IT IS ORDERED as set forth below:

Date: January 4, 2016

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In re:	:	BANKRUPTCY CASE NO:
JAMES LEE THOMPKINS,	:	**15-64208-MGD**
Debtor.	:	CHAPTER 7
JAMES LEE THOMPKINS,	:	
Plaintiff,	:	
v.	:	ADVERSARY PROCEEDING NO:
CARRINGTON MORTGAGE SERVICING, LLC,	:	**15-5345-MGD**
Defendant.	:	

ORDER DISMISSING ADVERSARY COMPLAINT

Before the Court is Defendant Carrington Mortgage Servicing, LLC's ("Carrington") Motion to Dismiss (Doc. 5). No response to the motion was filed.

I. Background

Debtor-Plaintiff James Lee Thompkins ("Debtor") filed his voluntary Chapter 7 Petition on July 30, 2015. (Bankr. Doc. 1). He listed his home address as 5958 Dart Drive, Lithonia, GA 30058 on his petition. (Bankr. Doc. 1). The Lithonia property is not listed on Debtor's Schedule A, but Debtor avers that the property is his current residence. (Doc. 1 at 4, ¶ 5). Debtor initiated this adversary proceeding on September 2, 2015. (Doc. 1). Carrington's motion for relief from stay regarding the property in question—filed August 24, 2015—was granted over Debtor's objection on September 28, 2015. (Bankr. Doc. 20).[1] Carrington filed its Motion to Dismiss and Memorandum in Support on October 5, 2015. (Docs. 5, 6). It argues that dismissal is appropriate in this case pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure ("Rule 12(b)(6)"), applicable to this adversary proceeding through Rule 7012 of the Federal Rules of Bankruptcy Procedure. Debtor did not file a response or otherwise oppose the motion.

II. Legal Standard

A complaint should be dismissed under Rule 12(b)(6) only where it appears that the facts alleged fail to state a "plausible claim for relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1950 (2009); FED. R. CIV. P. 12(b)(6). Under Federal Rule of Civil Procedure 8(a)(2), a pleading need only contain a "short and plain statement of the claim showing that the pleader is entitled to relief." FED. R. CIV. P. 8(a)(2). In ruling on a motion to dismiss, the court must accept all of the factual allegations in the complaint as true and construe them in the light most favorable to the plaintiff *Iqbal*, 129 S. Ct. at 1949. But "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id*. at 1949. The complaint "must contain either direct or inferential allegations respecting all the material

[1] Debtor has since moved to set aside the order granting the motion. (Bankr. Doc. 23). That motion was denied on November 10, 2015. (Bankr. Doc. 26).

elements necessary to sustain recovery under *some* viable legal theory." *Bell Atlantic v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 1969 (2007) (italics in original). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 129 S. Ct. at 1949. Debtor's status as a pro se party in this case does not exempt him from the pleading requirements contained in the Federal Rules of Civil Procedure. *Hennington v. Greenpoint Mortg. Funding, Inc.*, Nos. 1:09-CV-00676-RWS, 1:09-CV-00962-RWS, 2009 WL 1372961, at *4 (N.D. Ga. May 15, 2009) (citing *Trawinski v. United Tech.*, 313 F.3d 1295, 1297 (11th Cir. 2002)).

Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id*. at 1950 (citation omitted). In deciding a motion to dismiss, a court may consider the full text of documents that are quoted in the complaint or documents that the plaintiff either possessed or relied upon in bringing the suit without converting the motion to a motion for summary judgment. *Bickley v. Caremark RX, Inc.*, 461 F.3d 1325, 1329 n.7 (11th Cir. 2006); *Rothman v. Gregor*, 220 F.3d 81, 88–89 (2d Cir.2000). The movant has the burden of demonstrating that dismissal is appropriate. *Paul v. Intel Corp. (In re Intel Corp. Microprocessor Antitrust Litig.)*, 496 F. Supp. 2d 404, 408 (D. Del. 2007).

III. Discussion

Debtor did not respond to Carrington's Motion to Dismiss, which the Court deems unopposed. BLR 7007-1(c), N.D. Ga. In his adversary complaint, Debtor enumerates two causes of action: (1) injunctive relief; and (2) breach of contract. (*Id.* at 5–10). Carrington

argues that the complaint fails to state a claim with regard to both causes of action. The Court considers each cause of action in turn.

