

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

October 15, 2026

FOR THE TENTH CIRCUIT

Christopher M. Wolpert
Clerk of Court

JOYCE WIGFALL-CAMPBELL,

Plaintiff - Appellant,

v.

COMMUNITY LOAN SERVICING,
LLC, f/k/a Bayview Loan Servicing,
LLC,

Defendant - Appellee.

No. 25-1358
(D.C. No. 1:24-CV-02396-DDD-MDB)
(D. Colo.)

ORDER AND JUDGMENT*

Before **HOLMES**, Chief Judge, **MORITZ** and **FEDERICO**, Circuit Judges.

Joyce Wigfall-Campbell appeals the district court's dismissal, pursuant to Fed. R. Civ. P. 12(b)(6), of her civil action against Community Loan Servicing, LLC, f/k/a Bayview Loan Servicing, LLC ("Bayview")

* After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument.

This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Federal Rule of Appellate Procedure 32.1 and Tenth Circuit Rule 32.1.

alleging breach of the implied duty of good faith and fair dealing and violation of the Colorado Consumer Protection Act (CCPA), Colo. Rev Stat. §§ 6-1-101 to 1812. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

I

Wigfall-Campbell filed suit against Bayview on August 6, 2024. Bayview, a Delaware LLC, removed the case to the District of Colorado, citing the court’s diversity jurisdiction, *see* 28 U.S.C. § 1332(a)(1).

In Wigfall-Campbell’s amended complaint,¹ she alleged she owned real property in El Paso County, Colorado that she acquired from Creative Funding, LLC for a purchase price of \$200,000, with \$150,000 financed by Creative Funding. After she and Creative Funding executed the agreement, Creative Funding “purported to assign the debt” to Bayview. Aplt. App. at 29, ¶ 16. She “was already behind on the loan and therefore in default when Bayview purchased the loan,” so she executed a loan adjustment agreement with Bayview in 2008. *Id.* at 30, ¶ 17.

Wigfall-Campbell declared bankruptcy in 2009. She also executed a loan modification document “that would put the unsecured unpaid fees and

¹ The amended complaint is the operative source of allegations for our analysis of Bayview’s Rule 12 motion, and we assume the truth of all well-pleaded facts. *See Waller v. City & Cnty. of Denver*, 932 F.3d 1277, 1282 (10th Cir. 2019).

interest back into the loan as a secured debt.” *Id.* ¶ 28. She alleged, though, that this modification was void due to her bankruptcy. Bayview nonetheless “continued to attempt to collect the debt including the amount that was discharged in bankruptcy.” *Id.* at 31, ¶ 38. After the bankruptcy case closed in 2011, Wigfall-Campbell signed another loan modification agreement. But she stated in her amended complaint that “[a]s this was a post-bankruptcy document attempt at modification, the debt could not be reaffirmed and remained discharged.” *Id.* at 32, ¶ 55.

From 2011 to 2013, Bayview assessed late fees on Wigfall-Campbell’s account, and from March to April 2013 Bayview “erroneously force placed fire insurance on the property,” increasing the monthly payment due. *Id.* ¶ 59. Bayview charged her a default fee in March 2015 and continued charging late fees through 2022. Wigfall-Campbell alleged she “was told over and over” in conversations she had with Bayview representatives that her late fees “would be refund[ed],” and that these representations continued “until approximately 2022 when she hired counsel.” *Id.* at 33, ¶ 80. She alleged “[t]he last payment accepted by Bayview was September 2022,” and that Bayview initiated foreclosure proceedings in April 2024. *See id.* at 34, ¶¶ 85, 88.

