

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 19 2009

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

LISA MARIE MCHATTEN,

Plaintiff - Appellant,

v.

CHASE MANHATTAN MORTGAGE
CORP.,

Defendant,

and

CHASE HOME FINANCE LLC,

Defendant - Appellee.

No. 06-17129

D.C. No. CV-03-01094-EHC

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
Earl H. Carroll, District Judge, Presiding

Submitted March 9, 2009**
San Francisco, California

Before: WALLACE, THOMAS and BYBEE, 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 finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Lisa Marie McHatten appeals pro se from the district court's summary judgment in favor of Chase Home Financial LLC (Chase) on the parties' cross-motions for summary judgment. We have jurisdiction pursuant to 28 U.S.C. § 1291. *See also Jones-Hamilton Co. v. Beazer Materials & Servs., Inc.*, 973 F.2d 688, 694 (9th Cir. 1992) (“[T]he district court's . . . summary judgment was a final decision giving us jurisdiction to review its denial of plaintiff's motion for summary judgment”), quoting *Abend v. MCA, Inc.*, 863 F.2d 1465, 1482 n.20 (9th Cir. 1988). We affirm in part, vacate in part, and remand.

McHatten does not challenge the district court's summary judgment to Chase on her claims under the Uniform Land Security Interest Act, the Federal Trade Commission Act, the Fair Debt Collection Practices Act, and 15 U.S.C. § 1681s-2(a) of the Fair Credit Reporting Act. Summary judgment on these claims is therefore affirmed. *See Liu v. Amway Corp.*, 347 F.3d 1125, 1138 (9th Cir. 2003) (affirming judgment as to claims abandoned on appeal).

We vacate the judgment with respect to McHatten's claims for common law breach of contract based on (a) failure to provide notice of U.S. Department of Housing and Urban Development counseling, and (b) failure to provide loss mitigation, including acceptance of partial payment and provision of disaster relief assistance. We also vacate the judgment with respect to McHatten's claims under

the Equal Credit Opportunity Act based on Chase's alleged failure to provide adequate notice pursuant to 15 U.S.C. § 1691(d)(1). It is unclear whether the district court considered evidence submitted by McHatten in support of these claims. To the extent this evidence is admissible, the district court on remand should consider it in determining whether McHatten raises a genuine issue of material fact for trial. *See Fair Hous. Council of Riverside County, Inc. v. Riverside Two*, 249 F.3d 1132, 1134 (9th Cir. 2001) (remanding case to the district court where purportedly excluded evidence may be admissible, and may suffice to create an issue of fact).

The district court's summary judgment on McHatten's remaining claims is affirmed. The parties shall bear their own costs on appeal.

AFFIRMED in part; VACATED in part and REMANDED.