No. _____

6th Circuit
20-1639

IN THE
Supreme Court of the United States

MATI LEEAL and
MALKA LEEAL,
PETITIONERS,

v.

DITECH FINANCIAL, LLC,
F/K/A GREEN TREE SERVICING, LLC,

RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

WHETHER THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ERRED IN AFFIRMING THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MICHIGAN OPINION GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT ON ALL OF THE PETITIONERS' CLAIMS RAISED AGAINST RESPONDENTS IN THE PETITIONERS' COMPLAINT?

PARTIES TO THE PROCEEDING

MATI LEEAL and
MALKA LEEAL,

PETITIONERS

v.

DITECH FINANCIAL, LLC,
F/K/A GREEN TREE SERVICING, LLC

RESPONDENT

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RULES

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit and the opinion of the United States District Court for the Eastern District of Michigan were unpublished opinions.

JURISDICTION

The decision of the United States Court of Appeals for the Sixth Circuit, affirming the appeal from the District Court's Granting Respondents' Motion for Summary Judgment on March 5, 2020. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

RELEVANT PROVISIONS INVOLVED

See Reasons for Granting the Petition..

STATEMENT

Respondent removed the action to District Court on March 1, 2017, Respondent filed a Motion to Dismiss on March 17, 2017. On September 15, 2017, the Court denied Respondent's Motion, stayed the case, and directed Respondent to file a Motion in the State-Court DJ Action seeking to set aside, vacate, or otherwise obtain relief from the State-Court Default Judgment.

Respondent then returned to State Court and moved that court to vacate the State-Court Default Judgment. The State Court did not reach the merits of Respondent's Motion. Instead, it denied the Motion on the grounds that Respondent failed to seek relief from the State-Court Default Judgment in a timely manner. The proceedings in the District Court then resumed. Respondent filed an answer to the Petitioners' Complaint on May 21, 2018. Respondent also brought a Counter-Complaint against the Petitioners seeking a declaratory judgment that the State-Court Default Judgment was not binding on Respondent. Respondent brought additional counterclaims contending, in the alternative, that Respondent has an equitable mortgage on the Petitioners' property and that the Petitioners have been unjustly enriched.

On October 31, 2018, Respondent filed a Motion for Summary Judgment. Respondent also filed a renewed Motion for Summary Judgment.

On June 23, 2020, the District Court Granted Respondent's Motion for Summary Judgment.

REASONS FOR GRANTING THE PETITION

I. THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ERRED IN AFFIRMING THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MICHIGAN OPINION GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT ON ALL OF THE PETITIONERS' CLAIMS RAISED AGAINST RESPONDENTS IN THE PETITIONERS' COMPLAINT.

On June 23, 2020, the District Court ruled the following:

- Judgment is entered in favor of Defendant Ditech Financial LLC ("Ditech") and against Plaintiffs Mati Leeal and Malka Leeal on all of the claims raised against Ditech in the Leeals' Complaint

- It is further declared that:

A. The September 17, 2015, Default Judgment entered by the Oakland County Circuit Court, Case No. 15-46929-CH, is not binding on Ditech;

B. The Mortgage – dated November 16, 2007, and recorded in Liber 39796– remains a valid and enforceable first lien Mortgage against the

> property at 29249 Chelsea Crossing, Farmington Hills, Michigan, as Mati Leeal and Malka Leeal could not adjudicate the underlying validity of the Note and Mortgage when the proper parties in interest were not named or represented in the 2015 action before the Oakland County Circuit Court; and
>
> C. Ditech is entitled to exercise its statutory and contractual rights under the Mortgage, including foreclosure.
>
> - Counts II and III of Ditech's Counter-Complaint are DISMISSED WITHOUT PREJUDICE.

The District Court's ruling was based on the reasoning that the Petitioners had sued the wrong Party. However, that was not the conclusion of the Oakland County Circuit Court that in a series of rulings concluded the following:

> Upon the failure of the Defendants Abn Amro Mortgage Group, Inc. and CitiMortgage, Inc., to answer, plead or otherwise defend this action and the Court having heard Plaintiff's Motion for Entry of Default Judgment, it is hereby ordered:
>
> IT IS HEREBY ORDERED that the Note dated November 16, 2007, and the Mortgage dated November 16, 2007, and recorded in Liber

