

APPENDIX A

UNPUBLISHED

**UNITED STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT**

No. 18-1223

LAZINA KING; RIA KING,

Plaintiffs - Appellants,
v.

CALIBER HOME LOANS INC.,
Defendant - Appellee.

Appeal from the United States District Court for the District of Maryland, at Greenbelt. George Jarrod Hazel, District Judge. (8:16-cv-03489-GJH)

Submitted: June 14, 2018 Decided: June 18, 2018

Before TRAXLER, DUNCAN, and WYNN, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Lazina King, Ria King, Appellants Pro Se. Melissa O. Martinez, MCGUIREWOODS, LLP, Baltimore, Maryland, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Lazina King and Ria King appeal the district court's orders dismissing their complaint as barred by res judicata and denying their Fed. R. Civ. P. 59(e) motion. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *King v. Caliber Home Loans Inc.*, No. 8:16-cv-03489-GJH (D. Md. Sept. 22, 2017; Feb. 23, 2018). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

APPENDIX B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT COURT OF MARYLAND

LAZINA KING, et al.

Plaintiffs,

v.

CALIBER HOME LOANS, INC.,

Defendants.

Civil Action No. GJH-16-3489

MEMORANDUM OPINION

This is an action brought by Plaintiff's Lazina and Ria King against Defendant Caliber Home Loans, Inc. ("Caliber"), arising out of the foreclosure and subsequent sale of Plaintiff's home by Caliber. ECF No. 1 at 3¹ Plaintiffs allege that Caliber "dual-tracked" their mortgage: that is, at the same time that Caliber was initiating foreclosure proceedings against the Kings, they were also working with the Kings on a loan modification package. Plaintiffs seek \$50 million from Caliber under a variety of state and federal legal

¹ Pin cites to documents files on the court's electronic filing system (CM/ECF) refer to the page numbers generated by that system.

claims. *Id.* at 10. Presently pending before the Court is Defendant's Motions to Dismiss. ECF NO.4. ECF No. 17² No hearing is necessary. See Loc. R. 105.6 (D. Md. 2016). For the following reasons. Defendants' Motion to Dismiss is granted.

BACKGROUND

A. Factual Background

In 1996, Plaintiff Lazina King purchased the home located at 141 N. Huron Drive. Oxon Hill. MD. ECF: No. 21 at 3. In May 2007. Ms. King refinanced the mortgage for her home through Beneficial Homeowner Services Corp. ("Beneficial") and added her daughter. Ria King, to the mortgage. *Id.* In March 2013. Lazina King became ill and underwent two emergency surgeries: following these surgeries, the Kings became delinquent on their mortgage payments. *Id* at 4: ECF No. 17-1 at 3. In February 2014, the Kings, mortgage was transferred to Defendant Caliber Home Loans. Inc. ("Caliber"). ECF: No. 21 at 5. A few months later, in April 2014, the Kings requested that Caliber assist them with loan modification, and faxed a list of documents to Caliber on April 9. 2014. ECF No. 1 at 3. Still waiting for a response, in May 2014, the Kings called Caliber to check on the status of their modification application. Caliber told them that their file had been closed, because there was a cease and

² Caliber's First Motion to Dismiss, ECF No. 4, was partially granted by the Federal District Court for the District of Columbia and the case was transferred to this jurisdiction. However, as discussed below, that court did not address the substantive issues, which Caliber re-raised in its second Motion to Dismiss. ECF No. 17. To the extent the first Motion to Dismiss is still pending on the docket, this Court addresses both motions together here.

desist order listed on the Kings, account. And Caliber was unable to contact them³. *Id.* Caliber subsequently re-opened the Kings. File, and the Kings submitted additional documents to Caliber. /d at 4. In June 2014. Caliber sent the Kings a letter stating that the Kings ... [account is currently able to apply for in-house modification. Short sale, deed in lieu and repayment plan options: *Id.* However, on July 15. 2014, the Kings were informed that their application was again closed due to the cease and desist order. *Ill.* at 6. Again. Caliber re-opened the Kings, file and requested additional documents which the Kings faxed to Caliber on July 30. 2014. *Ill.* The Kings did not receive a decision on their loan modification, but received a letter dated August 22. 2014, informing them that their house was scheduled to be sold. *Id.*

On June 3, 2014, a foreclosure suit was initiated in the Circuit Court for Prince George's County against the Kings. ECF No. 17-4 at 1. The Kings' house was sold at auction September 19, 2014, which was subsequently ratified by the Circuit Court on February 26, 2015.

