

United States Court of Appeals  
For the Eighth Circuit

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No. 13-1597

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Peter Yakowicz; Susan Yakowicz

*Plaintiffs - Appellants*

v.

BAC Home Loans Servicing, LP; Mortgage Electronic Registration Systems, Inc.;  
The Bank of New York Mellon, formerly known as The Bank of New York, as  
Trustee for the Certificateholders of CWABS, Inc., Asset-Backed Certificates,  
Series 2002-6, Assignee of Mortgage

*Defendants - Appellees*

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Appeal from United States District Court  
for the District of Minnesota - Minneapolis

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Submitted: January 7, 2014  
Filed: January 13, 2014  
[Unpublished]

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Before MURPHY, SMITH, and SHEPHERD, Circuit Judges.

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PER CURIAM.

Peter and Susan Yakowicz brought the instant suit claiming breach of contract and violations of the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C.

§ 2605(c), (e)(2), arising out of defendants' denials of their mortgage-loan modification applications and subsequent foreclosure on their home. The district court<sup>1</sup> granted defendants' motion to dismiss under Federal Rule of Civil Procedure 12(b)(6), and this appeal followed. On appeal, the Yakowiczses have filed two pro se motions to supplement the record.

After reviewing the record below and the parties' arguments on appeal, we deny the motions to supplement the record, because appellants fail to demonstrate that the new evidence was actually unavailable before the district court decided the case. See Bell v. Pfizer, Inc., 716 F.3d 1087, 1092 (8th Cir. 2013). Further, upon our careful de novo review, see Butler v. Bank of Am., N.A., 690 F.3d 959, 961 (8th Cir. 2012) (standard of review), we agree with the district court that appellants failed to state a claim for a RESPA violation or for breach of contract, see Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (complaint must contain sufficient factual matter, accepted as true, to state claim plausible on its face); Park Nicollet Clinic v. Hamann, 808 N.W.2d 828, 833 (Minn. 2011) (elements of breach-of-contract claim under Minnesota law).

Accordingly, we affirm. See 8th Cir. R. 47B.

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<sup>1</sup>The Honorable Donovan W. Frank, United States District Judge for the District of Minnesota.