

[Matheson v. Deutsche Bank Nat'l Trust Co.](#)

United States Court of Appeals for the Second Circuit

December 13, 2017, Decided

16-1543-cv

Reporter

706 Fed. Appx. 24 *; 2017 U.S. App. LEXIS 25103 **; 2017 WL 6371251

MARILYN E. MATHESON, YVONNE E. CHAPLIN, Plaintiffs - Appellants, v. DEUTSCHE BANK NATIONAL TRUST COMPANY, INDYMAC BANK, AKA ONE WEST BANK, WELLS FARGO NATIONAL BANK, WELLS FARGO HOME MORTGAGE, AMERICA SERVICING COMPANY, AKA ASC, OCWEN LOAN SERVICING, LLC, OCWEN FINANCIAL CORPORATION, WILLIAM C. ERBEY, EXECUTIVE CHAIRMAN, CHASE MANHATTAN BANK, AKA JP MORGAN CHASE BANK, N.A., MERCORP-INC., JP MORGAN CHASE & CO., MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC., JUDGE AUGUSTUS J. AGATE, ANDREW MORGANSTERN, ROSICKI, ROSICKI & ASSOCIATES, P.C., FRENKEL, LAMBER, WEIS, WEISMAN & GORDON LLP, JOSEPH F. BATTISTA, ESQ., LINDA J. MENFREDI, ESQ., BECKY NORTH, CARYN EDWARDS, LAURA HESCOTT, STEVE BROVIK, DUTCHESS COUNTY SUPREME COURT, JUDGE CHRISTINE A. SPROAT, PETER B. SKELOS, APPELLATE DIVISION JUSTICE, ATTORNEY GERARD J. PISANELLI, RAS BORISKIN LAW OFFICE, MATTHEW MALTESE, JEFF BONDOC, AARON BATELIC, JASCO HOME IMPROVEMENTS, JOSEPH AMOROSSO, US BEST REPAIR, JAMES CHANG, JOSEPH C. AIMETTI, Defendants - Appellees.

Notice: PLEASE REFER TO *FEDERAL RULES OF APPELLATE PROCEDURE RULE 32.1* GOVERNING THE CITATION TO UNPUBLISHED OPINIONS.

Prior History: **[**1]** Appeal from orders of the United States District Court for the Southern District of New York (Paul A. Engelmayer, Judge).

[Deutsche Bank Natl. Trust Co. v. Matheson, 77 A.D.3d 883, 909 N.Y.S.2d 638, 2010 N.Y. App. Div. LEXIS 7776 \(N.Y. App. Div. 2d Dep't, Oct. 26, 2010\)](#)

Core Terms

orders, failure to state a claim, preliminary injunction, sua sponte, pro se

Counsel: Marilyn E. Matheson, PLAINTIFFS-APPELLANTS, Pro se, Pawling, NY.

Yvonne E. Chaplin, PLAINTIFFS-APPELLANTS, Pro se, Rosedale, NY.

FOR DEFENDANTS-APPELLEES: Deutsche Bank National Trust Company, IndyMac Bank, aka One West Bank, Ocwen Loan Servicing, LLC, Ocwen Financial Corporation, William C. Erbey, Executive Chairman, Mercorp-Inc., and Mortgage Electronic Registration System, Inc.: Schuyler Blake Kraus, Hinshaw & Culbertson LLP, New York, NY.

FOR DEFENDANTS-APPELLEES Dutchess County Supreme Court, Judge Augustus J. Agate, Judge Christine A. Sproat, and Justice Peter B. Skelos: David Lawrence III, Assistant Solicitor General (Barbara D. Underwood, Solicitor General, Steven C. Wu, Deputy Solicitor General, on the brief), for Eric T. Schneiderman, Attorney General of the State of New York, New York, NY.

FOR DEFENDANTS-APPELLEES Aaron Batelic and Joseph C. Aimetti: Kenneth C. Gobetz, Wichler & Gobetz, P.C., Suffern, NY.

FOR DEFENDANTS-APPELLEES U.S. Best Repair Service, Inc. and James Chan: Paul G. Ferrara, Costello, Cooney & Fearon, PLLC, Syracuse, NY.

FOR DEFENDANTS-APPELLEES **[**2]** Andrew Morganstern and Rosicki, Rosicki & Associates P.C.: Lijue T. Philip, Rosicki, Rosicki & Associates P.C., Plainview, NY.

FOR DEFENDANT-APPELLEE JPMorgan Chase Bank,

N.A.: Tyler J. Kandel, Emmet, Marvin & Martin, LLP,
New York, NY.

FOR DEFENDANTS-APPELLEES RAS Boriskin Law
Office, Matthew Maltese, and Jeff Bondoc: Jason W.
Creech, RAS Boriskin, LLC, Westbury, NY.

FOR DEFENDANTS-APPELLEES Wells Fargo Bank,
N.A., Wells Fargo Home Mortgage, and America's
Servicing Company, aka ASC: Heather R. Gushie and
David Dunn, Hogan Lovells US LLP, New York, NY,
Chava Brandriss, Hogan Lovells US LLP, Washington,
DC.

Judges: PRESENT: JOSÉ A. CABRANES, DEBRA
ANN LIVINGSTON, SUSAN L. CARNEY, Circuit
Judges.

Opinion

[*26] SUMMARY ORDER

**UPON DUE CONSIDERATION WHEREOF, IT IS
HEREBY ORDERED, ADJUDGED, AND DECREED**
that the March 14, 2016 and May 9, 2016 orders of the
District Court be and hereby are **AFFIRMED**.

Appellants Marilyn Matheson and Yvonne Chaplin,
proceeding *pro se*, appeal from the District Court's
orders *sua sponte* dismissing with prejudice their
complaint against, *inter alia*, various banks, mortgage
servicers, and New York state judges, for failure to state
a claim, and denying their motion for a preliminary
injunction **[**3]** to prevent the sale of Matheson's
residence. In a complaint exceeding 100 pages, they
asserted, among other things, violations of various
criminal statutes and the [Fair Debt Collection Practices
Act \("FDCPA"\)](#), claiming a vast conspiracy between the
Defendants related to the foreclosures of their homes.
They alleged \$365 million in damages. The District
Court granted them leave to amend their complaint to
comply with the pleading standards; they refused. We
assume the parties' familiarity with the underlying facts,
the procedural history of the case, and the issues on
appeal.

We review a district court's *sua sponte* dismissal for
failure to state a claim *de novo*, and its denial of a
preliminary injunction for abuse of discretion. [J.S. v.
T'Kach, 714 F.3d 99, 103 \(2d Cir. 2013\)](#) (*sua sponte*
dismissal for failure to state a claim); [Lynch v. City of
New York, 589 F.3d 94, 99 \(2d Cir. 2009\)](#) (denial of

preliminary injunction). *Pro se* submissions are reviewed
with special solicitude, and "must be construed liberally
and interpreted to raise the strongest arguments that
they suggest." [Triestman v. Fed. Bureau of Prisons, 470
F.3d 471, 474-75 \(2d Cir. 2006\)](#) (internal quotation
marks and emphasis omitted).

Upon review, we conclude that the District Court
properly dismissed the complaint and denied the
request for injunctive relief. We affirm for substantially
the reasons **[**4]** stated by the District Court in its
March 14, 2016 and May 9, 2016 orders.

CONCLUSION

We have reviewed all of the arguments raised by
Matheson and Chaplin on appeal and find them to be
without merit. For the foregoing reasons, we **AFFIRM**
the March 14, 2016 and May 9, 2016 orders of the
District Court.

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