No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Victor O. Jones, Jr, Petitioner,

vs.

Wells Fargo Bank, N.A;
Government National Mortgage Association Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

APPENDICES A THROUGH L

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In Propria Persona

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2168

VICTOR O. JONES, JR.,

Plaintiff - Appellant,

v.

WELLS FARGO BANK N.A.; GOVERNMENT NATIONAL MORTGAGE ASSOCIATION, as Trustee for Ginnie Mae Remic Trust 2006-026; JOHN DOES 1-100,

Defendants - Appellees.

Appeal from the United States District Court for the District of South Carolina, at Greenville. Bruce H. Hendricks, District Judge. (6:17-cv-02486-BHH)

Submitted: May 28, 2019 Decided: May 31, 2019

Before WILKINSON, MOTZ, and DIAZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Victor O. Jones, Jr., Appellant Pro Se. Matthew Todd Carroll, Columbia, South Carolina, Shelton Sterling Laney, III, WOMBLE BOND DICKINSON (US) LLP, Greenville, South Carolina, for Appellee Wells Fargo Bank, N.A.

Unpublished opinions are not binding precedent in this circuit.

APPENDIX A

PER CURIAM:

Victor O. Jones, Jr., appeals the district court's order accepting the recommendation of the magistrate judge and dismissing Jones' complaint with prejudice for lack of subject matter jurisdiction pursuant to the *Rooker-Feldman*[*] doctrine. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. *Jones v. Wells Fargo Bank*, N.A., No. 6:17-cv-02486-BHH (D.S.C. Sept. 4, 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

[*] *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923).

FILED: May 31, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2168
(6:17-cv-02486-BHH)

VICTOR O. JONES, JR.

Plaintiff - Appellant

v.

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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

Appendix B:

USDC Unpublished Opinion No. CV 6:17-2486-BHH, 2018 WL

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Victor O. Jones, Jr.,	)	Civil Action No.: 6:17-2486-BHH
	)	
Plaintiff,	)	
	)	
v.	)	**OPINION AND ORDER**
Wells Fargo Bank, N.A.; Government National Mortgage Association, as Trustee For Ginnie Mae Remic Trust 2006-026; and John Does, 1-100,	)	
	)	
Defendants.	)	
	)	

Plaintiff Victor O. Jones, Jr., ("Plaintiff"), proceeding *pro se*, brought this action against Defendants Wells Fargo Bank, N.A. ("Wells Fargo"), Government National Mortgage Association, as Trustee for Ginnie Mae Remic Trust 2006-026 ("Ginnie Mae"), and John Does 1-100 ("the John Doe Defendants"), seeking monetary damages and declaratory relief following a state foreclosure action that involved his mortgaged property. (*See* ECF No. 1.) In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., the action was referred to United States Magistrate Judge Kevin F. McDonald for pretrial handling and a Report and Recommendation ("Report). Magistrate Judge McDonald recommends that Wells Fargo's motion to dismiss (ECF No. 16) be granted, that Ginnie Mae's unopposed motion to dismiss (ECF No. 27) be granted, and that the action be dismissed against the John Doe Defendants for failure to timely serve. (*See* ECF No. 33.) The Report sets forth in detail the relevant background and standards of review and the Court incorporates them without recitation.[1]

BACKGROUND

[1] As always, the Court says only what is necessary to address Plaintiff's objections against the already meaningful backdrop of a thorough Report and Recommendation by the Magistrate Judge; comprehensive recitation of law and fact exist there.

On April 10, 2018, the Magistrate Judge issued the Report recommending that both pending motions to dismiss be granted and this action be dismissed in its entirety. (ECF No. 33 at 10.) On April 24, 2018, Plaintiff filed objections. (ECF No. 37.) Wells Fargo filed a reply (ECF No. 38), and Plaintiff filed a sur-reply (ECF No. 40). The matter is ripe for adjudication and the Court now makes the following ruling.