B. Procedural Background

The Kings have raise their allegations and legal claims at every level of the Maryland court system available to them: in the Circuit Court for Prince George's County, at the Court of Special Appeals, and

³ The Kings maintain that they have never sought a cease and desist order against Caliber, nor have they been provided "proof that such order exists," ECF No. 1 at 3.

the Court of Appeal. The Court briefly summarizes those proceedings.

1. Circuit Court

On September 3, 2014, the Kings' submitted a letter to the Circuit Court requesting hearing to halt the foreclosure proceedings on their property, as Caliber had allegedly been moving forward with the foreclosure proceedings on their property at the same time they were requesting information for the Kings for a loan modification package,⁴ the court denied that request on September 16, 2014. Id. at 2. Following the sale of their house, on March 25, 2015, the Kings filed another letter in the Circuit Court requesting an appeal from the foreclosure decision. ECF No. 17-6 at 3-4, On April 17, 2015, the Kings filed a Notice of Appeal. ECF No. 17-4 at 4. The Kings filed an emergency motion to stay their eviction order with the Circuit on July 24, 2015, and the motion was denied on August 4, 2015 "for failing to state a valid defense or present a meritorious argument. :ECF No. 17-4 at 5. On January 20, 2016 the Kings filed another emergency motion to stay with the Circuit court alleging the facts stated above. ECF No. 17-6 at 5. On March 4, 2016, the Circuit Court stayed the case pending the Kings' appeal. ECF No. 17-4 at 6.⁵

⁴ Although the complaint in this case is not a model of clarity, Plaintiffs raise the same allegation here, contending that their house would not have been subjected to "the auction stages of the foreclosure process" were it not for the Defendant's "mismanagement" and "perjury" related to the loan modification documents. ECF No. 1 at 9.

⁵ Following the King's appeal the Circuit Court lifted the stay on March 22, 2016. ECF no. 17-4 at 7.

2. Court of Special Appeals

While continuing to file motions in Circuit Court, the Kings filed a notice of appeal to the Court of Special Appeals on April 16, 2015. ECF No. 17-8 at 5. On September 23, 2015 the Kings filed a brief with the Court of Special Appeals, raising the same arguments that they raise here. ECF No. 4-4 at 13. On February 9, 2016, the Court of Special Appeals of Maryland dismissed the King's appeal, without reaching the merits of the complaint, concluding that the Kings' notice of Appeal was not filed "within thirty days of the order ratifying the foreclosure sale." ECF No. 17-8 at 4-5.

3. Court of Appeals

Additionally, on October 21, 2015, the Kings filed a "Motion to Appeal the Denial of the Stay of the Execution of Eviction" with the Maryland Court of Appeals, also raising the same arguments they raise here. ECF No. 4-4 at 1. On November 23, 2015, the Court of Appeals of Maryland denied the Kings' request. ECF No. 1707 at 2.

4. Present Case

The Kings filed their Complaint in this case in the Federal District of Columbia ("D.D.C.") on November 25, 2015. ECF No 1. Caliber filed a motion to Dismiss in that case arguing that (1) the Complaint is barred by res judicata and the Rooker-Feldman doctrine, (2) Venue was improper, and (3) the Complaint failed to state a claim upon which relief could be granted. ECF No. 4. On September 28, 2016, the D.D.C. ruled that

venue was improper and order the case transferred to this Court. ECF No. 10. The D.D.C. did not reach the remaining merits of Caliber's Motion to Dismiss, *id.* at 11, which Caliber subsequently re-raised before this Court as a renewed Motion to Dismiss. ECF No. 17-1. The Kings opposed Caliber's Motion, ECF No. 20, and Caliber filed a reply, ECF No. 24.⁶

STANDARD OF REVIEW

To survive a motion to dismiss under Fed. R. Civ. P. 12(b)(6), "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) citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual

