

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

MAR 18 2021

FOR THE NINTH CIRCUIT

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

AUDREY L. KIMNER,

Plaintiff-Appellant,

v.

CAPITAL TITLE OF TEXAS, LLC; et al.,

Defendants-Appellees.

No. 20-15861

D.C. No. 5:19-cv-07576-EJD

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Edward J. Davila, District Judge, Presiding

Submitted March 16, 2021**

Before: GRABER, R. NELSON, and HUNSAKER, Circuit Judges.

Audrey L. Kimner appeals pro se from the district court's order dismissing her action alleging federal and state law claims arising from Texas state court cases in which Kimner claimed fraud in the sale of her condominium. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a dismissal under the

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Rooper-Feldman doctrine, *Noel v. Hall*, 341 F.3d 1148, 1154 (9th Cir. 2003), and under 28 U.S.C. § 1915(e)(2)(B), *Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012). We affirm.

The district court properly dismissed Kimner's claims against all defendants (except Margaret A. Poissant) for lack of subject matter jurisdiction under the *Rooper-Feldman* doctrine because her claims are a "de facto appeal" of the Texas state court decisions. *Noel*, 341 F.3d at 1163-65.

The district court properly dismissed nonresident defendant Poissant because Kimner failed to allege facts sufficient to establish that the district court had personal jurisdiction over her. *See Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801-02 (9th Cir. 2004) (discussing requirements for general and specific personal jurisdiction).

We reject as unpersuasive Kimner's contentions that Magistrate Judge Cousins was biased or conspired against her.

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright*, 587 F.3d 983, 985 n.2 (9th Cir. 2009).

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

APR 09 2021

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

AUDREY L. KIMNER,

Plaintiff - Appellant,

v.

CAPITAL TITLE OF TEXAS, LLC; et
al.,

Defendants - Appellees.

No. 20-15861

D.C. No. 5:19-cv-07576-EJD

U.S. District Court for Northern
California, San Jose

MANDATE

The judgment of this Court, entered March 18, 2021, takes effect this date.

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

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: David J. Vignol
Deputy Clerk
Ninth Circuit Rule 27-7

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

AUDREY L. KIMNER,
Plaintiff,

v.

MARGARET A. POISSANT,
Defendant.

Case No. 5:19-cv-07576-EJD

**ORDER DISMISSING PLAINTIFF'S
CLAIMS WITH PREJUDICE**

Re: Dkt. No. 13

On January 29, 2020, this Court determined that the *Rooker-Feldman* doctrine prevented Plaintiff Audrey Kimner from proceeding with her case and dismissed certain Defendants from the action. *See* Dkt. 13. The Court determined, however, that *Rooker-Feldman* did not affect Plaintiff's claim against Defendant Margaret Poissant. *Id.* But, because Plaintiff's Complaint failed to state a claim against Defendant Poissant, the Court granted Plaintiff until February 28, 2020 to amend her complaint. *Id.* The Court warned Plaintiff that the amended complaint must cure the deficiencies or Plaintiff's claims would be dismissed. *See id.* at 4. Plaintiff subsequently filed a motion for reconsideration, which the Court denied. *See* Dkt. 15. In its Order Denying Reconsideration, the Court again informed Plaintiff that she had until February 28, 2020 to file her amended complaint or her claims would be dismissed. *See* Dkt. 15. Despite this, Plaintiff has failed to file an amended complaint. Accordingly, Plaintiff's case is **DISMISSED with prejudice**. The Clerk shall close the file

IT IS SO ORDERED.

Dated: March 4, 2020



EDWARD J. DAVILA
United States District Judge

Case No.: 5:19-cv-07576-EJD
ORDER DISMISSING PLAINTIFF'S CLAIMS WITH PREJUDICE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AUDREY L. KIMNER,
Plaintiffs,

v.

MARGARET A. POISSANT,
Defendants.

Case No.: 19-cv-07576-EJD

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that:

- (1) I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California; and
- (2) On 4/13/2020, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an interoffice delivery receptacle located in the Clerk's office.

