

**Dated: November 15, 2024**  
**The following is ORDERED:**



A handwritten signature in black ink, appearing to read "M. Ruthie Hagan".

---

**M. Ruthie Hagan**  
**UNITED STATES BANKRUPTCY JUDGE**

---

**UNITED STATES BANKRUPTCY COURT**  
**WESTERN DISTRICT OF TENNESSEE**  
**WESTERN DIVISION**

In re  
**Janice Bell**  
Debtor.

Case No. 24-22189  
Chapter 13

---

Janice Bell  
Plaintiff,

v.

Adv. Proc. No. 24-00055

PHH Mortgage,  
Wilson and Associates, PLLC, and  
Altisource Portfolio Solutions,  
Defendants.

---

**MEMORANDUM OPINION AND ORDER DENYING DEFENDANTS' MOTIONS TO  
DISMISS PLAINTIFF'S WRONGFUL FORECLOSURE, BREACH OF CONTRACT,  
AND SLANDER OF TITLE CLAIMS**

---

This matter is before the Court on the Motions of HSBC Bank USA National Association as Trustee for Freemont Home Loan Trust (2004-D) Mortgage-Backed Certificates series 2004-D, aka PHH Mortgage, a subsidiary of Ocwen) (“PHH”), and Altisource Portfolio Solutions (“Altisource”), collectively “Defendants,”<sup>1</sup> to Dismiss Janice Bell’s (“Plaintiff”) Complaint, [DE 14, 15], pursuant to FED. R. CIV. P. 12(b) and FED. R. BANKR. P. 7012(b), and Plaintiff’s Responses [DE 23, 24] to the Motions. The Court heard oral arguments on September 25, 2024 and took these matters under advisement.

This Court has jurisdiction to decide pretrial matters, such as a motion to dismiss, in accordance with 28 U.S.C. §§ 1334(b) and 157(b)(1). This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) and (E). Accordingly, the Court has both the statutory and constitutional authority to hear and determine these proceedings subject to the statutory appellate provisions of 28 U.S.C. § 158(a)(1) and Part VIII (“Bankruptcy Appeals”) of the Federal Rules of Bankruptcy Procedure. Regardless of whether specifically referred to in this decision, the Court has examined the submitted materials, considered statements of counsel, and reviewed the entire record of the case. Based upon that review, and for the following reasons, the Court hereby determines that Defendants’ Motions to Dismiss are DENIED without prejudice.

### **FACTUAL SUMMARY AND PROCEDURAL BACKGROUND**

Janice Bell (“Plaintiff” or “Debtor”) filed two previous bankruptcies within a year of her current bankruptcy case. *See* bankruptcy cases 23-20817 and 23-23066. Hence, pursuant to § 362(c)(4) of the Bankruptcy Code, the automatic stay was not triggered when Plaintiff filed her current bankruptcy case on May 9, 2024, so Plaintiff filed a Motion to impose the automatic stay in an attempt to stay commencement and/or continuation of a foreclosure action scheduled by

---

<sup>1</sup> Wilson and Associates, PLLC did not move to dismiss and filed an Answer to Plaintiff’s Complaint. [DE 11]

Defendants for May 10, 2024. [Case No. 24-22189, DE 1, 7] However, Plaintiff did not seek to have her Motion heard on an emergency basis nor seek any immediate temporary restraining order upon the filing of her current bankruptcy case. Instead, her Motion to impose the automatic stay was set in regular course and was initially set to be heard on June 5, 2024.<sup>2</sup> [Case No. 24-22189, DE 13] As detailed below, the foreclosure sale went forward on May 10, 2024 as scheduled and the Trustee's Deed was accordingly executed on May 14, 2024, and recorded on May 28, 2024. [DE 15-3]

