

Dated: April 17, 2025
The following is ORDERED:



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 GRANTING DEFENDANTS'
MOTIONS TO DISMISS PLAINTIFF'S AMENDED COMPLAINT

This matter is before the Court on the Motions of Altisource Portfolio Solutions (“Altisource”) and PHH Mortgage Corporation (“PHH”), collectively “Defendants,”¹ to Dismiss Janice Bell’s (“Plaintiff”) Amended Complaint [DE 46, 48], pursuant to FED. R. CIV. P. 12(b) and FED. R. BANKR. P. 7012(b), and Plaintiff’s Responses [DE 54, 57 & 58] to the Motions. The Court heard oral arguments on February 26, 2025.

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 GRANTED.

FACTUAL SUMMARY AND PROCEDURAL BACKGROUND

Janice Bell (“Plaintiff” or “Debtor”) filed two previous bankruptcies within a year of her current bankruptcy case that were both dismissed. *See* bankruptcy cases 23-20817 and 23-23066. Thus, under § 362(c)(4) of the Bankruptcy Code, the automatic stay did not go into effect when Plaintiff filed her current bankruptcy case on May 9, 2024. Plaintiff did file a Motion to impose the automatic stay in an attempt to stay commencement and/or continuation of a foreclosure action scheduled by Defendants for May 10, 2024. [Case No. 24-22189, DE 7] Plaintiff, however, failed to seek to have her Motion heard on an emergency basis nor did she seek any immediate temporary

¹ Wilson and Associates, PLLC did not move to dismiss and filed an Answer to Plaintiff’s Amended Complaint. [DE 43]

restraining order upon the filing of her current bankruptcy case. Instead, her Motion to impose the automatic stay was set on the Court's calendar in regular course and was initially set to be heard on June 5, 2024.² [Case No. 24-22189, DE 13] With no automatic stay in effect, the foreclosure sale proceeded on May 10, 2024 as scheduled, and the Trustee's deed was 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 Road, Memphis, Tennessee 38125 ("Property"). Plaintiff also seeks to have the foreclosure sale of the Property set aside and declared void, among other damages and remedies. [DE 1]

In the Amended Complaint Plaintiff alleges the following facts. On December 28, 2022, she was informed by her PHH relationship manager, Ash,³ that the loan modification she submitted in November 2022 was denied. [Amended Complaint ¶ 5, DE 39] Plaintiff further states that she was told PHH would only accept the lump sum needed to reinstate her loan. *Id.* ¶ 6. During this conversation, Ash further informed Plaintiff that she would be on a Covid Forbearance against foreclosure due to a loss in her income, that there would be a hold on late fees, and that late payments would not be listed in the credit reporting. *Id.* ¶ 9. Ash told Plaintiff this information would be sent to her in an email.⁴ *Id.*

On January 23, 2023, Plaintiff called PHH to check on the Covid Forbearance and eventually reached an account specialist, Tauseef. *Id.* ¶ 10. Tauseef informed Plaintiff that a

² The hearing on the Motion to impose the stay has been continued several times by agreement of the parties.

³ The Amended Complaint fails to provide the full name of every party. As a result, this Opinion will refer to some parties only by their first name as provided in the pleadings.

⁴ Plaintiff has not submitted a record of this email to this Court, and it is unclear whether one was ever sent.

foreclosure sale date had been set for February 23, 2023 and that she needed to apply again online for a loan modification. *Id.* Tauseef then transferred Plaintiff to the foreclosure department where Plaintiff eventually spoke with Mariana who informed her that there was no information regarding a forbearance in the system and that her only option would be to apply for a loan modification again online. *Id.* ¶ 11. Plaintiff requested a new case manager since Ash's information seemed incorrect, and Plaintiff informed Marianna that she applied for state assistance through the Tennessee Housing Development Agency ("THDA"). *Id.*