Audrey L. Kimner
P.O. Box 1493
Carmel, CA 93921

Dated: 4/13/2020

Susan Y. Soong
Clerk, United States District Court

By: Adriana M. Kratzmann
Adriana M. Kratzmann, Deputy Clerk to
the Honorable Edward J. Davila

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

AUDREY L. KIMNER,
Plaintiff,

v.

CAPITAL TITLE OF TEXAS, LLC, et al.,
Defendants.

Case No. 19-cv-07576-NC

**ORDER GRANTING
PLAINTIFF'S MOTION TO
PROCEED IN FORMA
PAUPERIS; SCREENING
COMPLAINT UNDER 28 U.S.C.
§ 1915**

Re: Dkt. No. 2

Pro se plaintiff Audrey L. Kimner seeks to proceed in forma pauperis against defendants Capital Title of Texas, LLC, JEM Advisory Group, LLC, Tanglewood Condominium Owners, First Service Residential, Ceasons Holdings, LLC, various individuals associated with those entities, and her former lawyer, Margaret A. Poissant. *See* Dkt. Nos. 1, 2. For the reasons stated below, the Court (1) GRANTS Kimner's motion for leave to proceed in forma pauperis; (2) FINDS that Kimner's complaint fails to state a claim against corporate Defendants and related individuals; (3) FINDS that Kimner's complaint fails to establish personal jurisdiction over Poissant; and (4) GRANTS Kimner leave to amend.

I. Allegations in the Complaint

Kimner owned a midrise condominium in Houston, Texas. *See* Dkt. No. 1 ("Compl.") at 7. In 2017, Kimner lost her home and valuable furniture within it. *Id.* at 7–

8. Kimner alleged that defendants Capital Title, JEM Advisory, and their agents fraudulently took her property. *Id.* at 8–9. She then hired Poissant to represent her in an unsuccessful lawsuit against the other Defendants. *Id.* at 10, 13–15.

Kimner now sues the Defendants for fraud, violation of her civil rights, and unlawful foreclosure. *See id.* at 2; *see also* Dkt. No. 1-1.

II. Application for Leave to Proceed In Forma Pauperis

Under 28 U.S.C. § 1915, a district court may authorize the commencement of a civil action in forma pauperis if it is satisfied that the would-be plaintiff cannot pay the filing fees necessary to pursue the action. *See* 28 U.S.C. § 1915(a)(1). Here, Kimner submitted the required documentation, and it is evident from the application that the listed assets and income are insufficient to enable her to pay the filing fees. *See* Dkt. No. 2. Accordingly, the Court GRANTS Kimner’s application for leave to proceed in forma pauperis.

III. Screening Under 28 U.S.C. § 1915

The Court must screen every civil action brought in forma pauperis under 28 U.S.C. § 1915(a) and dismiss any case that 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 relief.” 28 U.S.C. § 1915(e)(2)(B); *see Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000) (en banc).

A. Claims Against Corporate Defendants and Related Individuals

Under the *Rooker-Feldman* doctrine federal courts cannot hear appeals from state court judgments. *See Cooper v. Ramos*, 704 F.3d 772, 778 (9th Cir. 2012). The *Rooker-Feldman* doctrine prohibits federal lawsuits that are “explicitly styled as a direct appeal [and] also over the ‘de facto equivalent’ of such an appeal.” *Id.* (citing *Noel v. Hall*, 341 F.3d 1148, 1155 (9th Cir. 2003)).

Here, Kimner’s claims largely revolve around the foreclosure of her condominium, but that foreclosure was the subject of a state court lawsuit. Indeed, Kimner’s civil cover sheet indicates that this suit is intended to be a removal of her state court foreclosure

proceedings in Harris County District Court. *See* Dkt. No. 1-1.¹ Those proceedings have since ended and final judgment has been entered. *See Kimner v. Capital Title of Texas LLC*, Dkt. No. 201752170 (Harris Cnty. Dist. Ct.) (dismissed for lack of prosecution Oct. 9, 2019); *Kimner v. Ceasons Holding LLC*, Dkt. No. 201752170A (Harris Cnty. Dist. Ct.) (summary judgment entered Dec. 10, 2018); *Kimner v. Tanglewood Condominium Owners Assoc.*, Dkt. No. 201752170B (Harris Cnty. Dist. Ct.) (summary judgment entered Jan. 29, 2019). Kimner’s lawsuit now seeks damages for the loss of her home. Such relief, however, “would effectively reverse the state court decision or void its ruling.” *Fontana Empire Ctr., LLC v. City of Fontana*, 307 F.3d 987, 992 (9th Cir. 2002) (citation omitted).