A. Injunctive Relief

Debtor first asserts that he is entitled to injunctive relief because Carrington did not have the right to initiate foreclosure proceedings because it did not have standing to do so. Debtor states that he "attended a closing and executed a Mortgage and Note with Aldridge Connors, LLP, Trustees for the Mortgage Electronic Registration System ("MERS") and representing the seller of the subject property." (Doc. 1 at 4, ¶ 7). The Security Deed executed by Thompkins in favor of MERS granted the property in question, with power of sale, to MERS. (Doc. 12 at 8). That Security Deed was assigned to Bank of America, N.A., which then assigned it to Carrington. (Doc. 6, Exh. A). Debtor now argues that Carrington cannot legally foreclose upon the property in question. Specifically, Debtor argues that: 1) Carrington has not met "the standing requirements of attachment and enforceability under O.C.G.A. § 11-9-2013(b) and a perfected Security to initiate foreclosure"; 2) Carrington's security interest in the property is void because MERS is involved in the chain of assignments; and 3) Carrington's attempt to foreclose "has contained numerous violations of State and Federal laws" (Doc. 1 at 5–6, ¶¶ 11–15).

Debtor fails to allege any facts that would allow the Court to conclude that he is entitled to the relief sought. Debtor's complaint contains only conclusory allegations that Carrington has somehow violated some unspecified federal and state laws, and his incorrect assertion that Carrington lacks standing to foreclose because its security interest has been invalidated since MERS acted as a grantee in the chain of assignments. *See Davis v. Mortg. Elec. Reg. Sys., Inc.*, No. 1:14-CV-3268-WSD, 2015 WL 4561547, at *3 (N.D. Ga. July 28, 2015) (affirming the

magistrate's finding that, even if Plaintiff had standing to challenge an assignment from MERS, "Georgia courts have repeatedly rejected the argument that MERS, as grantee and nominee of the original lender, cannot effect assignment of a security deed.") (citing *Larose v. Bank of Am. N.A.*, 321 Ga. App. 465, 740 S.E.2d 882, 884 (Ga. Ct. App. 2013); *Montgomery v. Bank of Am.*, 321 Ga. App. 343, 740 S.E.2d 434, 437 (Ga. Ct. App. 2013)). Debtor has therefore failed to state a claim for injunctive relief upon which relief can be granted, and dismissal of his claim under Rule 12(b)(6) is appropriate.

The Court now turns to Debtor's claim for breach of contract.

B. Breach of Contract

Next, Debtor alleges that he and Carrington had a contractual agreement, which Carrington breached. (Doc. 1 at 7–9, ¶¶ 18-29). As evidence of this contract, Debtor has attached a series of letters he sent to Carrington and counsel for Carrington, which he claims resulted in a contract between him and Carrington that Carrington breached by failing to respond to his "Notice of Conditional Acceptance." (*Id.*). Nothing in the series of letters attached to Debtor's complaint indicates that Debtor and Carrington entered into any form of contract, which was then breached. Debtor asserts that Carrington's failure to reply to his letters amounted to acceptance of the terms contained therein. (*Id.*). But, it is hornbook law that an offeree need not respond to an offer, and the resulting silence will not be construed as an acceptance of the offer. 2 Williston on Contracts § 6:50 (4th ed.) (citing *Beach v. U.S.*, 226 U.S. 243, 33 S. Ct. 20, 57 L. Ed. 205 (1912)) (retaining a proposal without rejecting it does not constitute acceptance of the

proposal). Limited exceptions to this general rule exist,[2] none of which are applicable in this case.

As part of his breach of contract claim, Debtor also states that Carrington's failure to respond to his letter constitutes a violation of both the Fair Debt Collection Practices Act and the Truth in Lending Act. (Doc. 1 at 9, ¶ 27). But Debtor fails to allege any facts supporting his conclusory statements, and he cites merely to the Congressional Findings and Declaration of Purpose sections of each Act. (*Id.*). Debtor has therefore failed to state a claim for breach of contract upon which relief can be granted, and dismissal of his claim under Rule 12(b)(6) is appropriate.

IV. Conclusion

For the reasons stated above, Debtor's complaint fails to state a claim for relief, and dismissal under Rule 12(b)(6) is warranted. Accordingly, it is

ORDERED that Defendant's Motion to Dismiss (Doc. 5) is **GRANTED**, and the above-styled proceeding is **DISMISSED**.

The Clerk is directed to serve a copy of this Order on Plaintiff, Defendant, Defendant's counsel, and the Chapter 7 Trustee.

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[2] Those limited exceptions include: (1) "when the offeree, with a reasonable opportunity to reject offered goods or services, takes the benefit of them under circumstances which would indicate to a reasonable person that they were offered with the expectation of compensation"; (2) "when the offeror has stated or given the offeree reason to understand that assent may be manifested by silence or inaction, and the offeree in remaining silent and inactive intends to accept the offer"; (3) "when, because of previous dealings or otherwise, the offeree has reasonably led the offeror to understand that the silence or inaction is intended to manifest an acceptance, and the offeror understands the silence in this manner"; and (4) "when the offeree takes or retains possession of offered property, or otherwise acts inconsistently with the offeror's ownership rights, it will operate as an acceptance of the offered terms absent other circumstances suggesting a contrary intent." 2 Williston on Contracts § 6:50 (4th ed.). Debtor has not alleged any facts indicating any of these limited exceptions is applicable in this case.