STANDARD OF REVIEW

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter with instructions. 28 U.S.C. § 636(b)(1). However, the Court need not conduct a *de novo* review when a party makes only "general and conclusory objections that do not direct the court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). In the absence of a timely filed, specific objection, the Magistrate Judge's conclusions are reviewed only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

DISCUSSION

This case represents Plaintiff's attempt, in federal court, to collaterally attack foreclosure proceedings already resolved in favor of Wells Fargo in state court. (*See* ECF Nos. 1 (instant complaint, alleging: (1) lack of standing/wrongful foreclosure, (2)

fraud in the concealment, (3) fraud in the inducement, (4) unconscionable contract, (5) breach of fiduciary duty, (6) quiet title, (7) slander of title, (8) violation of the National Homeowners Bill of Rights, (9) violation of the Consumer Credit Protection Act, (10) violation of Regulation X, 12 C.F.R. § 1024.4, (11) violation of the Fair Debt Collection Practices Act, and (12) "declaratory relief"); 16-2 (judgment of foreclosure and sale in *Wells Fargo Bank, N.A. v. Victor O'Neil Jones, Jr., et al.*, 2014-CP-23-1278); 16-1 (order denying Plaintiff's motion for temporary restraining order and granting Wells Fargo's motion to dismiss Plaintiff's collateral "wrongful foreclosure" suit in *Victor O. Jones, Jr. v. Wells Fargo Bank, N.A., et al.*, 2015-CP-23-5735).) Even a cursory review of the pleadings reveals that Plaintiff is attempting to re-litigate matters already adjudicated in state court, and raise new theories with the hope of undercutting the results reached by the Court of Common Pleas, Thirteenth Judicial Circuit, County of Greenville, South Carolina.

In his thorough and detailed Report, the Magistrate Judge concluded that, to the extent Plaintiff is attempting to appeal or set aside the state court's judgment of foreclosure and sale in 2014-CP-23-1278, and its order of dismissal in 2015-CP-23-5735, this Court does not have subject matter jurisdiction over the action. (ECF No. 33 at 7.) This conclusion is correct pursuant to the *Rooker-Feldman* doctrine. *See District of Columbia Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *Brown & Root. Inc. v. Breckenridge*, 211 F.3d 194, 198 (4th Cir. 2000) (explaining that the *Rooker-Feldman* doctrine prevents a plaintiff "from seeking what in substance would be appellate review of [a] state judgment in a United States District Court, based on the losing party's claim that the state judgment itself

violates the loser's federal rights" (quotation marks and citation omitted)). The Magistrate Judge further concluded that Plaintiff's instant claims are identical in substance to the claims, defenses, and counterclaims he raised, or could have raised, in the state court cases, and as such are barred by the doctrine of *res judicata*. (ECF No. 33 at 7.) Moreover, the Magistrate Judge reasoned that, to the extent, if any, Plaintiff's instant claims are independent from and not inextricably intertwined with the state court's judgment and order of dismissal in the foreclosure proceedings, Wells Fargo is entitled to judgment as a matter of law. (*See* ECF No. 33 at 7-9.) Finally, the Magistrate Judge concluded that this action should be dismissed against the John Doe Defendants because of Plaintiff's failure to timely serve said Defendants. (ECF No. 33 at 9.)

Plaintiff filed extensive objections to the Report. (*See* ECF Nos. 37 & 40.) However, after careful review of those objections, the Court finds that Plaintiff has failed to point to any specific error in the Magistrate Judge's reasoning or conclusions. Though Plaintiff claims that he is not seeking to appeal or set aside the state court rulings at issue (*see* ECF No. 37 at 3), that is, in fact, precisely what he is trying to do. Indeed, Plaintiff repeatedly states that the state court rulings are "void," because of alleged "fraud upon the court." (*See* ECF Nos. 37 & 40.) This Court lacks subject matter jurisdiction over Plaintiff's attempted collateral attack on state court proceedings. *See, e.g., Skinner v. Switzer*, 562 U.S. 521, 531-32 (2011) (restating the *Rooker-Feldman* rule, that federal courts lack subject matter jurisdiction over cases where "[t]he losing party filed suit in a U.S. District Court after the state proceedings ended, complaining of an injury caused by the state-court judgment and seeking federal-court review and