Accordingly, the Court FINDS that Kimner has failed to state a claim against the corporate Defendants and their agents.

B. Claims Against Poissant

Kimner also sues Poissant, complaining of deficient or unethical representation during her state court lawsuits. *See* Compl. at 10–12, 14–16. It is not clear, however, that the Court has personal jurisdiction over Kimner’s claims against Poissant.

A federal court must have personal jurisdiction over a defendant to exercise jurisdiction over that defendant. *See Walden v. Fiore*, 571 U.S. 277, 284 (2014). Personal jurisdiction exists in two forms: general and specific. *See Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 801–02 (9th Cir. 2004).

A court may exercise general personal jurisdiction over an individual when that individual resides in the forum state. *See Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014). Kimner alleged that Poissant resides in Houston, Texas. *See* Compl. at 5. Thus, the Court does not have general personal jurisdiction over Poissant.

A court may exercise specific personal jurisdiction over an individual when “the

¹ Kimner’s civil cover sheet states that the docket number for her state court proceedings is 20175210. *See id.* The Court was unable to find any cases originating from Harris County District Court with that number. The Court did, however, find three related lawsuits between Kimner and defendants Capital Title, Ceasons Holding, and Tanglewood with docket numbers 201752170, 201752170A, and 201752170B. For the purposes of this order, the Court assumes that those are the state court cases Kimner intended to reference.

defendant's suit-related conduct must create a substantial connection with the forum State." *Axiom Foods, Inc. v. Acerchem Int'l, Inc.*, 874 F.3d 1064, 1068 (9th Cir. 2017) (quoting *Walden*, 571 U.S. at 284). Poissant's suit-related conduct is her representation of Kimner in the Texas court proceedings. The only connection between Poissant's conduct and California is the fact that Poissant was Kimner's attorney, but "a defendant's relationship with a plaintiff or third party, standing alone, is an insufficient basis for jurisdiction." *Id.* (quoting *Walden*, 571 U.S. at 286). Thus, the Court also does not have specific personal jurisdiction over Poissant.

Accordingly, the Court FINDS that it does not have personal jurisdiction over Poissant.

IV. Conclusion

The Court GRANTS Kimner's application for leave to proceed in forma pauperis. Screening Kimner's complaint under 28 U.S.C. § 1915, the Court FINDS that Kimner fails to state a claim against corporate Defendants and related individuals. The Court also FINDS that Kimner failed to establish personal jurisdiction over Poissant. The Court GRANTS Kimner leave to file an amended complaint by **December 27, 2019**. The amended complaint must cure the deficiencies noted in this order or the Court will recommend dismissal.

The Court directs Kimner to the Federal Pro Se Program, which provides free information and limited-scope legal advice to pro se litigants in federal civil cases. The Federal Pro Se Program is located in Room 2070 in the San Jose United States Courthouse, and is available by appointment Monday to Thursday 9:00 a.m.–4:00 p.m. The Program can also be reached by calling (408) 297-1480.

IT IS SO ORDERED.

Dated: November 21, 2019


NATHANAEL M. COUSINS
United States Magistrate Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

AUDREY L. KIMNER,
Plaintiff,

v.

CAPITAL TITLE OF TEXAS, LLC, et al.,
Defendants.

Case No. 5:19-cv-07576-EJD

**ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION**

Re: Dkt. No. 22

Before the Court is Plaintiff Audrey Kimner's motion for reconsideration.¹ Plaintiff asks this Court to reconsider its March 2020 order, which dismissed Plaintiff's claims with prejudice. *See* Dkt. 16. Plaintiff subsequently appealed that order.² Dkt. 17.