⁶ Also pending on the Docket is Caliber's motion for Extension of Time to File their reply, ECF No. 22 and the Kings motion to strike that Reply, ECF No. 25. Caliber's Reply was initially due before December 30, 2016, but Caliber requested an extension on December 29, 2016, asking the court for more time given "the intervening Christmas and New Year Holidays, the fact that no scheduling order has been entered and neither party will be prejudiced..."ECF No. 22 at 2. In their motion to strike Caliber's Reply, the Kings argue that there was no extension given to Caliber at the time they filed their reply, and that the Court should strike the reply as non-compliant with this Court's rules. ECF No. 25 at 2. The Court will grant Caliber's Motion for Extension of time and deny the King's Motion to strike. Given the timing of filing (with Christmas and New Year's Intervening), and the fact that the Kings do not allege any prejudice, the court finds that good cause existed to grant an extension. However, the Court notes that Caliber's Reply merely reiterated their previous argument regarding the doctrine of res judicata. Thus even if the Court granted the King's Motion to Strike, the hold of this opinion would be the same.

content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. “Iqbal 556 U.S. at 678. “Thread bread recitals of the elements of a cause of action supported by mere conclusory statements, do not suffice.” Id. (citing Twomly, 550 U.S., at 555) ([A] plaintiffs obligation to provide the ‘grounds’ of his ‘entitlement to relief requires more than labels and conclusions, and a formulaic recitation of a cause of action’s elements will not do.”)

The purpose of Fed. R. Civ. P. 12(b)(6) “is to test sufficiency of a complaint and not to resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses.” Presley v. City of Charlottesville, 464 F.3d 480, 483 (4th Cir. 2006) (citation and internal quotation marks omitted). When deciding a motion to dismiss under Rule 12 (b)(6), a court “must accept as true all of the factual allegations contained in the complaint,” and must “draw all reasonable inference [from those facts] in favor of the plaintiff, “ E.i. du Pont de Nemours & Co. v. Kolon Indus, Inc., 637 F.3d 435, 440 (4th Cir 2011) (Citations and internal quotation marks omitted). The Court need not, however, accept unsupported legal allegations, see Revene v. Charles County Comm’rs, 883 F.2d 870, 873 (4th Cir. 1989), legal conclusions couched as factual allegations devoid of any reference to actual events. United Black Firefighters of Norfolk v. Hirst, 604 F.2d 844, 847 (4th Cir. 1979). Because the Kings are self-represented, their filings are abide by its “affirmative obligation...to prevent factually unsupported claims and defenses from proceeding to trial, “Boouchat v. Baltimore Ravens Football Club,

Inc., 346 F.3d 514, 526 (4th Cir 2002) (internal citations omitted).

Accepting the facts as alleged in the Complaint as true, see *Aziz v. Alcolac*, 668 F.3d 388, 390 (4th Cir. 2011), when reviewing a motion to dismiss, the Court “may consider documents attached to the complaint, as well as documents attached to the motion to dismiss, if they are integral to the complaint and their authenticity is not disputed,” *Sposato v. First Mariner Bank*, No. CCB-12-1569, 2013 WL 1308582, at *2 (D. Md. March 28, 2013). The Court may take judicial notice of state court documents pursuant to Fed. R. Evid. 201 and 803 (8)(a)(a). When a defendant asserts that facts outside of the complaint deprived the court of jurisdiction, the Court “may consider evidence outside the pleadings without converting the proceeding to one for summary judgement,” *Velasco v. Gov’t of Indonesia*, 370 F.3d 392, 398 (4th Cir. 2004). Specifically, in considering a res judicata defense at the motion to dismiss stage, a court may consider the “documents from the underlying case,” *Andrews v. Daw*, 201 F.3d 521, 524 n. 1 (4th Cir 2000) (“Although an affirmative defense such as res judicata may be raised under Rule 12(b)(6) only if it clearly appears on the face of the complaint, when entertaining a motion dismiss on the ground of res judicata, a court may take judicial notice of facts from a prior judicial proceeding when the res judicata defense raises no disputed issue of fact.”); *Lara v. Suntrust Mortgage Inc.*, No. DKC-16-0145, 2016 WL 3753155, at *1 n. 1, *6 (D. Md. July 14, 2016) (considering “relevant documentation regarding the Property and the foreclosure

proceeding and sale" attached by Defendants to a motion to dismiss to substantiate a claim of res judicata).