rejection of that judgment"). It is abundantly clear *both* that Plaintiff's instant claims are "inextricably intertwined" with the state court foreclosure matters, *and* that the vast majority of specific issues he raises have already been "actually decided" in the state court cases. *See Brown & Root. Inc.*, 211 F.3d at 198 (stating that either prong is sufficient to preclude subject matter jurisdiction in federal court).

In an abundance of caution, the Court has conducted a *de novo* review of the Report, the record, and the applicable law. The Court finds that the Magistrate Judge fairly and accurately summarized the facts and applied the correct principles of law, and there is no basis upon which to deviate from the sound reasoning and analysis contained in the Report. Accordingly, there is no reason for the Court to discuss the same issues for a second time here.

CONCLUSION

For the reasons stated above and by the Magistrate Judge, the Court overrules Plaintiff's objections, and adopts and incorporates the Magistrate Judge's Report. Therefore, Wells Fargo's motion to dismiss (ECF No. 16) is hereby GRANTED, Ginnie Mae's unopposed motion to dismiss (ECF No. 27) is GRANTED, and this action is dismissed against John Does 1-100 pursuant to Federal Rule of Civil Procedure 4(m) for failure to effectuate timely service. The dismissal is *with prejudice*.

IT IS SO ORDERED.

/s/Bruce Howe Hendricks
United States District Judge

September 4, 2018
Greenville, South Carolina

APPENDIX B-2

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

GREENVILLE DIVISION

Victor O. Jones, Jr., Plaintiff, vs. Wells Fargo Bank, N.A.; Government National Mortgage Association, as Trustee for Ginnie Mae Remic Trust 2006-026; and John Does, 1-100, Defendants.	Civil Action No. 6:17-cv-2486-BHH-KFM **REPORT OF MAGISTRATE JUDGE**

This matter is before the court on the motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6) (doc. 16) by Wells Fargo Bank, N.A. (hereafter the "Bank"), and the motion to dismiss based on a notice of disclaimer of interest (doc. 27) by Government National Mortgage Association (hereafter "Ginnie Mae"). The plaintiff is proceeding *pro se,* seeking monetary damages and declaratory relief following a state foreclosure action that involved his mortgaged property. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(A) and Local Civil Rule 73.02(B)(2)(e) (D.S.C.), all pretrial matters in cases involving *pro se* litigants are referred to a United States Magistrate Judge for consideration.

PROCEDURAL HISTORY

The plaintiff filed his complaint on September 18, 2017. The Bank filed its motion to dismiss on November 10, 2017 (doc. 16). Pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), the plaintiff was advised of the procedure on motions to dismiss and for summary judgment and the possible consequences if he failed to respond adequately to the motion (doc. 19). The order specifically advised the plaintiff that if the

parties submit and the court considers materials outside of the pleadings on a motion to dismiss pursuant to Rule 12(b)(6), the motion to dismiss is converted to a motion for summary judgment (doc. 19; *see also* doc. 29). *See* Fed. R. Civ. P. 12(d). The plaintiff filed his response in opposition on December 15, 2017 (doc. 22), and the Bank filed a reply on December 27, 2017 (doc. 24).

On March 2, 2018, on behalf of Ginnie Mae, the Department of Housing and Urban Development filed a notice of disclaimer of interest, stating it has no ownership interest in the note and deed of trust at issue and asking that it be dismissed from the case (doc. 27). On March 5, 2018, pursuant to *Roseboro*, 528 F.2d 309, the plaintiff was again advised of the procedure on motions to dismiss and for summary judgment (doc. 29). On April 3, 2018, the plaintiff responded in support of Ginnie Mae's dismissal from the case, stating that "the decision has been made to voluntarily dismiss only this defendant" (doc. 31).

