

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

LUIS BEATO and
SHAWNTAYE BEATO,

Plaintiffs,

v.

CASE NO. 8:12-cv-1233-T-23EAJ

MORRISON FINANCIAL SERVICES
OF FLORIDA, LLC, et al.,

Defendants.

ORDER

The *pro se* plaintiffs sue (Doc. 1) seven financial institutions and twenty "John Does" for a violation of the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. §§ 2601–2617*; for wrongful foreclosure, fraud, and "declaratory relief"; and to quiet title. Arguing that the plaintiffs fail to invoke subject matter jurisdiction, fail to state a claim, fail to comply with Rule 8 of the Federal Rules of Civil Procedure, and fail to timely sue, the defendants move (Docs. 8, 9, 21) to dismiss. Alternatively, the defendants note a continuing, state court foreclosure action against the plaintiffs' property and argue for abstention under *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 819 (1976).

* As a basis for subject matter jurisdiction, the complaint in a prefatory paragraph cites RESPA; the Home Ownership and Equity Protection Act, Pub.L. 103-325; the Home Owners' Loan Act, 12 U.S.C. §§ 1461–1468; the Truth in Lending Act, 15 U.S.C. §§ 1601–1667; the Fair Debt Collection Practices Act, 15 U.S.C. § 1692; and "the Mortgage Fraud Act[,] 18 U.S.C. § 1006." However, the complaint, divided into five counts, attempts neither to raise nor to support a federal claim other than the claim under RESPA, which appears as the "Fifth Cause of Action."

The plaintiffs' RESPA claim cites 12 U.S.C. § 2607 and alleges that the defendant Morrison Financial Services of Florida, LLC, gave the plaintiffs a mortgage loan at an artificially inflated rate and gave an illegal kickback to "DOE 2." RESPA prescribes a one-year limitation. 12 U.S.C. § 2614. For a mortgage, the RESPA injury is inflicted and the limitation accrues at the closing. *Snow v. First Am. Title Ins. Co.*, 332 F.3d 356, 359-60 (5th Cir. 2003). The plaintiffs closed on December 13, 2005. (Doc. 9-1, at 1) The plaintiffs initiated this action on June 1, 2012, over six years after the closing. The plaintiffs' RESPA claim fails.

The motions (Docs. 8, 9, 21) are **GRANTED IN PART**, and **COUNT V's** RESPA claim is **DISMISSED WITH PREJUDICE**. With the dismissal of the only federal claim, supplemental jurisdiction is **DECLINED** under 28 U.S.C. § 1367(c)(3). Section 1367(d) tolls any applicable limitation for thirty days. *Jinks v. Richland County, S.C.*, 538 U.S. 456, 459 (2003). Accordingly, this action is **DISMISSED** for lack of jurisdiction. The Clerk is directed to (1) terminate any pending motion and (2) close the case.

ORDERED in Tampa, Florida, on August 15, 2012.



STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE