

1  
2  
3  
4  
5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 THE BANK OF NEW YORK  
9 MELLON AS TRUSTEE FOR THE  
10 BENEFIT OF THE CERTIFICATE  
11 HOLDERS OF THE CWABS, INC.,  
12 ASSET-BACKED CERTIFICATES,  
13 SERIES 2007-SD1 FKA THE BANK  
14 OF NEW YORK,

15 Plaintiff,

16 v.

17 KAREN , and DOES 1  
18 through 50,

19 Defendants.

ORDER

20 THIS MATTER comes before the Court on Defendant Karen  
21 Motion to Dismiss, docket no. 10. The parties have also filed Requests for Judicial  
22 Notice, docket nos. 11 & 14. Having reviewed all papers filed in support of, and in  
23 opposition to, the motion, the Court enters the following order.

**Background**

21 Defendant Karen received a \$356,250.00 mortgage loan on February 9,  
22 2007, secured by a Deed of Trust against real property in Seattle. Complaint, docket  
23

1 no. 1, Ex. 2 ¶¶ 4-6. stopped paying her mortgage shortly thereafter, on July 1,  
2 2007, and never made another installment payment on the loan. *Id.* ¶ 9. She filed for  
3 bankruptcy on September 5, 2007, and received a discharge of debts—including her  
4 mortgage obligation—on September 11, 2009.<sup>1</sup> Def.’s RJN (docket no. 11), Ex. 7.

5 Plaintiff BONY initiated several non-judicial foreclosure actions over the ensuing  
6 years. The first action commenced with a recorded notice of trustee sale on May 27,  
7 2009 setting an August 28, 2009 sale date. Pl.’s RJN (docket no. 14), Ex. A. According  
8 to Plaintiff, the “sale did not occur and the proposed August 2009 sale was not  
9 continued.” Pl.’s Response (docket no. 13) at 3. Plaintiff next recorded a July 19, 2010  
10 notice of sale scheduled for October 15, 2010. Pl.’s RJN, Ex. B. Again, Plaintiff  
11 represents that the sale did not occur and was not continued. Pl.’s Response at 3.  
12 Plaintiff recorded another notice on April 19, 2011 for a July 22, 2011 sale. Pl.’s RJN,  
13 Ex. C. Again, the sale never occurred and was not continued. Pl.’s Response at 3. On  
14 March 27, 2015, Plaintiff recorded another notice of sale for July 31, 2015. Pl.’s RJN,  
15 Ex. D. That sale was discontinued on October 30, 2015 when Plaintiff filed a Notice of  
16 Discontinuance. *Id.*, Ex. H. Plaintiff recorded another notice of sale on November 14,  
17 2016 for a sale to take place on March 24, 2017. *Id.*, Ex. E. Plaintiff discontinued that  
18 sale on December 5, 2016 because in the interim the Defendant commenced mediation  
19 under Washington’s Foreclosure Fairness Act (RCW 61.24.165). *Id.*, Ex. I, F.

---

21  
22 <sup>1</sup> Although her personal obligation was discharged, BONY retained an in rem interest in the Property  
23 even after the discharge. *Johnson v. Home State Bank*, 501 U.S. 78, 82-84 (1991).

1  
2  
3  
4  
5  
6  
7  
8 **2. Tolling During Mediation**

BONY argues that it should receive another 420 days of tolling during the pendency of mediation. The Court need not reach the issue because BONY needs the full tolling during both the mediation and the foreclosure sales in order to extend the limitations period long enough to avoid dismissal. Even if BONY could claim the additional 420 days of tolling during mediation, the limitations period would have expired in January 2018, approximately four months before BONY filed this action.

8 **Conclusion**

9 For the foregoing reasons, the Court ORDERS:

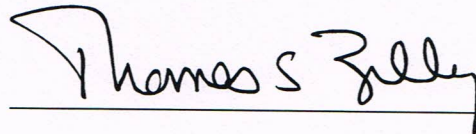
10 (1) Defendant's Motion to Dismiss, docket no. 10, is GRANTED with  
11 prejudice.

12 (2) Defendant's Request for Judicial Notice (docket no. 11) and Plaintiff's  
13 Request for Judicial Notice (docket no. 15) are GRANTED.

14 (3) The Clerk is directed to send a copy of this Order to all counsel of record  
15 and to CLOSE this case.

16 IT IS SO ORDERED.

17 Dated this 16th day of October, 2018.

18  
19 

20 Thomas S. Zilly  
21 United States District Judge  
22  
23