BACKGROUND

The plaintiff alleges in his complaint (doc. 1), and also states in his attached affidavit (doc. 1-1), that in 2006 he mortgaged his real property at 114 Spindleback Way in Greer, South Carolina, and that the Bank was a subsequent assignee of the mortgage. The Bank foreclosed in 2009 (2009-CP-23-6696) in the Greenville County Court of Common Pleas,[1] and a loan modification agreement was subsequently reached between the parties in 2010. In 2015, the plaintiff learned that the mortgage was again delinquent and that the Bank had again filed a foreclosure action in the Greenville County Court of Common Pleas (2014-CP-23-1287). This case had advanced to the issuance of an eviction notice in March

[1] While the plaintiff does not provide copies of all relevant filings from his cited state court cases, they are publicly available online at https://www2.greenvillecounty.org/scjd/publicindex, Case Numbers 2009-CP-23-6696; 2014-CP-23-1287; and 2015-CP-23-5735. The court may take judicial notice of matters of public record. *Sec'y of State for Defense v. Trimble Navigation Ltd.*, 484 F.3d 700, 705 (4th Cir. 2007).

2015, and the plaintiff recites his many efforts to set aside the eviction and revisit the foreclosure, including the hiring of an attorney. Ultimately, the Bank's judgment in 2014-CP-23-1287 was upheld. The plaintiff then undertook additional efforts to challenge the Bank's issuance, documentation, and management of the underlying loan itself, as well as alleged procedural defects in case 2014-CP-23-1287. He then filed a "wrongful foreclosure" action against the Bank and others in September 2015 in the Greenville County Court of Common Pleas (2015-CP-23-5735). In that case, the plaintiff alleged many of the same causes of action he raises here, including (1) Lack of Standing / Wrongful Foreclosure; (2) Fraud in the Concealment; (3) Fraud in the Inducement; (4) Slander of Title; (5) Quiet Title; and (6) Declaratory Relief (doc. 16-3). That action was dismissed by the state court in November 2015 (doc. 16-1).

The plaintiff now files this action in federal court, restating many of the claims that were previously presented to the state court in cases 2014-CP-23-1287 and 2015-CP-23-5735, as well as presenting additional claims including alleged violations of federal statutes or regulations (doc. 1). The plaintiff cites many perceived irregularities with the documents and proceedings in the state court actions, including allegations of forgery and mishandling of documents (doc. 1-1, pl. aff. ¶¶ 29-66), and requests that this court declare that the defendants lack any interest in the subject property and that the documents relied upon by the state court were improper. He also seeks an award of monetary damages, as well as fees and costs (doc. 1 at 24).

The Bank moves to dismiss the plaintiff's case pursuant to Rule 12(b)(1) and (6), arguing that this federal court lacks subject matter jurisdiction to reconsider the state court rulings and that otherwise the complaint fails to state claims for which relief can be granted. In its motion (doc. 16), the Bank recounts its version of the state court procedural history and provides as an attachment to its motion a copy of the judgment in case 2015-CP-23-5735, showing the plaintiff's case was dismissed in November 2015 (doc. 16-1). The Bank describes the plaintiff as a "serial litigator" who, despite the Bank having sold the property in 2014 pursuant to its judgment of foreclosure, "refuses to leave" (doc. 16 at 1).

In response, the plaintiff argues that he is not asking this court to act in an appellate capacity, but has "newly discovered grounds" that amount to the Bank committing "fraud upon [him], Ginnie Mae, and fraud upon the Court" (doc. 22 at 4-5).