Plaintiff called PHH again shortly after the call with Tauseef ended and, after a few transfers and dropped calls, reached Israel, an escalation specialist. *Id.* ¶¶ 12-13. Plaintiff informed Israel about her call with Ash, and Israel responded that there was no letter regarding a Covid Forbearance attached to her account. *Id.* ¶ 13. She then spoke with Stan who informed her of a letter PHH received from Wilson and Associates, PLLC ("Wilson Law Group") on January 21, 2023. *Id.* Stan further informed her that he would put in a request for a forbearance plan and asked whether Plaintiff lost income due to Covid, to which Plaintiff replied, "Yes." *Id.* Stan stated he needed to speak to a supervisor, but none were available at the time so he told Plaintiff he would call her back. *Id.*

On January 23, 2023, Plaintiff also called the Wilson Law Group and left a voicemail with the Loss Mitigation department. *Id.* ¶ 14. Plaintiff later spoke with Skylar Cano and informed him that she received a PHH mortgage statement and request of payment from the Wilson Law Group but not a notice of scheduled foreclosure sale. *Id.* Mr. Cano stated he would request that an attorney send it to her and that he would send it to Plaintiff's email address. *Id.* Plaintiff also inquired about whether the sale could be postponed, and Mr. Cano stated he would receive a response to his email requesting postponement within forty-eight hours. *Id.*

On January 24, 2023, Plaintiff called PHH and eventually reached Sepia, an escalation specialist. *Id.* ¶¶ 15-16. Sepia informed Plaintiff that only an escalation manager could request an extension of the Covid Forbearance or stop the foreclosure, and she stated that a case was opened to research the matters. *Id.* ¶¶ 16-17. Plaintiff was then scheduled for an appointment to speak with a relationship manager on January 25, 2023. *Id.* ¶ 18.

At the appointment, Plaintiff spoke to Nisar Chaudhury. *Id.* ¶¶ 18-19. Mr. Chaudhury informed Plaintiff that Ash noted her account about Covid and THDA, but did not file for a Covid Forbearance extension. *Id.* ¶ 19. Mr. Chaudhury stated neither a modification nor forbearance plans were an option but that she could seek reinstatement at that time. *Id.* Mr. Chaudhury scheduled another call for February 10, 2023 and informed Plaintiff that she would need to submit a full new application for a modification because it could potentially help put the foreclosure on hold. *Id.* ¶ 20. On January 30, 2023, Plaintiff submitted fifteen requested documents to the Loans Solutions Center. *Id.* ¶ 21. On February 2, 2023, Plaintiff called PHH and spoke with Rushikesh, who explained that it could take up to five days for the modification department to review her documents and place the sale on hold, if necessary. *Id.* ¶ 23.

At some point during this time, Plaintiff began to communicate with Marquis Development Group, Inc. to discuss the purchase of her home. *Id.* ¶ 25. On February 6, 2023, Plaintiff called PHH to discuss a potential short sale of her home. *Id.* ¶ 26. She spoke with Prashant, who informed her that the foreclosure could not be postponed, that he would complete the short sale process as soon as possible and that it needed be finished at least one day before the foreclosure, and that the last loan modification was denied. *Id.*

On February 10, 2023, Plaintiff called PHH and spoke with Zaid, who informed her that the short sale was denied because there was a foreclosure sale scheduled for February 23, 2023

and requests for short sale had to be made outside the thirty-seventh day prior to foreclosure. *Id.* ¶ 30. Later that day, Plaintiff spoke with Mr. Chaudhury. Mr. Chaudhury informed Plaintiff that the reinstatement letter would still be good for \$58,064. *Id.* ¶ 32. Plaintiff told Mr. Chaudhury she felt it was unfair that PHH refused to extend the Covid Forbearance when Ash said it was granted, she received a reinstatement letter after her account was in foreclosure, the foreclosure attorney waited until it was within thirty days of the scheduled foreclosure sale to send the letter stating the foreclosure date, and both PHH and the Wilson Law Group refused to discuss the short sale with her potential buyer. *Id.* ¶ 33. Plaintiff received a reinstatement quote dated February 13, 2023, which was set to expire February 21, 2023, the same day she received it. *Id.* ¶ 34.