In her complaint, Wigfall-Campbell brought four claims for relief. The first claim requested a declaratory judgment pursuant to Colorado’s

Uniform Declaratory Judgments Law, Colo. Rev. Stat. § 13-51-101–115, on the following point(s):

a. Whether the Bankruptcy filing of May 22, 2009 created a stay of collection in favor of [Wigfall-Campbell]?

b. Whether the modification signed by [Wigfall-Campbell] during the bankruptcy is a valid contract?

c. Whether the modification signed in 2011 is a valid contract?

d. Whether the deed of trust from June 2006 has expired due to failure to exercise Bayview's rights under the deed of trust due to the statute of limitations related to the default under the original loan as the 2009 contract is not valid?^[2]

e. Whether the statute of limitation[s] has passed on the loan as default began according to Bayview beginning in 2015 and foreclosure was not brought until April 24, 2024 which is more than six years after accrual of Bayview's cause of action.

f. Whether [Wigfall-Campbell], [Bayview] or third-party defendant^[3] is the owner and entitled to possession of the Property.

Aplt. App. at 35, ¶ 106(a)–(f).

² Although we quote it here, we agree with Bayview that this portion of the request for declaratory relief is unintelligible. *See* Resp. Br. at 34, n.3. We construe it, along with subparagraphs e and f, as a request to declare the statute of limitations has run on Bayview's claim to foreclose on the property.

³ When Wigfall-Campbell filed the amended complaint, there was no third-party defendant, nor has Bayview ever designated one.

The second claim asserted Bayview breached the implied duty of good faith and fair dealing through its “confusing and inconsistent servicing of the loan and unlawful actions related to violations of the bankruptcy stay,” and its breaches “include[d], but are not limited to, conduct, acts, promises, and omissions during the period late 2008 through and after the date of the commencing the foreclosure action on the property.” *Id.* at 36, ¶¶ 112, 118.

The third claim sought to quiet title in the property, and the fourth asserted Bayview violated the CCPA by “provid[ing] [Wigfall-Campbell] conflicting and erroneous information regarding her due date and her grace period,” causing her to incur “late fees for nearly eight years that would not be due and owing had the grace period been honored.” *Id.* at 37, ¶¶ 129-30.

Bayview moved to dismiss for failure to state a claim under Rule 12(b)(6). The district court granted the motion. The court concluded Wigfall-Campbell’s second and fourth claims for relief – her claims for breach of the implied duty of good faith and fair dealing and violation of the CCPA, respectively – were each subject to a three-year statute of limitations and therefore time barred. The court dismissed her claim for declaratory relief because there was no valid cause of action attached to it, and it dismissed her quiet title claim because it was dependent upon her declaratory judgment claim. This timely appeal followed.

II

A

“We review de novo a district court’s decision on a Rule 12(b)(6) motion for dismissal for failure to state a claim. Under this standard, we must accept all the well-pleaded allegations of the complaint as true and must construe them in the light most favorable to the plaintiff.” *Waller v. City & Cnty. of Denver*, 932 F.3d 1277, 1282 (10th Cir. 2019) (citation, italics, and internal quotation marks omitted). “[A] complaint must contain sufficient factual matter . . . to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). To meet this standard, the plaintiff must “plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* And, “the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions.” *Id.* “[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged – but it has not shown – that the pleader is entitled to relief.” *Id.* at 679 (internal quotation marks and brackets omitted).

B

“To prevent cases from needlessly bouncing back and forth between district and appellate courts, this court is entitled to affirm a district court

on alternative grounds that court didn't consider if those grounds are adequate, apparent in the record, and sufficiently illuminated by counsel on appeal." *Walton v. Powell*, 821 F.3d 1204, 1212 (10th Cir. 2016). Wigfall-Campbell argues the court should not consider any alternative grounds for affirmance because Bayview did not bring a cross-appeal. She further argues this court's ability to affirm on any *ground* supported by the record "does not permit appellees to raise completely new *issues* . . . that appellants are then forced to respond to in their reply briefs." Reply Br. at 6. We reject this argument. There was no adverse ruling for Bayview to cross-appeal. And the distinction Wigfall-Campbell attempts to draw between "grounds" and "issues" is contrary to circuit precedent. *See Richison v. Ernest Grp., Inc.*, 634 F.3d 1123, 1130 (10th Cir. 2011) ("[W]e treat arguments for *affirming* the district court differently than arguments for *reversing* it. We have long said that we may affirm on any basis supported by the record, even if it requires ruling on arguments not reached by the district court or even presented to us on appeal.").