APPLICABLE LAW AND ANALYSIS

Legal Standard

As noted above, the Bank has moved for dismissal of the plaintiff's case pursuant to Rule 12(b)(1) and (6). Rule 12(b)(1) provides for dismissal for lack of subject matter jurisdiction, and Rule 12(b)(6) provides for dismissal for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(1), (6). "The purpose of a Rule 12(b)(6) motion is to test the sufficiency of a complaint." *Williams v. Preiss-Wal Pat III, LLC*, 17 F. Supp. 3d 528, 531 (D.S.C. 2014) (quoting *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999)). Rule 8(a) sets forth a liberal pleading standard, which requires only a " 'short and plain statement of the claim showing the pleader is entitled to relief,' in order to 'give the defendant fair notice of what . . . the claim is and the grounds upon which it rests.' " *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). "[T]he facts alleged 'must be enough to raise a right to relief above the speculative level' and must provide 'enough facts to state a claim to relief that is plausible on its face.'" *Robinson v. American Honda Motor Co., Inc.*, 551 F.3d 218, 222 (4th Cir. 2009) (quoting *Twombly*, 550 U.S. at 555, 569). "The plausibility standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted).

"In deciding whether a complaint will survive a motion to dismiss, a court evaluates the complaint in its entirety, as well as documents attached or incorporated into the complaint." *E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 448 (4th Cir. 2011). The court may consider such a document, even if it is not attached to the

complaint, if the document "was integral to and explicitly relied on in the complaint," and there is no authenticity challenge. *Id.* at 448 (quoting *Phillips v. LCI Int'l, Inc.*, 190 F.3d 609, 618 (4th Cir. 1999)). *See also Int'l Ass'n of Machinists & Aerospace Workers v. Haley*, 832 F. Supp. 2d 612, 622 (D.S.C. 2011) ("In evaluating a motion to dismiss under Rule 12(b)(6), the Court . . . may also 'consider documents attached to . . . the motion to dismiss, so long as they are integral to the complaint and authentic.'") (quoting *Sec'y of State for Def. v. Trimble Navigation Ltd.*, 484 F.3d 700, 705 (4th Cir. 2007)). If on a Rule 12(b)(6) motion, the parties submit and the court considers matters outside the pleadings, the motion must be treated as one for summary judgment under Rule 56. Fed. R. Civ. P. 12(d).

Here, the defendant Bank has submitted documents from the plaintiff's previous state court cases (docs. 16-1, 16-2, 16-3). The plaintiff has submitted a transcript from a hearing in one of the cases (doc. 22-1), an allegedly forged lost mortgage satisfaction document regarding the subject property (doc. 22-2), and an unsigned note regarding the subject property (doc. 22-3). Out of an abundance of caution and as the parties have been given a reasonable opportunity to present all material that is pertinent to the Bank's motion, the undersigned will treat the motion as one for summary judgment.

Rule 56 states, as to a party who has moved for summary judgment: "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). As to the first of these determinations, a fact is deemed "material" if proof of its existence or nonexistence would affect the disposition of the case under the applicable law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue of material fact is "genuine" if the evidence offered is such that a reasonable jury might return a verdict for the non-movant. *Id.* at 257. In determining whether a genuine issue has been raised, the court must construe all inferences and ambiguities against the movant and in favor of the non-moving party. *United States v. Diebold, Inc.*, 369 U.S. 654, 655 (1962).

The party seeking summary judgment shoulders the initial burden of demonstrating to the district court that there is no genuine issue of material fact. *Celotex Corp. v. Catrett,* 477 U.S. 317, 325 (1986). Once the movant has made this threshold demonstration, the non-moving party, to survive the motion for summary judgment, may not rest on the allegations averred in his pleadings; rather, he must demonstrate that specific, material facts exist that give rise to a genuine issue. *Id.* at 324. Under this standard, the existence of a mere scintilla of evidence in support of the plaintiff's position is insufficient to withstand the summary judgment motion. *Anderson*, 477 U.S. at 252. Likewise, conclusory allegations or denials, without more, are insufficient to preclude the granting of the summary judgment motion. *Id.* at 248. "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment. Factual disputes that are irrelevant or unnecessary will not be counted." *Id.*