Reconsideration of a final judgment, order, or proceeding is appropriate if the district court (1) is presented with newly discovered evidence; (2) committed clear error or the initial decision was manifestly unjust; or (3) if there is an intervening change in controlling law. *See, e.g., School Dist. No. 1J, Multnomah Cty., Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). A motion for reconsideration may not be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation. *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003).

¹ In this District, parties must first file a motion for *leave* to file a motion for reconsideration. *See* N.D. Cal. Civ. L.R. 7-9(a). Plaintiff Kimner only filed a motion for reconsideration. Given Plaintiff's pro se status, the Court interprets Plaintiff's motion as asking for leave to file a motion for reconsideration. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (discussing the lower standard for pro se plaintiffs, namely that they are held to "less stringent standards" with respect to pleadings).

² This ground alone prevents the Court from granting Plaintiff's motion for reconsideration. *See* N.D. Cal. Civ. L.R. 7-9(a) (requiring the motion to be brought before entry of judgment).

Case No.: 5:19-cv-07576-EJD

ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No.19-cv-07576 NC

AUDREY L. KIMNER,

Plaintiff,

v.

CAPITAL TITLE OF TEXAS, et al.,

Defendants,

NOTICE OF IMPENDING
REASSIGNMENT TO A UNITED
STATES DISTRICT COURT
JUDGE AND CERTIFICATE OF
SERVICE

The Clerk of the Court will now randomly reassign this case to a United States District Judge because one or more parties has not consented to the jurisdiction of a United States Magistrate Judge. You will be informed by separate notice of the district judge to whom this case is reassigned. ALL HEARING DATES PRESENTLY SCHEDULED BEFORE THE MAGISTRATE JUDGE ARE VACATED.


I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 12/3/2019, I SERVED a true and correct copy of this notice, by placing said copy in a postage paid envelope addressed to the person hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy into an inter-office delivery receptacle located in the Clerk's office.

Audrey L. Kimner
P.O. Box 1493
Carmel, CA 93921

Dated: 12/3/2019

Susan Y. Soong
Clerk, United States District Court

By: 
Lili Harrell, Deputy Clerk to the
Honorable NATHANAEL M. COUSINS

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

AUDREY L. KIMNER,
Plaintiff,

v.

CAPITAL TITLE OF TEXAS, LLC, et al.,
Defendants.

Case No. 19-cv-07576-EJD

**CLERK'S NOTICE RESETTING CASE
MANAGEMENT CONFERENCE
FOLLOWING REASSIGNMENT**

TO ALL PARTIES AND COUNSEL OF RECORD:

YOU ARE NOTIFIED THAT a case management conference has been set for February 27, 2020 at 10:00 AM in Courtroom 4, 5th Floor, 280 S. 1st Street, San Jose, California before Edward J. Davila. On or before February 17, 2020, the parties shall file a joint case management conference statement. The Court does not issue a revised Initial Case Management Scheduling Order with ADR Deadlines. Standing orders can be downloaded from the court's web page at www.cand.uscourts.gov/ejdorders.

Dated: 12/5/2019

Susan Y. Soong
Clerk, United States District Court



Adriana M. Kratzmann, Deputy Clerk to the
Honorable EDWARD J. DAVILA

Case No.: 19-cv-07576-EJD
CLERK'S NOTICE RESETTING CASE MANAGEMENT CONFERENCE FOLLOWING
REASSIGNMENT

Your name: Audrey Kimmer

Address: P.O. Box 1493

Carmel, California 93921

Phone Number: 843-754-1543

Fax Number: —

E-mail Address: Audrey ~~#~~ Kimmer 10@gmail.com

Pro Se [Select one: Plaintiff or Defendant]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

[Select one location: San Francisco / Oakland / San Jose / Eureka]

Audrey L. Kimmer

Case Number: 19-CV-07576 EJD

Plaintiff(s),

Title of Document:

vs.

Capital Title of Texas
LLC, et.al.

