UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

IRIS MCCLAIN,

Plaintiff,

v.

WELLS FARGO HOME MORTGAGE/
WELLS FARGO BANK, N.A.,
THE BANK OF NEW YORK MELLON,
BONY MELLON,
WILLIAM SAVAGE,
KRISTINE BROWN,
ROBYN MCQUILLEN,
MONICA CAMERON,
JUDGE LORI SIMPSON, *DISTRICT COURT,*

Defendants.

Civil Action No. TDC-18-2084
(Related Cases TDC-17-1094, TDC-17-3397)

ORDER

Plaintiff Iris McClain has spent the good part of a decade battling to prevent the foreclosure sale of her home on Herrington Drive in Upper Marlboro, Maryland. *See McClain v. Wells Fargo Bank, N.A.*, No. TDC-17-1094, 2018 WL 1271231, at *2-3 (D. Md. Mar. 8, 2018). This suit is the latest in a series of legal actions in which she has argued that Wells Fargo Bank, N.A. and various other parties participated in a scheme to defraud her and force the foreclosure of her property. As the suit raises many of the same issues Plaintiff has previously litigated, I am dismissing her Complaint with prejudice.

BACKGROUND

The history of Plaintiff's disputes with Wells Fargo and other parties with ties to the mortgage on the Upper Marlboro property is detailed in *McClain v. Wells Fargo Bank, N.A.*, No.

TDC-17-1094, 2018 WL 1271231 (D. Md. Mar. 8, 2018). There, Plaintiff asserted 11 claims against various combinations of defendants, including Wells Fargo, Bank of New York Mellon ("BNYM"), and several attorneys. The complaint alleged, *inter alia*: fraud; conspiracy to commit fraud; negligent infliction of emotional distress; a violation of the Racketeer Influenced and Corrupt Organizations Act; a violation of the Fair Debt Collection Practices Act (FDCPA); bankruptcy fraud; and foreclosure fraud. 2018 WL 1271231, at *1. The Court, finding some of the claims time-barred and others without merit, dismissed all claims. *Id.*

Plaintiff filed the instant action on July 9, 2018, naming several of the same defendants she had previously sued.[1] Those defendants include: Wells Fargo and BNYM (collectively, the "Wells Fargo Defendants"); and attorneys Kristine Brown, William Savage, and Robyn McQuillen (collectively, the "Attorney Defendants"). As before, Plaintiff asserts a range of claims against each defendant. The nine claims raised in the complaint are: (1) bankruptcy fraud; (2) fraud upon the court; (3) common law fraud, embezzlement, and theft; (4) violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 (2012) ("FDCPA"); (5) complicity to bankruptcy fraud; (6) perjury and suborning perjury; (7) infliction of emotional stress; (8) mail and wire fraud; and (9) false and deceitful misrepresentation. Compl. 1, ECF No. 1.

The Complaint also brings claims against two defendants who did not appear in the earlier suit. Specifically, it seeks damages from Wells Fargo employee Monica Cameron for perjury or suborning perjury and for infliction of emotional distress. The Complaint also asserts claims against the Honorable Lori Simpson of the U.S. Bankruptcy Court for the District of Maryland,

[1] The Complaint included a note stating: "In the event this Complaint is forwarded to Judge [Theodore D.] Chuang, I kindly ask that he recuse himself, in all fairness to me." Compl. 1, ECF No. 1. When, as it happens, the case was assigned to Judge Chuang, Plaintiff sent the Court a letter reiterating her wish for a recusal. Correspondence, ECF No. 4. The case was subsequently transferred for unrelated reasons.

accusing Judge Simpson of fraud upon the court, complicity to bankruptcy fraud, and infliction of emotional distress.

Plaintiff's Complaint in this case was accompanied by a Motion for Leave to Proceed *in Forma Pauperis*. ECF No. 2. Because Plaintiff appears to be indigent, her Motion is granted pursuant to 28 U.S.C. § 1915(a)(1).

