

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
JACKSONVILLE FLORIDA

In re:

APOSTOLIC ASSEMBLIES OF  
JESUS CHRIST, INC.,

Case No.: 3:11-bk-2018-JAF  
Chapter 11

Debtor.

APOSTOLIC ASSEMBLIES OF  
JESUS CHRIST, INC.

Adv. Pro. No. 3:13-ap-352-JAF

Plaintiff,

v.

CHURCH MORTGAGE AND LOAN  
CORPORATION,

Defendant.

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION TO  
DISMISS COMPLAINT**

This proceeding is before the Court upon Defendant's, Church Mortgage and Loan Corporation, Motion to Dismiss the Complaint filed by Plaintiff, Apostolic Assemblies of Jesus Christ, Inc. (the "Motion") (Doc. 4). Plaintiff filed a Response and Objection to the Motion to Dismiss (the "Response") (Doc. 9). Upon consideration of the parties' arguments, the Court concludes that the Motion should be granted in part and denied in part.

**I. Background**

On July 30, 2013, Plaintiff initiated this adversary proceeding by filing a Complaint to Determine Validity Extent or Priority of Lien (the "Complaint") (Doc. 1). Pursuant to the Complaint, Plaintiff "sought to assist" Christ Tabernacle Missionary Baptist Church ("Baptist Church") in refinancing Baptist Church's "property to avoid foreclosure." (Doc. 1 at 2). Defendant "was to provide a total loan in the amount of \$200,000.00," but Plaintiff did not receive any of the loan proceeds. (Doc. 1 at 2-3). Now Defendant holds a mortgage lien for \$251,942.40 on Plaintiff's real property. (Doc. 1 at 2). Plaintiff

requested that the Court determine the lien to be “invalid” and an award “further relief as may be just” because Plaintiff “was not aware, nor did it intend that it’s property was the sole security for the transaction, nor did it intend to repay the loan or accept any liability independent of the original obligation [Baptist Church] had to [Defendant].” (Doc. 1 at 3). Thereafter, Defendant filed the Motion alleging the Complaint should be dismissed because it fails to allege any facts supporting the conclusion that Defendant’s mortgage lien could be invalid. (Doc. 4 at 3).

## **II. Analysis**

When considering a Rule 12(b)(6) motion to dismiss, a court must accept the allegations in the complaint as true and construe them in the light most favorable to the plaintiff. Glover v. Liggett Grp., Inc., 459 F.3d 1304, 1308 (11th Cir. 2006). To satisfy the pleading requirements of Federal Rule of Civil Procedure 8, a complaint must give the defendant fair notice of what the plaintiff’s claims are and the grounds upon which they rest. Swierkiewicz v. Sorema N.A., 534 U.S. 506, 507 (2002). Thus, a complaint must contain more than “labels and conclusions” or “a formulaic recitation of the elements of a cause of action.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). A “complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal quotations omitted). “[A] complaint sufficiently raises a claim even if it points to no legal theory or even if it points to the wrong legal theory as a basis for that claim, as long as relief is possible under any set of facts that could be established consistent with the allegations.” Tolle v. Carroll Touch, Inc., 977 F.2d 1129, 1134 (7th Cir. 1992) (internal quotations omitted).

Applying the principles set forth above, the Court concludes Plaintiff did not allege sufficient factual matter, which even if accepted as true, stated a cause of action. Defendant asks the Court to dismiss the Complaint with prejudice and claims that there is no set of facts which Plaintiff could plead that would entitle Plaintiff to avoid or invalidate the mortgage lien. (Doc. 4 at 6). However, the Court is unable to determine at this time whether Plaintiff could or could not plead any facts which would entitle Plaintiff to invalidate mortgage lien. For this reason, Defendant’s request to dismiss the Complaint with

prejudice is denied. The Court grants Defendant's Motion in part and dismisses Plaintiff's Complaint without prejudice. Plaintiff has fifteen days from the date of this order to file an amended complaint.

Accordingly, it is **ORDERED**:

1. Defendant's Motion to Dismiss Complaint is granted in part and denied in part.
2. Plaintiff's Complaint is dismissed without prejudice.
3. Plaintiff has fifteen days from the date of this order to file an amended complaint.

**DATED** this 26 day of November, 2013 in Jacksonville, Florida.

/s/\_\_\_\_\_  
**JERRY A. FUNK**  
United States Bankruptcy Judge

Attorney, Andrew Layden, is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.