On June 18, 2024, Plaintiff filed this adversary proceeding against Defendants seeking a temporary restraining order/injunction restraining and enjoining Defendants from any further action regarding certain real property located at 4195 Long Creek Cove, Memphis, Tennessee 38125 ("Property"). Plaintiff also seeks to have the foreclosure sale set aside and declared void, among other damages and remedies. [DE 1, 3]

In the Complaint, Plaintiff sets out that upon filing her bankruptcy petition she called PHH to inform it of her new bankruptcy case filing. [Complaint ¶ 6, DE 1] The Property was scheduled to be foreclosed by the substitute trustee, Wilson and Associates, PLLC ("Wilson Law Group") the next day, May 10, 2024. *Id.* ¶ 7. Plaintiff's Complaint sets out that, on May 10, 2024, before going to the Shelby County Courthouse for the foreclosure sale, Plaintiff called the Wilson Law Group to see if they received notice of the bankruptcy petition and her Motion to impose the automatic stay. *Id.* ¶ 8. The Wilson Law Group informed her that they would need forty-eight hours to review her information. *Id.* ¶ 9. Plaintiff also alleges that she called PHH to verify whether information that was provided the day before had been processed and PHH told her it had received

---

<sup>2</sup> The hearing on the Motion to impose the automatic stay has been continued several times by agreement of the parties.

the documents Plaintiff sent on May 10th, but PHH had not cancelled the foreclosure sale. *Id.* ¶ 10-11.

Plaintiff's Complaint alleges that at the foreclosure sale, the auctioneer solicited bids to start at \$240,750.00 for the Property and that no one placed a bid. *Id.* ¶¶ 15-16. The Complaint then alleges that "[t]he auctioneer stated that the auction 'was over' and if the attorney for the mortgage company wanted to set another sale date that he would have to go through the same process and announce it the same way that this one was done." *Id.* ¶ 17. Plaintiff claims there was never an acknowledgement of a highest bidder for the Property. *Id.* ¶ 16.

Three days later, on May 13, 2024, Plaintiff alleges that she called PHH to check on her account status and was told the foreclosure was "suspended" and that PHH would not proceed. Plaintiff also called Wilson Law Group that same day who told her that the case was closed and Plaintiff was provided no further information. *Id.* ¶¶ 18, 20. However, the trustee's deed conveying the real property to HSBC Bank USA, National Association, as Trustee for Fremont Home Loan Trust 2004-D, Mortgage-Backed Certificates, Series 2004-D for \$240,750.00 was executed on May 14, 2024, and recorded on May 28, 2024. *See* DE 15-3.

On June 10, 2024, Plaintiff alleges she received a letter stating the Property "had been foreclosed and the new owner is preparing to sell it." *Id.* ¶ 23 The letter also requested that Plaintiff voluntarily vacate the Property by July 4, 2024, after which date a formal eviction would ensue. *Id.* ¶ 24.

Plaintiff hired counsel on or about June 4, 2024, and Plaintiff filed the Complaint initiating this adversary proceeding on June 18, 2024, asserting that the foreclosure was improperly conducted under the parties' Deed of Trust executed in 2004. *Id.* ¶¶ 26-34. Plaintiff also alleges "the defendant" caused various documents to be recorded that have impaired Plaintiff's title. *Id.* ¶

36. Plaintiff seeks a temporary restraining order enjoining Defendants from any further action regarding the sale, transfer of title, or interference with Plaintiff's ownership or possession rights in the Property. Plaintiff also requests that the foreclosure sale be set aside and declared void, and seeks an award of attorney fees and expenses, and other relief, both general and specific, to which she may be entitled.