DISCUSSION

Because Plaintiff is proceeding *in forma pauperis*, the Court must screen her Complaint. 28 U.S.C. § 1915(e)(2) (2012). District courts "shall dismiss" a complaint filed by a self–represented plaintiff if the action is "frivolous or malicious," "fails to state a claim on which relief may be granted," or "seeks monetary relief against a defendant who is immune from such relief." *Id.* § 1915(e)(2)(B). The Court is mindful of its obligation to liberally construe the pleadings of *pro se* litigants. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam); *White v. White*, 886 F.2d 721, 722-23 (4th Cir. 1989). Liberal construction, though, does not mean a court may overlook a clear failure in the pleading to allege facts that set forth a cognizable claim. *See Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 391 (4th Cir. 1990).

The claims against the Wells Fargo Defendants and Attorney Defendants are premised on Plaintiff's assertions that these parties filed a series of fraudulent claims in Plaintiff's prior bankruptcy proceedings. Compl. ¶ 4. Plaintiff, though, had previously attacked the legitimacy of these same documents in her earlier suit. Amended Complaint at 52, 54-55, *McClain*, 2018 WL 1271231, ECF No. 45-1.

Res judicata, also known as claim preclusion, is a legal doctrine that promotes judicial efficiency and the finality of decisions. *In re Microsoft Corp. Antitrust Litig.*, 355 F.3d 322, 325 (4th Cir. 2004). Under this doctrine, a final judgment on the merits in an earlier decision precludes the parties from relitigating issues that were raised or could have been raised during

that action. *Pueschel v. United States*, 369 F.3d 345, 354 (4th Cir. 2004). The doctrine applies when there is: (1) a final judgment on the merits in a prior lawsuit; (2) an identity of cause of action in both the earlier and later suits; and (3) an identity of parties or their privies in the two suits. *Id.* at 354-55. Although res judicata must ordinarily be pleaded as an affirmative defense, a court may raise the defense on its own motion if it is "'on notice that it has previously decided the issue presented.'" *Arizona v. California*, 530 U.S. 392, 412 (2000) (quoting *United States v. Sioux Nation of Indians*, 448 U.S. 371, 432 (1980) (Rehnquist, J., dissenting)); *accord Clodfelter v. Republic of Sudan*, 720 F.3d 199, 208-10 (4th Cir. 2013).

Here, the first and third elements are easily satisfied. Plaintiff, the Wells Fargo Defendants, and the Attorney Defendants were all parties to the earlier suit. The Court's decision in *McClain v. Wells Fargo Bank, N.A.*, No. TDC-17-1094, 2018 WL 1271231 (D. Md. Mar. 8, 2018), dismissed Plaintiff's case in its entirety on the grounds that the claims were time-barred or without merit. 2018 WL 1271231, at *8. This dismissal constituted a "final judgment on the merits." *McLean v. United States*, 566 F.3d 391, 396 (4th Cir. 2009); *see Cooper v. Principi*, 71 F. App'x 73, 75 (1st Cir. 2003) (per curiam) ("It is well-settled that a dismissal on statute-of-limitations grounds is a judgment 'on the merits.'").

As for the second element, courts in the Fourth Circuit "follow the 'transactional' approach when considering whether causes of action are identical." *Clodfelter*, 720 F.3d at 210. Under this approach, a prior suit has preclusive effect "[a]s long as the second suit arises out of the same transaction or series of transactions as the claim resolved by the prior judgment." *Id.*

Plaintiff's amended complaint in the earlier suit alleged, in part, that Wells Fargo Defendants and Attorney Defendants "use[d] forged documents, less than truthful affidavits, false claims and/or other inaccurate documents . . ., thus depriving Plaintiff of a fair trial and

making it impossible for her to bring her mortgage current or succeed in bankruptcy, unless she pays money that she does not owe." Amended Complaint at 13-14, *McClain*, 2018 WL 1271231, ECF No. 45-1. Plaintiff singled out several filings, in particular, as false and deceptive. *See, e.g., id.* at 52 (asserting that a proof of claim filed on July 28, 2015, was "doctored"). Plaintiff cannot now relitigate these allegations. *See Arizona*, 530 U.S. at 412. Accordingly, the claims against Wells Fargo Defendants and Attorney Defendants are dismissed with prejudice.[2]

The claims against Cameron and Judge Simpson must likewise be dismissed, but for different reasons.