State Court Proceedings

While the plaintiff argues in his response in opposition (doc. 22) that he is not asking this court to be an appellate court of the state court's rulings and judgments, he is in fact doing just that. The state court has already entered a final judgment of foreclosure in favor of the Bank in case 2014-CP-23-1278 (doc. 16-2) and has dismissed the plaintiff's collateral "wrongful foreclosure" suit in case 2015-CP-23-5735 (doc. 16-1). In his complaint, the plaintiff asks this court to enter a judgment:

> Declaring that Defendants lack any interest in the subject property which would permit them to foreclose, evict, or attempt to foreclose or evict, the trust deed and/or to sell the subject properties; [and] Declaring that the trust deed is not a lien against the subject properties, ordering the immediate release of the trust deed of record, and quieting title to the subject properties in Plaintiff and against Defendants and all claiming by, through or under them.

(Doc. 1 at 24).

Obviously, such an order would be in direct contravention with the state court orders already issued in favor of the Bank. Initially, to the extent that the plaintiff is attempting to appeal or set aside the state court's order and judgment of foreclosure and sale in 2014-CP-23-1278 and its order of dismissal in 2015-CP-23-5375, this court lacks subject matter jurisdiction to sit in appellate review of judicial determinations made in state courts. *See District of Columbia Ct. of Appeals v. Feldman,* 460 U.S. 462 (1983)*; Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). *See also Brown & Root. Inc. v. Breckenridge*, 211 F.3d 194, 198 (4th Cir. 2000) (stating the *Rooker–Feldman* doctrine prevents the plaintiff "from seeking what in substance would be appellate review of the state judgment in a United States District Court, based on the losing party's claim that the state judgment itself violates the loser's federal rights") (citation omitted). In any event, the plaintiff had the opportunity to pursue each of the purported state and federal claims he raises here as defenses or counterclaims in his state court action; indeed, he pled many the of same claims, including (1) Lack of Standing / Wrongful Foreclosure; (2) Fraud in the Concealment; (3) Fraud in the Inducement; (4) Slander of Title; (5) Quiet Title; and (6) Declaratory Relief in case 2015-CP-23-5375, all of which were rejected by the state court (doc. 16-1 and 3). As such, all of his claims are barred by *res judicata.*

The plaintiff alleges that he has "newly discovered grounds" of the Bank's alleged wrongful conduct, suggesting that he was unaware of these grounds and thus could not have raised them during the earlier state court proceedings. However, the *Rooker-Feldman* doctrine still applies, and these new grounds cannot be considered by this court as a basis to set aside the judgments of the state court.

To the extent, if any, that the plaintiff's claims here are independent from and not inextricably intertwined with the state court's judgment in the foreclosure proceedings, the court further finds that the Bank is entitled to judgment as a matter of law. In his complaint, the plaintiff alleges various irregularities in the title and loan documentation, as

well as the state court proceedings, and that the Bank lacked standing to foreclose its mortgage. He further challenges the Bank's ability to foreclose as a real party in interest. However, these are matters for interpretation of state law and do not alone evoke federal jurisdiction.