DISCUSSION

In their pending Motion to Dismiss, Caliber argues that the King's complaint must be dismissed because: (1) it is barred by res judicata and the Rooker-Feldman doctrines; (2) the Complaint fails to meet the pleading requirements of Fed. R. Civ. P. 8(a) and 12(b)(6); (3) Plaintiff Ria King does not have standing; (4) the claims for violation of the Truth-in-Lending Act and Fair Debt Collection Practices Act are timed-barred; and, (5) Plaintiffs' claim for negligence fails because Caliber does not owe them a duty of care. ECF No. 17-1 at 1-2. The Court agrees that the Kings' claims are barred by the doctrine of res judicata, and therefore grants the Motion to Dismiss on that basis, see *McMillan v. Bierman, Greesing, Ward & Wood LLC*, No. WMN-11-2048, 2012 WL 425823, *5n.6 (D. Md. Feb. 8, 2012) ("As the doctrine of res judicata operates to bar all claims, the Court need not address the applicability of these [other] defenses.")

Res Judicata is an affirmation defense, which usually does not offer resolution at the motion-to-dismiss stage, see Fed. R. Civ. P. 8(c)(1); see also *Georgia Pac. Consumer Prod., LP v. Von Drehle Corp.*, 710 F.3d 527, 533 (4th Cir 2013). However, if "facts sufficient to rule on an affirmative defense are alleged in the complaint" or in documents attached to the complaint the Court may reach the issue.

Goodman v. Prazair, Inc., 494 F.3d 458, 464 (4th Cir. 2007).

Res Judicata prohibits the re-litigation of matters previously litigated, as well as those claims that could have been asserted and litigated in the original suit, *Anyanwutaku v. Fleet Mort. Group*, 85 F. Supp.2d 566, 570 (D. Md. 2000). “The doctrine was designed to protect ‘litigants from the burden of re-litigating an identical issue with the same party or his privy and [to promote] judicial economy by preventing needless litigation.’” *Laurel Sand & Gravel, Inc., v. Wilson*, 519 F.3d 156, 161-162 (4th Cir. 2008) (quoting *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 (1979)). When considering the preclusive effect of a prior state judgement under res judicata, federal courts apply that state’s law as “a federal court must give to a state-court judgement the same preclusive effect as would be given that judgement under the law of the State in which the judgement was rendered. “*Migra v. Warren City School Dist. Bd of Educ.*, 465 U.S. 75, 81 (1984). In Maryland, res judicata requires that “(1) the parties in the present litigation are the same or in privity with the parties to the earlier litigation; (2) the claim presented in the current action is identical to that determined, or that which could have been raised and determined, in prior litigation; and (3) there has been a final judgement on the merits. “*McMillian* 2012 WL 42583 at *3 (citing *R & D 2001, LLC v. Rice*, 938 A.2d 839, 848 (Md. 2008)).

The case of *McMillian v. Bierman, Greesing, Ward & Wood LLC*, cited by Caliber in its motion to dismiss ECF No 17-1 at 10, is directly on point, and

instructive here, *Id.* In that case, the plaintiffs house was foreclosed by the defendants, sold at auction, and ratified in the Circuit Court of Baltimore County, *Id.* at *1. The plaintiff files several motions with the Circuit Court to stay her eviction, with no success. *Id.* at The plaintiff subsequently files a complaint in this court, alleging violations of the Fair Debt Credit Practices Act, and several Maryland state consumer protection claims brought against the foreclosing defendants were part of the same transaction, as they all arose out of defendants' conduct leading up to the foreclosure. *McMillian*, 2012 WL 425823 at *5.

Here, as in *McMillian*, the Kings vigorously opposed the foreclosure proceedings on their property by submitting multiple filings with the Circuit Court, the Court of Special Appeals, and the Maryland Court of Appeal, and raising the same arguments here. As in *McMillian*, there was a final decision by a state court regarding the King's foreclosure and subsequent eviction, the parties were the same or privity, and the claims being brought here arise out of the same transaction (the actions by Caliber leading up to and including the foreclosure of the King's home).

The Kings argue that the claims being brought here "could [not] have been brought in the foreclosure case: as those claims were not ripe because they had not yet "lost the property". *Id.* at 11. Notwithstanding the possibility that the Kings may have suffered additional damages since the filing of the state action, the legal issue remained the same. The court finds the claims brought here

arises out of the same transaction as the foreclosure proceedings, and state the same allegations. As such, the Kings' claims are barred by the doctrine of res judicata, and will be dismissed.