Wigfall-Campbell challenges the district court's conclusion that her claims for violation of the CCPA and for breach of the implied duty of good faith and fair dealing were untimely. We do not need to reach these arguments because the record supplies alternate bases to affirm each

dismissal that are “adequate, apparent in the record, and sufficiently illuminated by counsel on appeal.” *Walton*, 821 F.3d at 1212..

C

The implied duty of good faith and fair dealing claim fails because Wigfall-Campbell did not plead the existence of “a specific contract term” that “allow[ed] discretion on the part of either party.” *Amoco Oil Co. v. Ervin*, 908 P.2d 493, 498 (Colo. 1995), *as modified on denial of reh’g* (Jan. 16, 1996), (holding such circumstances are the “only” ones in which a party to a contract may rely upon the implied duty, which “will not contradict terms or conditions for which a party has bargained.”).

Although Wigfall-Campbell alleged generally that Bayview acted in bad faith while considering various proposed modifications to the loan and with its ultimate decision to pursue foreclosure, she admitted that she had not paid the full balance owed. And the deed of trust empowered Bayview to pursue foreclosure in the event of a default but neither provided for, nor required it to consider or agree to, a loan modification. This defeats Wigfall-Campbell’s claim. *See Miller v. Bank of N. Y. Mellon*, 379 P.3d 342, 349 (Colo. App. 2016) (no implied duty of good faith and fair dealing claim where “original note and deed of trust gave [Bank] the right to foreclose in the event of default and did not require [Bank] to consider or agree to a modification.”).

D

The CCPA claim fails because Wigfall-Campbell did not adequately plead that Bayview engaged in a trade practice that “significantly impacts the public as actual or potential consumers of [its] goods, services, or property.” *Rhino Linings USA, Inc. v. Rocky Mountain Rhino Lining, Inc.*, 62 P.3d 142, 147 (Colo. 2003). Her complaint centered on a series of private transactions between her and a commercial lender related to a non-residential property loan. So, even assuming she adequately pleaded that Bayview’s conduct was wrongful, she failed to plead sufficient facts to show she has a valid claim under the CCPA. *Id.* at 149 (“[I]f a wrong is private in nature, and does not affect the public, a claim is not actionable under the CCPA.”).

E

Wigfall-Campbell argues the court erred in treating her claim for declaratory judgment as derivative of her implied duty of good faith and fair dealing and CCPA claims because she pled it under the Colorado Declaratory Judgment Act, which, she argues, permits her to proceed “whether or not further relief is or could be claimed.” Op. Br. at 12 (quoting Colo. R. Civ. P. 57(a)). Bayview argues, though, that Wigfall-Campbell’s claim for declaratory relief “presents a procedural matter, rather than substantive law,” and therefore the court properly considered (and,

ultimately, dismissed) it in light of the federal Declaratory Judgment Act. Resp. Br. at 10.

In support of its position, Bayview cites *Atlas Biologicals, Inc. v. Kutrubes*, 50 F.4th 1307, 1328 n.5 (10th Cir. 2022) for the proposition that Colorado’s declaratory judgment statute is purely procedural, and hence is inapplicable under the *Erie* doctrine because the case was removed to federal court. But the panel in *Atlas Biologicals* expressly declined to “definitively opine on the matter” of whether the federal or state declaratory judgment statute governed, *id.*. And we need not do so here, either, because we agree with Bayview that, substantively, Wigfall-Campbell is not entitled to any of the declaratory relief she seeks. *See Walton*, 821 F.3d at 1212 (permitting affirmance on alternate grounds); *Richison*, 634 F.3d at 1130 (same).