Plaintiff has asserted two claims against Cameron. The first of these, Count VI, seeks civil relief for perjury, alleging Cameron made false statements at a court hearing. Perjury, though, is a criminal offense. It is not a cognizable cause of action in a civil suit. *See Griffiths v. Siemens Auto., L.P.*, 43 F.3d 1466 (4th Cir. 1994) (per curiam) (finding no basis in law for a civil cause of action for perjury or the subornation of perjury). I must therefore dismiss this claim with prejudice.

Plaintiff's other claim against Cameron, Count VII, seeks damages for "infliction of emotional distress." It is unclear whether Plaintiff means to frame this count as a claim for negligent infliction of emotional distress ("NIED") or, alternatively, for intentional infliction of emotional distress ("IIED"). Ultimately, though, it makes no difference, because neither tort is availing here. NIED, as this Court observed in Plaintiff's previous civil suit, is not a viable cause

[2] The Court recognizes that some of the activities cited in Count VII, alleging infliction of emotional distress, postdate the filing of the amended complaint in the earlier litigation. However, as this Court earlier noted, Maryland does not recognize a cause of action for negligent infliction of emotional distress. *McClain*, 2018 WL 1271231, at *6 (citing *Hamilton v. Ford Motor Credit Co.*, 502 A.2d 1057, 1066) (Md. Ct. Spec. App. 1986)).

of action in Maryland. *McClain*, 2018 WL 1271231, at *6. IIED, by contrast, is cognizable, but it is "rarely viable in a case brought under Maryland law." *Takacs v. Fiore*, 473 F. Supp. 2d 647, 652 (D. Md. 2007) (quoting *Robinson v. Cutchin*, 140 F. Supp. 2d 488, 494 (D. Md. 2001)); *see Ky. Fried Chicken Nat'l Mgmt. Co. v. Weathersby*, 607 A.2d 8, 11 (Md. 1992) (stating that the requirements for an IIED claim "are rigorous, and difficult to satisfy" (quoting W. Page Keeton, Presser and Keeton on the Law of Torts § 12 (5th ed. 1984))).

In Maryland, an IIED claim "has four elements: (1) The conduct must be intentional or reckless; (2) the conduct must be extreme and outrageous; (3) there must be a causal connection between the wrongful conduct and the emotional distress; [and] (4) the emotional distress must be severe." *Manikhi v. Mass Transit Admin.*, 758 A.2d 95, 113 (Md. 2000) (quoting *Harris v. Jones*, 380 A.2d 611, 614 (Md. 1977)). The second element is especially onerous. "For conduct to be 'extreme and outrageous,' it must 'go beyond all possible bounds of decency and . . . be regarded as atrocious, and utterly intolerable in a civilized community.'" *Kohler v. Shenasky*, 914 F. Supp. 1206, 1212 (D. Md. 1995) (quoting *Harris*, 380 A.2d at 611). For example, in *Young v. Hartford Accident & Indemnity Co.*, 492 A.2d 1270 (Md. 1985), a workers' compensation claimant alleged her employer's insurer, despite knowledge of her frail condition and history of suicide attempts, required her to undergo further psychiatric evaluation for the sole purpose of harassing her into abandoning her claim or committing suicide. 492 A.2d at 1273. The Court of Appeals of Maryland held the "escalated level" of intentional conduct stated a claim for IIED. *Id.* at 1278. By contrast, in *Continental Casualty Co. v. Mirabile*, the Court of Special Appeals held an employee failed to "clearly, concisely and adequately" support an IIED claim in alleging that his supervisors made "negligent, false, and malicious statements" in his performance review. 449 A.2d 1176, 1185 (Md. Ct. Spec. App. 1982).