### **LAW AND ANALYSIS**

In deciding a Rule 12(b)(6) motion to dismiss for failure to state a claim, a court must “(1) view the complaint in the light most favorable to the plaintiff and (2) take all well-pleaded factual allegations as true.” *Tackett v. M & G Polymers, USA, LLC*, 561 F.3d 478, 488 (6th Cir. 2009) (citation omitted). “Federal Rule of Civil Procedure 8(a)(2) requires only ‘a short and plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). “[O]nly a complaint that states a plausible claim for relief survives a motion to dismiss.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009), citing *Twombly*, 550 U.S. at 556. A court is “not bound to accept as true a legal conclusion couched as a factual allegation.” *Id.* at 678 (quoting *Twombly*, 550 U.S. at 555). Indeed, a complaint must contain allegations regarding all the material elements to sustain a recovery under some cause of action. *Scheid v. Fanny Farmer Candy Shops, Inc.*, 859 F.2d 434, 436 (6th Cir. 1988) (quoting *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1106 (7th Cir. 1984)).

Moreover, “a court considering a Rule 12(b)(6) motion may review exhibits attached to the complaint as well as ‘items appearing in the record of the case and exhibits attached to [a] defendant’s motion to dismiss so long as they are referred to in the Complaint and are central to

the claims contained therein.”” *Diei v. Boyd*, 116 F.4th 637, 643 (6th Cir. 2024) (quoting *Bassett v. Nat’l Collegiate Athletic Ass’n*, 528 F.3d 426, 430 (6th Cir. 2008)); *see also Wyser-Pratte Mgmt. Co. v. Telxon Corp.*, 413 F.3d 553, 560 (6th Cir. 2005) (explaining that a court may also consider other materials integral to the complaint, public records, or materials otherwise appropriate for taking judicial notice).

Defendants argue Plaintiff’s claims are subject to dismissal because (1) the complaint lacks clarity and specificity; (2) Plaintiff cannot establish a claim for wrongful foreclosure or breach of contract because she has not identified any provision of the Deed of Trust that was violated and HSBC was authorized to purchase the Property at the sale; and (3) Plaintiff cannot establish a claim for slander of title because Plaintiff has not asserted any of the elements to establish such a claim. [DE 14-5, 15-5]

### **The Complaint’s Lack of Clarity and Specificity**

Defendants argue that the Complaint “is so generic and vague” that it does not meet the standards set out under FED. R. CIV. P. 8(a)(2), *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007). [DE 14, 15] Defendants claim that Plaintiff failed to assert “factual allegations that would raise their right to relief beyond the speculative level.” Defendants assert Plaintiff’s Complaint is a “shotgun pleading.” [DE 14, 15] A shotgun pleading is one that ““throws everything against the wall and hop[es] something sticks.”” *Banks v. Bosch Rexroth Corp.*, No. 5:12-345-DCR, 2014 WL 868118, at \*7 n.2 (E.D. Ky. March 5, 2014) (quoting *Krusinski v. U.S. Dept. of Agric.*, No. 92-4026, 1993 WL 346858, at \*5 (6th Cir. Sept. 20, 1993)).

PHH primarily argues that the Complaint generally refers to Defendants collectively, making it impossible for PHH to know which allegations are raised against it individually. Even so, the Complaint specifically mentions PHH several times, alleges the foreclosure sale was

improperly conducted under the terms of the Deed of Trust (which PHH is a named party to), and states that Plaintiff reasonably relied upon the statements of PHH that the foreclosure sale was suspended under the “WRONGFUL FORECLOSURE and BREACH OF CONTRACT” section of the Complaint. The “SLANDER OF TITLE” section incorporates all the previous allegations in the Complaint, many of which specifically identify PHH. Accordingly, while this Court agrees that the Complaint could have been articulated better, the Court was able to determine which causes of action and facts belong with PHH. *See, e.g., Bonner v. Equifax Info. Servs., LLC*, No. 5:20-CV-00175-TBR, 2021 WL 4392955, at \*3 (W.D. Ky. Sept. 24, 2021).