Motion to reconsider
based on evidence and
defendants self admitting
knowledge and willful
knowledge of fraud in this
case, torting my property
and land in 2017.

Defendant(s).

4/12/2020
(Attached)

Dear honorable Davila,

You closed my proven fraud case on
March 4, 2020 unknownst to me, as the
court was closed due to the virus. I had a
hearing scheduled 4/9/2020 to go over
proof you have not viewed. I am asking

TITLE OF DOCUMENT: Motion to reconsider CASE NO.: 19-CV-07576 EJD

Defendant No. 1

Name Capital Title of Texas, LLC
Job or Title (if known) Title Company CEO Bill Shaddock
Street Address 7001 Preston Rd # 120
City and County DALLAS Dallas County
State and Zip Code TX - 75205
Telephone Number 214-219-7300
E-mail Address (if known) BShaddock@ctot.com, CEO

Defendant No. 2

Name Long, Kevin
Job or Title (if known) Lawyer, Oldenettel & Long
Street Address 210 Coronado St.
City and County HOUSTON Harris
State and Zip Code TX 77009
Telephone Number 713-622-5161
E-mail Address (if known) KLong@oldenettelaw.com

Defendant No. 3

Name Shaddock, Bill
Job or Title (if known) CEO of Capital Title
Street Address 7001 Preston Rd #120
City and County DALLAS Dallas County
State and Zip Code TX 75205
Telephone Number 214-219-7300
E-mail Address (if known) BShaddock@ctot.com

Defendant No. 4

Name Baker, Nichole
Job or Title (if known) Capital Title Escrow manager Office
Street Address 21021 Springbrook PLAZA Drive
City and County Spring Harris County Suite 150
State and Zip Code TX 77379
Telephone Number 281-715-3440
E-mail Address (if known) ~~NBaker@ctot.com~~
Nbaker@ctot.com

Defendant No. 9

Name Ceasons Holdings, LLC
Job or Title (if known) Lein Lender previous defendant, John
Street Address 6008 Gentle Knoll DAVENPORT
City and County DALLAS
State and Zip Code TX 75248
Telephone Number 469-233-0450
E-mail Address (if known) john@ceasonsholdings.com

Defendant No. 10

Name Poissant, Margaret, A.
Job or Title (if known) Plaintiffs ex Lawyer
Street Address 301 FANNIN Rm 245
City and County Houston Harris County
State and Zip Code TX 77002
Telephone Number 713-274-2800
E-mail Address (if known) mp@poissantlawfirm.com

Defendant No. 11

Name TAPP G. Michael
Job or Title (if known) Real estate lawyer
Street Address 12611 Jones Rd #101
City and County Houston
State and Zip Code TX 77070
Telephone Number 281-890-8277
E-mail Address (if known) michael@michaeltapplaw.com

Defendant No. 12

Name Irelan, Bradford W.
Job or Title (if known) TX State BAR # 10411550 Defendant to
Street Address 440 Louisiana, Suite 1800
City and County Houston Harris
State and Zip Code TX
Telephone Number 713-222-7666
E-mail Address (if known) birelan@imtexaslaw.com

Defendant No. 13

Name
Job or Title (if known)
Street Address
City and County
State and Zip Code
Telephone Number
E-mail Address (if known)

Vida, Sarah, M.
Lawyer, Roberts Marille Weinburg
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svida@rmwbhlaw.com

Defendant No. 14

Name
Job or Title (if known)
Street Address
City and County
State and Zip Code
Telephone Number
E-mail Address (if known)

Hearn, Clayton R
Lawyer, Roberts Marille Weinburg
5307 E. Mockingbird Ln. Butler HAI
DALLAS Suite 685 DALLAS County PC
TX 75206
713-840-9404
chearn@rmwbhlaw.com

Defendant No.

Name
Job or Title (if known)
Street Address
City and County
State and Zip Code
Telephone Number
E-mail Address (if known)

Defendant No.

Name
Job or Title (if known)
Street Address
City and County
State and Zip Code
Telephone Number
E-mail Address (if known)

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