Here, Plaintiff alleges that all defendants, collectively, were responsible for the emotional distress she endured amid the dispute over her mortgage obligations. Compl. ¶¶ 74-108. Cameron's part in the episode was small. In fact, across the portions of the Complaint setting out Plaintiff's factual allegations and legal claims, Cameron's name appears just six times. It does not appear at all in the section addressing Count VII, the IIED claim. To the extent the Complaint makes any allegations against Cameron, it is that she "lied under oath and did not retract her testimony when the falsities were brought to her attention." *Id.* ¶ 12. Such conduct, however objectionable, is well outside the realm of "extreme and outrageous" conduct capable of supporting a claim for IIED. Plaintiff has not stated a claim, and it is clear that amendment would be futile. As to Cameron, then, Count VII is dismissed with prejudice.

Plaintiff brings three claims against Judge Simpson: fraud upon the court (Count II); complicity to bankruptcy fraud (Count V), and infliction of emotional distress (Count VII). These claims concern actions Judge Simpson took in her capacity as a bankruptcy judge. The claims are therefore barred by the doctrine of judicial immunity. *See Forrester v. White*, 484 U.S. 219, 226-27 (1988) ("If judges were personally liable for erroneous decisions, the resulting avalanche of suits, most of them frivolous but vexatious, would provide powerful incentives for judges to avoid rendering decisions likely to provoke such suits.").

Accordingly, it is hereby ordered that Plaintiff's Complaint is DISMISSED. The Clerk shall CLOSE the case.

Date: October 12, 2018

/S/
PAUL W. GRIMM
United States District Judge

FILED: April 8, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2309
(8:18-cv-02084-PWG)

IRIS MCCLAIN

Plaintiff - Appellant

v.

WELLS FARGO HOME MORTGAGE/WELLS FARGO BANK, N.A.; THE BANK OF NEW YORK MELLON, Bony Mellon; WILLIAM SAVAGE; KRISTINE BROWN; ROBYN MCQUILLEN; MONICA CAMERON; LORI S. SIMPSON, District Judge

Defendants - Appellees

J U D G M E N T

In accordance with the decision of this court, the judgment of the district court is affirmed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2309

IRIS MCCLAIN,

Plaintiff - Appellant,

v.

WELLS FARGO HOME MORTGAGE/WELLS FARGO BANK, N.A.; THE BANK OF NEW YORK MELLON, Bony Mellon; WILLIAM SAVAGE; KRISTINE BROWN; ROBYN MCQUILLEN; MONICA CAMERON; LORI S. SIMPSON, District Judge,

Defendants - Appellees.

Appeal from the United States District Court for the District of Maryland, at Greenbelt. Paul W. Grimm, District Judge. (8:18-cv-02084-PWG)

Submitted: April 4, 2019 Decided: April 8, 2019

Before NIEMEYER and HARRIS, Circuit Judges, and SHEDD, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Iris McClain, Appellant Pro Se. Virginia Wood Barnhart, Sarah E. Meyer, WOMBLE BOND DICKINSON (US) LLP, Baltimore, Maryland, for Appellees.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Iris McClain appeals the district court's order dismissing her complaint for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B) (2012). We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *McClain v. Wells Fargo Home Mortg./Wells Fargo Bank, N.A.*, No. 8:18-cv-02084-PWG (D. Md. filed Oct. 12, 2018 & entered Oct. 15, 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

FILED: May 31, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2309
(8:18-cv-02084-PWG)

IRIS MCCLAIN

Plaintiff - Appellant

v.

WELLS FARGO HOME MORTGAGE/WELLS FARGO BANK, N.A.; THE BANK OF NEW YORK MELLON, Bony Mellon; WILLIAM SAVAGE; KRISTINE BROWN; ROBYN MCQUILLEN; MONICA CAMERON; LORI S. SIMPSON, District Judge

Defendants - Appellees

MANDATE

The judgment of this court, entered April 8, 2019, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

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/s/Patricia S. Connor, Clerk

Additional material from this filing is available in the Clerk's Office.