

DEC 27 2010

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RICHARD SHELLEY, pro se,

Plaintiff - Appellant,

v.

QUALITY LOAN SERVICE CORP. and
LITTON LOAN SERVICING, LLP,

Defendants - Appellees,

and

FREMONT INVESTMENT & LOAN,

Defendant.

No. 09-56133

D.C. No. 8:09-cv-00291-CJC-
MLG

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Cormac J. Carney, District Judge, Presiding

Submitted December 14, 2010**

Before: GOODWIN, WALLACE, and W. FLETCHER, Circuit Judges.

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

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

Richard Shelley appeals pro se from the district court's order dismissing his Truth in Lending Act ("TILA") action. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *King v. California*, 784 F.2d 910, 912 (9th Cir. 1986). We affirm.

The district court properly dismissed Shelley's TILA claim seeking damages because his action, filed nearly three years after the alleged violation, was time-barred. *See* 15 U.S.C. § 1640(e) (an action for damages must be brought within one year of the date of the alleged violation).

The district court also properly dismissed Shelley's TILA claim seeking rescission because Shelley did not allege the ability to tender the proceeds of the loan despite being warned by the district court of this requirement and being given the opportunity to do so. *See Yamamoto v. Bank of N.Y.*, 329 F.3d 1167, 1171 (9th Cir. 2003). ("[I]n applying TILA, a trial judge has the discretion to condition rescission on tender by the borrower of the property he had received from the lender.") (internal quotation marks and brackets omitted).

We do not consider contentions arising from claims that were not included in the complaint or arguments that were not raised before the district court. *See O'Guinn v. Lovelock Corr. Ctr.*, 502 F.3d 1056, 1063 n.3 (9th Cir. 2007); *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997).

Shelley's remaining contentions are unpersuasive.

All pending motions are denied.

AFFIRMED.