In April 2024,⁵ Plaintiff contacted Neighborhood Corporation of America (“NACA”) to assist her in working with PHH. *Id.* ¶ 37. Her assigned representative, Bobby Brown, informed her that NACA sent PHH a completed packet on May 3, 2024. *Id.* ¶ 38. On May 6, 2024, Plaintiff called PHH and spoke with Rashid, who informed her the packet was received; he also informed her that her account was not entitled to further review due to its status and reinstatement or a short sale were her only options. *Id.* ¶ 39.

In the Amended Complaint, Plaintiff sets out that upon filing her bankruptcy petition on May 9, 2024, she called PHH to inform them of her new bankruptcy case filing. *Id.* ¶ 43. The Property was scheduled to be foreclosed by the substitute trustee, the Wilson Law Group, the next day, May 10, 2024. *Id.* ¶ 44. Plaintiff states 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 Motion to impose the automatic stay. *Id.* ¶ 45. The

⁵ Plaintiff filed her first of the two aforementioned bankruptcy cases, Case No. 23-20817, on February 16, 2023. That case was dismissed on May 19, 2023 for failure to submit required documents. Plaintiff filed the other case, Case No. 23-23066, on June 23, 2023. That case was dismissed on March 29, 2024 for failure to make plan payments.

Wilson Law Group informed her that they would need forty-eight hours to review. *Id.* ¶ 46. Plaintiff also called PHH to verify whether information that was provided the day before had been processed and the Amended Complaint sets out that PHH told her they had received the email documents Plaintiff sent on May 10th, but PHH had not cancelled the foreclosure sale. *Id.* ¶¶ 47-48.

Plaintiff's Amended Complaint alleges at the foreclosure sale, she informed the auctioneer, Jennifer Lynch, about her bankruptcy filing, but the auctioneer informed her that she was told to go through with the sale that morning. *Id.* ¶ 49. The auctioneer solicited bids to start at \$240,750.00 for the Property and no one placed a bid. *Id.* ¶¶ 52-53. The Amended 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.* ¶ 54.

Three days later, on May 13, 2024, Plaintiff alleges she called PHH to check on her account status and was told the foreclosure was "suspended" and that PHH would not proceed. *Id.* ¶ 56. Plaintiff also called the Wilson Law Group that same day who told her that the case was closed and that they would not provide her further information. *Id.* ¶ 58. 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." [DE 39 ¶ 66] The letter also requested that Plaintiff voluntarily vacate the Property by July 4, 2024, after which formal eviction would ensue. *Id.* ¶ 67.

Plaintiff hired counsel on or about June 4, 2024, and filed the Complaint initiating this adversary proceeding on June 18, 2024. [DE 1] Defendants each filed a motion to dismiss Plaintiff's initial complaint, and this Court heard oral arguments on that matter on September 25, 2024. After examining the submitted materials, considering the statements of counsel, and reviewing the entire record of the case, this Court issued a Memorandum Opinion and Order Denying Defendants' Motions to Dismiss Plaintiff's Wrongful Foreclosure, Breach of Contract, and Slander of Title Claims [DE 35] and granted Plaintiff thirty (30) days to file an amended complaint to address the multiple deficiencies outlined in that Order.

Plaintiff's Amended Complaint asserts that PHH and the Wilson Law Group improperly conducted the foreclosure based upon breach of contract and negligent performance of contract under the parties' Deed of Trust executed in 2004. Plaintiff also alleges PHH and the Wilson Law Group caused various documents to be recorded that have impaired and slandered Plaintiff's title. 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, an award of attorney fees and expenses, and other relief to which she may be entitled. [DE 39]

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) 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 (2) Plaintiff cannot establish a claim for slander of title because Plaintiff has not asserted any of the elements to establish such a claim.

Failure to State a Breach of Contract or Negligent Performance 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 “threadbare” assertions that the foreclosure was improperly conducted. [DE 49]

The Tennessee Supreme Court recently held “that there is no common law cause of action for ‘wrongful foreclosure’ in Tennessee.” *Case v. Wilmington Tr., N.A.*, 703 S.W.3d 274, 278 (Tenn. 2024).⁶ Still, “borrowers who believe their property was unlawfully foreclosed are not left without recourse. Generally, courts analyzing claims for foreclosures gone wrong in Tennessee have done so under three theories: breaches of contract, tort claims, and statutory violations.” *Id.* at 295 (collecting cases). The Tennessee Supreme Court has previously 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.” *Holt v. Citizens Cent. Bank*, 688 S.W.2d 414, 416 (Tenn. 1984) (citation omitted); *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).

