2d 245, 247.

All Defendants asserted that the Statute of Limitations bars this action, which is supported by looking only at the Complaint. The Complaint asserts causes of action for breach of contract, intentional infliction of emotional distress and violation of the S.C. Unfair Trade Practices Act. The relevant statute of limitations for all of these causes of action is three years as provided by S.C. Code Ann. §15-3-530 and §39-5-150. The event which gives rise to Plaintiff's claim took place on September 30, 2016. The Summons and Complaint was not filed until October 8, 2020. In the Complaint, Plaintiff alleges she received a letter dated June 12, 2017 from Robertson

outlining the issues and acknowledging that the second mortgage had not been satisfied (Complaint, Paragraph 16). Plaintiff further alleges she received a letter dated August 25, 2017 from HUD demanding payment on the outstanding loan and that it planned to pursue garnishment of wages for payment of the debt. (Complaint, Paragraph 17). As of these dates, Plaintiff was advised the second mortgage had not been paid off and she would have clearly known she had a claim against the responsible parties. However, Plaintiff failed to commence an action until October 8, 2020, more than four years after the closing and more than three years after she was advised in writing of the issues. Plaintiff argues equitable tolling should apply as she was awaiting an administrative decision from HUD on the wage garnishment issue. Based on the Complaint, Plaintiff alleges she objected to wage garnishment because of financial hardship and because Robertson was to blame for providing incorrect information about the two mortgages. This would not toll the statute because she was merely contesting HUD's right to garnish her wages and not awaiting any type of decision on whether the debt was owed. As a practical matter, Plaintiff should have been aware that she received more proceeds than she was entitled to at closing and should have known one of the mortgages had not been paid off. Therefore, the Court finds this action was not commenced within the applicable statute of limitations and Defendants' Motions are GRANTED.

Although the each of the Defendants filed additional grounds to support their Motions to Dismiss, the Court has not addressed those because the dismissal was granted based on the Statute of Limitations.

Given the failure of Plaintiff to file this action within a timely manner under the Statute of Limitations, Defendants HUD's, Lanier's, Robertson's, Investor's, and PennyMac's Motions to Dismiss are GRANTED.

IT IS SO ORDERED.

Judge Gravely's Signature Page to Follow



Greenville Common Pleas

Case Caption: Sula Adams vs. PennyMac Loan Services LLC , defendant, et al
Case Number: 2020CP2304644
Type: Order/Dismissal

So Ordered

s/ Honorable Perry H. Gravely, #2755

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