> 39796, Page 368 with the Oakland County Register of Deeds which were entered into with Plaintiffs are void as Defendant Abn Amro Mortgage Group, Inc. ceased to exist as of the date of the execution of said mortgage and note and said Defendant was no longer authorized to transact business in Michigan as of September 21, 2007;
>
> IT IS FURTHER ORDERED that Defendant Abn Amro Mortgage Group, Inc. lacked legal capacity to enter into the note dated November 16, 2007, and the Mortgage dated November 16, 2007, and recorded in Liber 39796, Page 368 with the Oakland County Register of Deeds entered into with Plaintiffs;
>
> IT IS FURTHER ORDERED that there is no legal basis documented or otherwise which requires Plaintiff to make any payments to Defendants CitiMortgage, Inc. or Defendant Abn Amro Mortgage Group, Inc. relative to the Mortgage and/or note with Plaintiffs dated November 16, 2007, and the Mortgage of the same date and recorded in Liber 39796, Page 368 with the Oakland County Register of Deeds.

Thus, the premise of the District Court's ruling is inaccurate, the Oakland County ruling should prevail, and the District Court should have denied Respondents renewed Motion for Summary Disposition.

Assuming that the District Court premise is correct in that Petitioners sued the wrong party, the District Court's ruling must still fail. Michigan law is quite clear. To set aside a default judgment Respondent must follow the State of Michigan statutory scheme and case law. Michigan appellate court generally will not reverse a lower court's decision on setting aside a default judgment unless the lower court clearly abused its discretion. Alken-Ziegler, 461 Mich 219 at 233; Harvey Cadillac Co v Rahain, 204 Mich App 355, 514 NW2d 257 (1994); Lindsley v Burke, 189 Mich App 700, 474 NW2d 158 (1991).

The courts have gone a step further by stating that it is the policy in Michigan not to set aside a default judgment unless these requirements are strictly met. Specifically, the court of appeals invoked "the established policy that courts are strict in setting aside defaults regularly entered."Zinn v Fischer Distrib Co, 27 Mich App 591, 593, 183 NW2d 859 (1970). Zinn is cited in the collection attorney's dream case, Glasner, in which the court refused to set aside the default judgment for $21,233.

NO GOOD CAUSE AND MERITORIOUS DEFENSE

Respondent's Motions in the Oakland County Circuit Court to set aside the Circuit Court Orders must establish good cause and an affidavit of facts showing a meritorious defense. Respondent could not show good cause in that Respondent was served with a copy of the Judgment, and the Respondent waited eighteen months

before they took any affirmative action to address the Court Order.

Finally, Respondent did not have a meritorious defense in that the Respondent unlawfully foreclosed on the subject property in breach of Quiet Title statutes and case law.

THERE WAS NO MISTAKE, INADVERTENCE, SURPRISE, OR EXCUSABLE NEGLECT

The Oakland County Court could have relieved the Respondent from a Default, order, or proceeding on the basis: (1) of mistake, inadvertence, surprise, or excusable neglect...(5) that the judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. MCR 2.612(C)(1)(a)-(f). Heugel v Heugel, 237 Mich App 471, 478; 603 NW2d 121 (1999). In the case at bar, the Oakland County Court refused to do so. See Judge Shalina Kumar November 22, 2017, Order after Motion and Judge Shalina Kumar December 20, 2017, Order after Motion.

PROPER SERVICE

Respondent's claim that they were not properly served or notified. Pursuant to MCR 2.105(E) Respondent's claim is without merit. MCR 2.105(E) (D)

is a non-issue because Respondent received actual notice under MCR 2.105(J) (3) which states as follows:

> (3) An action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within the time provided in these rules for service.

Respondent's actual notice of the Judgment as evidenced by Petitioners sending a copy of the Judgment to Respondent.

By analogy, in *Hill v Frawley*, 155 Mich App 611, 614; 400 NW2d 328 (1986) the Court stated that an action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within the time provided in these rules for service." "Thus, if a defendant actually receives a copy of the summons and complaint within the permitted time, he cannot have the action dismissed on the ground that the manner of service contravenes the rules." *Hill v Frawley*, 155 Mich App 611, 614; 400 NW2d 328 (1986).

Also, the failure to technically comply with MCR 2.105(E) does not render service of process ineffective. Notably, the rules applicable to service of process "are not intended to limit or expand the jurisdiction given the Michigan courts over a defendant." MCR 2.105(J)(1). As a result, strict compliance with the rules is not mandated. MCR 2.105(J)(3); *Alycekay Co v Hasko*

Constr Co, Inc, 180 Mich.App. 502, 505-506; 448 N.W.2d 43 (1989). Rather, "[t]his Court has held that service-of-process rules are intended to satisfy the due process requirement that a defendant be informed of the pendency of an action by the best means available, by methods reasonably calculated to give a defendant actual notice of the proceeding and an opportunity to be heard and to present objections or defense." *Bunner v Blow-Rite Insulation Co,* 162 Mich.App. 669, 673-674; 413 N.W.2d 474 (1987).