1

The statute of limitations for Bayview to foreclose on the loan secured by the property has not expired because, per the allegations in Wigfall-Campbell’s Amended Complaint, her debt under the loan has still not become due. *See US Bank Nat’l Ass’n v. Silvernagel*, 528 P.3d 163, 166 (Colo. 2023) (“[A]ll actions enforcing the rights set forth in any instrument securing the payment of or evidencing any debt must be brought within six years after the cause of action *accrues*. A cause of action accrues on the date

such debt, obligation, money owed, or performance *becomes due*.” (internal quotation marks and citation omitted)).

Rather, she admits that she agreed in 2008 to “extend[] the loan from two years to thirty years,” Aplt. App. at 30, ¶ 19. And, she admits she continued to pay on the loan through September 2022. These partial payments toward her total balance due effectively restarted the statute of limitations on a foreclosure action. *See Hutchins v. La Plata Mountain Res., Inc.*, 373 P.3d 582, 585 (Colo. 2016) (“Since early common law, it has been universally accepted that a new promise to pay effectively removes the bar of any applicable statute of limitations by creating a new debt, with a new due date; and that a partial payment constitutes an implicit promise to pay.”).

2

Ms. Wigfall-Campbell’s bankruptcy “discharge [did] not extinguish the underlying debt[,] [R]ather[,] it change[d] [her] liability for that debt.” *FB Acquisition Prop. I, LLC v. Gentry, (In re Gentry)*, 807 F.3d 1222, 1228 (10th Cir. 2015). And it did not eliminate Bayview’s right to foreclose on the property to collect the debt. *See Johnson v. Home State Bank*, 501 U.S. 78, 84 (1991) (“[A] bankruptcy discharge extinguishes only one mode of enforcing a claim – namely, an action against the debtor *in personam* –

while leaving intact another – namely, an action against the debtor *in rem*.”).

Further, Wigfall-Campbell admits in her amended complaint she “filed an intent to retain statement with the [bankruptcy court] stating that the property would be retained and paid per contract.” Aplt. App. at 30–31, ¶ 33. Such a statement “is functionally indistinguishable from reaffirmation on the original terms except for the lack of personal liability.” *Dumont v. Ford Motor Credit Co. (In re Dumont)*, 581 F.3d 1104, 1114 (9th Cir. 2009). Under these circumstances, Wigfall-Campbell’s bankruptcy provides no basis to challenge the validity of the post-bankruptcy modifications to the loan, so the dismissal of her claim for declaratory judgment seeking such relief was proper.

3

The only other challenge Wigfall-Campbell makes to the validity of the modifications she signed to the loan in 2008 and 2011 – that only she, not Bayview, signed them – fails because the operative statute of frauds requires only that such modifications be “signed by the party against whom enforcement is sought.” Colo. Rev. Stat. § 38-10-124(2).

Because Wigfall-Campbell’s claims for declaratory relief fail on their own terms – that is, because neither the statute of limitations nor her 2009 bankruptcy nor any other basis operates to impair Bayview’s right to seek

foreclosure on the loan, we affirm the district court’s dismissal without deciding whether the Colorado or federal Declaratory Judgment Act governs that cause of action.

F

Finally, we affirm the dismissal of the quiet title claim because Wigfall-Campbell conceded before the district court that it was “an ancillary claim to the declaratory action.” Aplt. App. at 116 (capitalization omitted), *see also id.* (“[T]he determination of that action will determine whether the quiet title action is valid.” (capitalization omitted)). She offers no argument on appeal that this claim could function independently of her other claims. In any event, such an argument would contradict her position before the district court, so we will not consider it. *See Lone Star Steel Co. v. United Mine Workers of Am.*, 851 F.2d 1239, 1243 (10th Cir. 1988) (“Ordinarily, a party may not lose in the district court on one theory of the case, and then prevail on appeal on a different theory.”).

AFFIRMED.

Entered for the Court

Richard E.N. Federico
Circuit Judge