Altisource separately argues that Plaintiff only mentions Altisource in the “Parties” section of the Complaint and fails to assert any allegations against Altisource with particularity. Indeed, the Complaint is scarce of any factual allegations including Altisource or any allegations against Altisource for wrongful foreclosure, breach of contract, or slander of title. In Plaintiff’s Opposition to Altisource’s Motion to Dismiss, she responds, “[b]ased upon the gravamen of the complaint [P]laintiff stated that the foreclosure sale scheduled for May 10, 2024[,] did *not* take place in accordance to what the Deed of Trust required, a public outcry.” [DE 23] (emphasis in original). Altisource is not a named party in the Deed of Trust. Thus, the Complaint does not provide notice to Altisource regarding which claim(s) would subject it to liability. However, the Court finds sufficient case law that would allow Plaintiff the opportunity to amend her Complaint to better identify which allegations are pled against Altisource. *See Banks*, 2014 WL 868118, at \*7 (“Amended Complaint does not provide notice to the defendants regarding which counts would

subject them to liability, rendering a response difficult. However, dismissal of the entire Amended Complaint is not the appropriate remedy to address the issues raised by a shotgun pleading.”).<sup>3</sup>

### **Failure to State a Wrongful Foreclosure or Breach of Contract Claim**

PHH argues that Plaintiff has not identified any specific provision of the Deed of Trust that was violated. Instead, PHH argues, Plaintiff only relies on “bare-bone” assertions that the foreclosure was improperly conducted. [DE 14-5]

Under Tennessee law, “[w]hile there are no specific elements for wrongful foreclosure, Tennessee courts generally examine whether contractual or statutory requirements were met in the foreclosure of the property in question.” *Ogle v. U.S. Bank Nat’l Ass’n for Residential Asset Sec. Corp.*, No. 1:17-CV-40-TAV-CHS, 2018 WL 1324137, at \*3 (E.D. Tenn. Mar. 14, 2018) (quoting *Ringold v. Bank of Am. Home Loans*, No. 2:12-cv-2344, 2013 WL 1450929, at \*6 (W.D. Tenn. Apr. 9, 2013)). The Tennessee Supreme Court has stated, “[i]f a foreclosure sale is legally held, conducted and consummated, there must be some evidence of irregularity, misconduct, fraud, or unfairness on the part of the trustee or the mortgagee that caused or contributed to an inadequate price, for a court . . . to set aside the sale.” *Holtz v. Citizens Cent. Bank*, 688 S.W.2d 414, 416 (Tenn. 1984); *see also McKenzie v. Brandywine Homeowner’s Ass’n, Inc.*, 589 S.W.3d 123, 123 (Tenn. Ct. App. 2019). Further, “[t]he essential elements of any breach of contract claim include (1) the existence of an enforceable contract, (2) nonperformance amounting to a breach of the contract, and (3) damages caused by the breach of the contract.” *ARC LifeMed, Inc. v. AMC-Tennessee, Inc.*, 183 S.W.3d 1, 26 (Tenn. Ct. App. 2005) (citations omitted).

---

<sup>3</sup> Plaintiff has a pending Motion to amend her Complaint. [DE 22] A cursory review of the proposed amended complaint still does not meet the pleading requirements; however, this Court is inclined to allow Plaintiff one last opportunity to properly notify Altisource of which claim(s) subject it to liability.



Plaintiff makes two general allegations in her Complaint: (1) “[t]he alleged ‘Foreclosure’ was improperly conducted under the terms of the parties’ Deed of Trust executed in 2004,” and (2) “[t]he attempted foreclosure sale was not conducted openly and fairly and the bidding thereon suppressed.” [DE 1, ¶¶ 26, 29] The Deed of Trust states:

If Lender invokes the power of sale, Trustee shall give notice of sale by public advertisement in the county in which the Property is located for the time and in the manner provided by Applicable Law, and Lender or Trustee shall mail a copy of notice of sale to Borrower in the manner provided in Section 15. Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and under the terms designated in the notice of sale. Lender or its designee may purchase the Property at any sale.