Conclusion

For the foregoing reasons, Defendant's Motion to Dismiss, ECF No. 4. ECF No. 17, is granted. The Defendant's Motion for Extension of Time to File Response/Reply, ECF No 22, is also granted and the Plaintiffs' Emergency Motion to Strike the Defendant's Reply, ECF No. 25, is denied. A spate Order shall issue.

Date: September 22, 2017
//s// George Hazel

George J. Hazel
United States District Judge

APPENDIX C

FILED: August 21, 2018

UNITED STATES COURT OF APPEALS FOR THE
FOURTH CIRCUIT

No. 18-1223 (8:16-cv-03489-GJH)

LAZINA KING; RIA KING

Plaintiffs - Appellants

v.

CALIBER HOME LOANS INC.

Defendant - Appellee

ORDER

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc. Entered at the direction of the panel: Judge Traxler, Judge Duncan, and Judge Wynn.

For the Court
/s/ Patricia S. Connor, Clerk

§1024.41 Loss mitigation procedures.

(a) *Enforcement and limitations.* A borrower may enforce the provisions of this section pursuant to section 6(f) of RESPA (12 U.S.C. 2605(f)). Nothing in §1024.41 imposes a duty on a servicer to provide any borrower with any specific loss mitigation option. Nothing in §1024.41 should be construed to create a right for a borrower to enforce the terms of any agreement between a servicer and the owner or assignee of a mortgage loan, including with respect to the evaluation for, or offer of, any loss mitigation option or to eliminate any such right that may exist pursuant to applicable law.

(g) *Prohibition on foreclosure sale.* If a borrower submits a complete loss mitigation application after a servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process but more than 37 days before a foreclosure sale, a servicer shall not move for foreclosure judgment or order of sale, or conduct a foreclosure sale, unless:

(1) The servicer has sent the borrower a notice pursuant to paragraph (c)(1)(ii) of this section that the borrower is not eligible for any loss mitigation option and the appeal process in paragraph (h) of this section is not applicable, the borrower has not requested an appeal within the applicable time period for requesting an appeal, or the borrower's appeal has been denied;

(2) The borrower rejects all loss mitigation options offered by the servicer; or

(3) The borrower fails to perform under an agreement on a loss mitigation option.

78 Fed. Reg. at 10,819 (“[T]he Bureau has clarified that proceeding to a foreclosure judgment

includes filing a dispositive motion, such as a motion for a default judgment . . . , which may result in the issuance of a foreclosure judgment.”).

12 U.S. Code § 2605

(f) Damages and costs

Whoever fails to comply with any provision of https://www.law.cornell.edu/definitions/uscode.php?width=840&height=800&iframe=true&def_id=12-USC-937028451-502875521&term_occur=1483&term_src=title:12:chapter:27:section:2605 shall be liable to the borrower for each such failure in the following amounts:

- (1) Individuals In the case of any action by an individual, an amount equal to the sum of—
 - (A) any actual damages to the borrower as a result of the failure; and
 - (B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not to exceed \$2,000.
- (2) Class actions In the case of a class action, an amount equal to the sum of—
 - (A) any actual damages to each of the borrowers in the class as a result of the failure; and
 - (B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not greater than \$2,000 for each member of the class, except that the total amount of damages under this subparagraph in any class action may not exceed the lesser of—
 - (i) \$1,000,000; or
 - (ii) 1 percent of the net worth of the servicer.
- (3) Costs

In addition to the amounts under paragraph (1) or (2), in the case of any successful action under this section, the costs of the action, together with any attorneys fees incurred in connection with such action as the court may determine to be reasonable under the circumstances.

(4) Nonliability

A transferor or transferee servicer shall not be liable under this subsection for any failure to comply with any requirement under this section if, within 60 days after discovering an error (whether pursuant to a final written examination report or the servicer's own procedures) and before the commencement of an action under this subsection and the receipt of written notice of the error from the borrower, the servicer notifies the person concerned of the error and makes whatever adjustments are necessary in the appropriate account to ensure that the person will not be required to pay an amount in excess of any amount that the person otherwise would have paid.