

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 21 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

VINCENT-RALPH CALIGIURI,

Plaintiff - Appellant,

v.

COLUMBIA RIVER BANK
MORTGAGE GROUP; COLUMBIA
RIVER BANK COLUMBIA BANCORP;
FREEDOM MORTGAGE
CORPORATION; WELLS FARGO
BANK, N.A.; WELLS FARGO NV N.A.,
also known as Wells Fargo Bank Nevada,
N.A.; LOANCARE SERVICING
CENTER, INC.; THOMAS J.
PRENOVOST, Jr.; UNKNOWN
OWNERS, of the Evidences of the Debts
and/or Owners of "The Notes";
NORTHWEST TRUSTEE SERVICES,
INC., successor by merger to Northwest
Trustee Services, PLLC, formerly known
as Northwest Trustee Services, Inc.,

Defendants - Appellees.

No. 07-35445

D.C. No. CV-07-03003-OMP

MEMORANDUM*

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Appeal from the United States District Court
for the District of Oregon
Owen M. Panner, District Judge, Presiding

Submitted May 7, 2009**
Portland, Oregon

Before: W. FLETCHER, BEA and IKUTA, Circuit Judges.

Plaintiff Vincent-Ralph Caligiuri appeals pro se the district court's dismissal without leave to amend of his action against defendants Columbia River Bank Mortgage Group ("CRB"), Wells Fargo, and Freedom Mortgage Corp. ("Freedom"), LoanCare Servicing Center, Inc. ("LoanCare"), and Northwest Trustee Services, Inc. ("NWTS"), for claims under the Truth in Lending Act ("TILA"), the Fair Credit Reporting Act, the Fair Debt Collection Practices Act, and various supplemental state law claims. We affirm the district court's dismissal of Caligiuri's claims.

Caligiuri's claims against CRB, Freedom, LoanCare, and NWTS are all claim-precluded by his previous state court lawsuit against CRB and Freedom. We apply Oregon law of claim preclusion, *Maldonado v. Harris*, 370 F.3d 945, 951 (9th Cir. 2004). Under Oregon law, a plaintiff

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

who has prosecuted one action against a defendant through to a final judgment binding on the parties is barred on *res judicata* grounds from prosecuting another action against the same defendant where the claim in the second action is one which is based on the same factual transaction that was at issue in the first, seeks a remedy additional or alternative to the one sought earlier, and is of such a nature as could have been joined in the first action.

Rennie v. Freeway Transport, 656 P.2d 919 (Or. 1982); *see also Bloomfield v. Weakland*, 123 P.3d 275, 279 (Or. 2005) (en banc). Caligiuri's claims in this case arise from the same factual transactions as his claims in the state case, and he could have or did bring all of his claims in this case in the previous state case against CRB and Freedom. His attack on the state court's jurisdiction in his state action cannot be raised here. *Aguirre v. Alberton's, Inc.*, 117 P.3d 1012, 1018 (Or. Ct. App. 2005). Although LoanCare and NWTS were not parties to the original state action, they are covered by claim preclusion through privity with Freedom. *Bloomfield*, 123 P.3d at 279.

All that remain are Caligiuri's claims against Wells Fargo, and these claims fail. Even if Caligiuri did not receive the proper notices from Wells Fargo and thus had three years under the TILA in which to seek rescission (which we will assume without deciding), Caligiuri's TILA claim against Wells Fargo is time-barred. *Yamamoto v. Bank of N.Y.*, 329 F.3d 1167 (9th Cir. 2003). His quiet title claim is foreclosed by *Yamamoto* as well. *Id.* at 1172. His claim that he tendered payment

fails because his promissory notes did not meet the terms for payment of the loan agreement and were not unconditional promises to pay funds that were presently available. *Crane v. Mabry*, 802 P.2d 696, 699 (Or. Ct. App. 1990). His claim that he was not contractually obligated because there was no consideration fails because a line of credit constitutes valid consideration for a contract. *See Shelley v. Portland Tug & Barge Co.*, 76 P.2d 477, 481 (Or. 1938). Caligiuri's remaining claims are either waived, irrelevant, or moot, and amendment cannot save his complaint.

AFFIRMED.