Defendants argue that Plaintiff’s Amended Complaint should be dismissed because it does not even identify the elements of a breach of contract, nor has Plaintiff identified any action taken

⁶ Plaintiff styled her claim as “wrongful foreclosure based upon breach of contract and negligent performance of contract.” [DE 39] As such, this Court will construe Plaintiff’s claim as one for breach of contract.

by Defendants that would constitute a breach of the Deed of Trust. Plaintiff makes two general allegations in her Amended Complaint: (1) “[t]he alleged ‘Foreclosure’ was improperly conducted under the terms of the parties’ Deed of Trust executed in 2004”; and (2) that PHH had the obligation to perform the contract in good faith and failed to do so because its agents gave Plaintiff information that “was either erroneous, misleading, or contained omissions, regarding the Covid Forbearance extension; loan modification, reinstatement; short sale; and foreclosure notice.” [DE 39, ¶¶ 69, 71-72, 80-88] 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 the 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 15-1, ¶ 22]

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 claims that “Pursuant to the Deed of Trust, in paragraph 22 of the Deed of [T]rust, any foreclosure sale must be conducted by a ‘public cry’ and sold to the highest bidder” and that “[n]o highest bidder was declared at the attempted foreclosure sale of May 10, 2024.” [DE 39, ¶¶ 80-81] This claim ignores the very next sentence of the Deed of Trust which states, “Lender or its designee may purchase the Property at any sale.” While PHH, or its agents, may have given Plaintiff misleading information after the sale regarding whether it was completed (as Plaintiff alleges), Plaintiff has not established that PHH violated the terms of the Deed of Trust by purchasing the property. Nothing in the Deed of Trust required PHH

to hold another sale if no third party bids occurred at the initial auction.⁷ Further, nothing in the Deed of Trust required the auctioneer to cry-out, “sold.” Plaintiff’s argument that the sale was not conducted in the manner outlined in the Deed of Trust disregards the Deed’s own terms and fails for that reason. Plaintiff also references paragraph 19 of the Deed of Trust, the borrower’s right to reinstate the loan, but fails to state how Defendants breached its terms. [DE 39, ¶ 70]

Moreover, Plaintiff does not allege that she attempted to bid at the sale, but that no highest bidder was declared by the auctioneer. Essentially, Plaintiff argues, that because the auctioneer didn’t say “sold,” there was never a final sale. Plaintiff has not pointed to any practice, custom, or any other rule that supports this argument. As such, even taken as true that no highest bidder was orally declared at the auction, 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 Holt*, 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.

Next, Plaintiff’s breach of contract and negligent performance of contract claims are also barred by the Tennessee Statute of Frauds:

No action shall be brought against a lender or creditor upon any promise or commitment to lend money or to extend credit, or upon any promise or commitment to alter, amend, renew, extend or otherwise modify or supplement any written promise, agreement or commitment to lend money or extend credit, unless the promise or agreement, upon which such action shall be brought, or some memorandum or note thereof, shall be in writing and signed by the lender or creditor, or some other person lawfully authorized by such lender or creditor.

TENN. CODE ANN. § 29-2-101(b)(1). Indeed, to the extent that Plaintiff contends PHH, or its agents promised to postpone or cancel the foreclosure sale, and that she relied on those promises, her claims remain barred by the Tennessee Statute of Frauds. *Asemota v. Suntrust Mortg., Inc.*, No.

⁷ It is common practice that the initial foreclosure bid is the lender’s initial credit bid at any foreclosure sale.

11-2816-STA-dkv, 2012 WL 12550260, at *2, 6-9 (W.D. Tenn. June 18, 2012) (Deed of Trust fell within the Tennessee statute of frauds); *see also Jones v. BAC Home Loans Serv., LP*, No. W2016-00717-COA-R3-CV, 2017 WL 2972218, at *6 (Tenn. Ct. App. Jul. 12, 2017) (“Additionally, we note that case law supports the proposition that a promise to postpone foreclosure would be required to be in writing.”) (citation omitted); *Jackson v. CitiMortgage, Inc.*, No. W2016-00701-COA-R3-CV, 2017 WL 2365007, at *7 (Tenn. Ct. App. May 21, 2017) (holding that an alleged promise to complete a loan modification review and postpone foreclosure does in fact constitute modifying the Note and Deed, which is a modification of an agreement to extend or lend credit (thus bringing it into the statute of frauds), and finding that “[a] promise to complete the loan modification review process and, more importantly, postpone the foreclosure proceedings would constitute modifying the ‘clear and unambiguous’ literal terms of the Deed which provide [lender] with clear rights to accelerate the debt and proceed to foreclosure if the [debtors] defaulted.”) (citation omitted).

Plaintiff alleges that PHH, or its agents, gave her information that was “either erroneous, misleading, or contained omissions, regarding the Covid Forbearance extension; loan modification; reinstatement; short sale; and foreclosure notice.” [DE 39 ¶ 72] Even so, none of this information was contained in a writing even though it would effectively modify the Deed of Trust. Because Plaintiff’s claims are based on alleged misleading oral communications with PHH or its agents, Plaintiff’s breach of contract and negligent performance of contract claims are deficient under the Tennessee Statute of Frauds.

To the extent Plaintiff argues in her response brief that Defendants violated the covenant of good faith and fair dealing, Plaintiff offers no authority on the point. Further, Plaintiff is barred from amending her Amended Complaint in her response brief. *Guzman v. U.S. Dept. of Homeland*

Sec., 679 F.3d 425, 429 (6th Cir. 2012) (“[C]ourts consider whether the *complaint* states a claim upon which relief could be granted, not whether the plaintiff has stated—or could state—such a claim elsewhere.”) (citation omitted).

In sum, Plaintiff’s bare assertions of legal conclusions in her Amended Complaint have not sufficiently alleged a breach of contract cause of action against Defendants under Tennessee law. *Scheid*, 859 F.2d at 436; *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 557). Accordingly, Plaintiff’s breach of contract and negligent performance of contract claims are dismissed.

Failure to State a Slander of Title Claim

Plaintiff alleges that PHH, through its agent the Wilson Law Group, impaired her title by filing a substitute trustee’s deed after the foreclosure sale. [DE 39, ¶ 96] Still, Plaintiff has failed to allege any material elements to establish a claim for slander of title.

Under Tennessee law, to prevail on a slander of title claim, 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 Amended Complaint. Plaintiff did assert these elements in her response [DE 54] to PHH’s Motion to Dismiss; however, Plaintiff may not attempt to amend her Amended Complaint with a response brief. *See Guzman*, 679 F.3d at 429-30.

In her brief in response to PHH’s Motion to dismiss the Amended Complaint, Plaintiff argues, “[Plaintiff] believes that whoever filed the substitute trustee’s deed acted in reckless disregard of the truth that her property did not sale [sic] at the scheduled foreclosure sale on May

10, 2024. The [P]laintiff believes that it was done maliciously.” [DE 54] “A person acts maliciously when the person is motivated by ill will, hatred, or personal spite.” *Currie v. JPMorgan Chase Bank, N.A.*, No. 2:12-CV-02915-JPM-dkv, 2013 WL 3776217, at *8 (W.D. Tenn. July 16, 2013) (citation omitted). Moreover, “[t]he malice requirement means that good faith, but nevertheless erroneous, claims of title do not give rise to a cause of action for slander or libel of title.” *Gibson*, 2011 WL 3608538, at *6 (citing *Brooks*, 15 S.W.3d at 484). Even construing Plaintiff’s argument above to encapsulate elements one, two, and four, Plaintiff has failed to plead any facts that demonstrate ill will, hatred, or spite. Accordingly, Plaintiff’s slander of title claim is dismissed.

CONCLUSION

Based on the facts presented, and for the reasons set forth herein, the Court finds that the Defendants’ Motions to Dismiss Plaintiff’s Amended Complaint [DE 46, 48] are **GRANTED**.

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

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