The plaintiff also alleges violations of assorted federal statutes and regulations, including (1) the National Homeowners Bill of Rights ("HBOR"); (2) the Consumer Credit Protection Act ("CCPA"); (3) Regulation X of Real Estate Settlement Procedures Act ("RESPA"); and (4) the Fair Debt Collection Practices Act ("FDCPA") (doc. 1). Again, these violations have been, or could have been, presented to the state court, and the plaintiff presents nothing to suggest otherwise. In any event, the HBOR is not an existing federal law but instead the name of a bill that was offered in the United States House of Representatives in 2014 and again in 2017, but was never enacted. The CCPA, Regulation X of RESPA, and the FDCPA are existing federal statutes and regulations that deal generally with consumer or borrower notice requirements and protections, but as argued by the Bank, any violations by the Bank would be time-barred by the applicable statute of limitations: the bank was assigned the loan in 2007, modified it in 2010, and ultimately foreclosed on it by final judgment of July 2014. The plaintiff did not file suit here until September 2017, well beyond the three-year statute of limitations for RESPA violations (*see* 12 U.S.C. § 2614) and any limitations periods for claims that could be brought under the CCPA (*see* 15 U.S.C. § 1681p) and FDCPA (*see* 15 U.S.C. § 1692k(d)). As for the complaint's additional claims of "unconscionable contract" and "breach of fiduciary duty," the plaintiff has failed to present plausible information to defeat the Bank's motion, as he cannot establish that the Bank owed him a fiduciary duty as a mortgagee or that any part of his loan contract with the Bank was unconscionable. As such, the Bank is entitled to judgment as a matter of law. Moreover, as addressed above, these are claims that could

have been considered by the state court, and the plaintiff is prevented by *res judicata* from presenting them for the first time here.

Based upon the foregoing, the defendant Bank is entitled to summary judgment as to all claims alleged by the plaintiff against it.

John Does

The plaintiff also named John Does 1-100 as defendants in this action (doc. 1). In an order filed on October 20, 2017, the undersigned informed the plaintiff that his complaint was not in proper form with respect to these defendants and that he must provide information sufficient to identify all John Doe defendants on a summons (doc. 8). The plaintiff was informed that the information did not have to be the proper name of the intended defendant if the plaintiff could provide other identifying information such as the shift the person works, his/her physical description, the date on which the alleged incident occurred, etc. that gives additional information to conduct further investigation into the identity of the intended defendant (*id.* at 1). In addition, the plaintiff was notified that no process would issue as to these defendants until the needed information was provided (*id.* at 2). The plaintiff's attention was also specifically directed at Rule 4(m), which provides that if a defendant is not served within 90 days after the complaint is filed, the court must dismiss the action without prejudice against that defendant or order that service be made within a specified time (*id.* at 2 n.1). Fed. R. Civ. P. 4(m). The plaintiff was directed to "be mindful of this time limitation and diligent in obtaining identifying information and submitting service documents for the John Does if he desires to serve them in this case" (*id.*). The plaintiff did not provide the required identify information, and, therefore, service against the defendant John Does 1-100 was not authorized (doc. 9). It has now been nearly seven months since the filing of the complaint, and the plaintiff has failed to timely serve the defendant John Does 1-100. Thus, it is recommended that the action be dismissed against the defendant John Does 1-100 pursuant to Rule 4(m).

CONCLUSION AND RECOMMENDATION

Based upon the foregoing, the undersigned recommends that the Bank's motion to dismiss (doc. 16) be granted and that Ginnie Mae's unopposed motion to dismiss (doc. 27) be granted. It is further recommended that the action be dismissed against the defendant John Does 1-100 for failure to timely serve.

IT IS SO RECOMMENDED.

s/ Kevin F. McDonald
United States Magistrate Judge

April 10, 2018
Greenville, South Carolina

Appendix C:

4th Cir Order Denying Rehearing/Rehearing En Banc on 08/13/2019

FILED: August 13, 2019

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-2168
(6:17-cv-02486-BHH)

VICTOR O. JONES, JR.

Plaintiff - Appellant

v.

WELLS FARGO BANK N.A.; GOVERNMENT NATIONAL MORTGAGE ASSOCIATION, as Trustee for Ginnie Mae Remic Trust 2006-026; JOHN DOES 1-100

Defendants - Appellees

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 Wilkinson, Judge Motz, and Judge Diaz.

For the Court

/s/ Patricia S. Connor, Clerk

APPENDIX C

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