[DE 15-2, ¶ 22] Plaintiff also states, “No highest bidder was declared at the attempted foreclosure sale.” [DE 1, ¶ 28]

While Plaintiff generally alleges that the foreclosure sale failed to meet the contractual requirements under the Deed of Trust, she does not allege that the foreclosure sale failed to meet statutory requirements under Tennessee law. Plaintiff’s conclusory claim that the sale “was not conducted openly and fairly and the bidding was thereon suppressed” is contradicted by her allegation that she had notice of, and attended, the sale. Moreover, Plaintiff does not allege she attempted to bid at the sale and was denied that right, but that no highest bidder was declared. Essentially, Plaintiff argues, that because the auctioneer didn’t say “sold,” there was never a final sale. Even taken as true, Plaintiff has failed to allege that any irregularity, misconduct, fraud, or unfairness on the part of the trustee or the mortgagee occurred in conducting the foreclosure sale. *See Holtz*, 688 S.W.2d at 416. Plaintiff has also failed to allege any breach or nonperformance of the Deed of Trust by Defendants other than her conclusory claims. In sum, Plaintiff’s bare assertions of legal conclusions have not sufficiently alleged a wrongful foreclosure or breach of contract cause of action against PHH under Tennessee law. *Scheid*, 859 F.2d at 436; *Iqbal*, 556

U.S. at 678 (quoting *Twombly*, 550 U.S. at 557). Given these flaws, the Court will allow Plaintiff the opportunity to amend her Complaint to better identify the specific provision(s) in the Deed of Trust which were violated and/or the statutory provision which was violated.

### **Failure to State a Slander of Title Claim**

Finally, Plaintiff also alleges a slander of title claim. Plaintiff states, “[t]he defendant[s] have caused to be recorded various documents which have impaired the Plaintiff’s title.” [DE 1 ¶ 36] Still, Plaintiff has failed to allege any material elements to establish a claim for slander of title.

To prevail on a slander of title claim under Tennessee law, a plaintiff must show: “(1) that the plaintiff has an interest in the property, (2) that the defendant published false statements about the title to the property, (3) that the defendant was acting maliciously, and (4) that the false statements proximately caused the plaintiff a pecuniary loss.” *Gibson v. Mortg. Elec. Registration Sys., Inc.*, No. 11-2173-STA, 2011 WL 3608538, at \*6 (W.D. Tenn. Aug. 16, 2011) (citing *Brooks v. Lambert*, 15 S.W.3d 482, 484 (Tenn. Ct. App. 1999)).

As Defendants point out, Plaintiff has failed to plead any of these elements in her Complaint. Even construing Plaintiff’s argument to encapsulate elements one, two, and four, Plaintiff has not attributed malice of any kind to any Defendant. Accordingly, Plaintiff must amend the factual allegations relating to the slander of title claim to be more than conclusory in order to survive a subsequent motion to dismiss.

### **CONCLUSION**

Based on the facts presented, and for the reasons set forth herein, the Court finds that the Defendants’ Motions to Dismiss [DE 14, 15] are denied and Plaintiff has thirty (30) days to file an amended complaint which addresses the multiple deficiencies outlined in this Order.

The Bankruptcy Court Clerk shall cause a copy of this Order and Notice to be sent to the following interested parties:

Janice Bell  
4195 Long Creek Rd.  
Memphis, TN 38125

Stacy Clinton  
The Clinton Law Office  
4862 Elvis Presley Blvd.  
Memphis, TN 38116

Reid Stephens Manley  
Burr & Forman LLP  
420 North 20th Street, Suite 3400  
Birmingham, AL 35203

Katherine Rogers  
Burr & Forman LLP  
222 2nd Avenue South, Suite 2000  
Nashville, TN 37201

Jennifer K. Cruseturner  
Chapter 13 trustee  
5350 Poplar Avenue, Suite 500  
Memphis, TN 38119

United States Trustee  
Office of the United States Trustee  
200 Jefferson, Suite 400  
Memphis, TN 38103