Because the purpose underlying the rules governing service of process is to provide actual notice of a lawsuit and an opportunity to defend, MCR 2.105(I)(1), courts shall not dismiss an action based on improper service unless the service failed to inform the defendant of the existence of a claim within the time specified within the court rules. MCR 2.105(J)(3); *Holliday v Townley,* 189 Mich.App. 424, 425; 473 N.W.2d 733 (1991). Contrary to the majority's opinion, the focus is not on the method of process used to provide the notice but rather on whether the service used actually provided timely notice of the complaint to an authorized individual.

Respondent argues that there is "a complete failure of service of process." *Holliday v Townley,* 189 Mich.App. 424, 425; 473 N.W.2d 733 (1991). Contrary to that argument, however, the facts presented here did not establish a "complete failure of service of process in that evidenced by the facts and ruling of the Oakland County Circuit Court. Since the Appellee was "aware

of" the Judgment, then service was proper under MCR 2.105(J)(3).

A. THE DISTRICT COURT ERRED IN RULING THAT THE SEPTEMBER 17, 2015, DEFAULT JUDGMENT ENTERED BY THE OAKLAND COUNTY CIRCUIT COURT, CASE NO. 15-46929-CH, IS NOT BINDING ON RESPONDENT.

Petitioners hereby incorporate by reference each and every prior argument contained in Section 1 above in their entirety, as if fully rewritten herein.

B. THE DISTRICT COURT ERRED IN RULING THAT THE MORTGAGE REMAINS A VALID AND ENFORCEABLE FIRST LIEN MORTGAGE AGAINST THE PROPERTY AT 29249 CHELSEA CROSSING, FARMINGTON HILLS, MICHIGAN, AS PETITIONERS COULD NOT ADJUDICATE THE UNDERLYING VALIDITY OF THE NOTE AND MORTGAGE WHEN THE PROPER PARTIES IN INTEREST WERE NOT NAMED OR REPRESENTED IN THE 2015 ACTION BEFORE THE OAKLAND COUNTY CIRCUIT COURT.

Petitioners hereby incorporate by reference each and every prior argument contained in Section 1 above in their entirety, as if fully rewritten herein.

C. THE DISTRICT COURT ERRED IN RULING THAT RESPONDENT IS ENTITLED TO EXERCISE ITS STATUTORY AND CONTRACTUAL RIGHTS UNDER THE MORTGAGE, INCLUDING FORECLOSURE.

Petitioners hereby incorporate by reference each and every prior argument contained in Section 1 above in their entirety, as if fully rewritten herein.

CONCLUSION

For the above and foregoing reasons, Petitioners respectfully request the issuance of a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

DARWYN P. FAIR & ASSOCIATES

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Dated: July 19, 2021

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
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Filed: February 19, 2021

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Detroit, MI 48226

Re: Case No. 20-1639, Mati Leeal, et al v. Ditech Financial LLC
Originating Case No.: 2:17-cv-10645

Dear Counsel,

The Court issued the enclosed opinion today in this case.

Sincerely yours,

s/Cathryn Lovely
Opinions Deputy

cc: Ms. Kinikia D. Essix

Enclosure

Mandate to issue

NOT RECOMMENDED FOR PUBLICATION
File Name: 21a0095n.06

Case No. 20-1639

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

FILED

Feb 19, 2021

DEBORAH S. HUNT, Clerk

MATI LEEAL, *et al.*,
Plaintiff-Appellants,

v.

DITECH FINANCIAL, LLC,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

OPINION

BEFORE: WHITE, LARSEN, and NALBANDIAN, Circuit Judges.

NALBANDIAN, Circuit Judge. Plaintiffs, the Leeals, hoped that a state court judgment would relieve them of their mortgage payments. And it might have, if they had sued the right parties. But when they stopped making mortgage payments, Defendant Ditech began foreclosing on the mortgage. And the prior state court default judgment purporting to void their mortgage

could not stop the foreclosure because Ditech had not been a party in the state court. As a result, the district court granted Ditech's summary judgment motion because the state court judgment did not bind the parties in this case. The Leeals make no argument that supports reversal, so we **AFFIRM**.

I.

Mati and Malka Leeal took out a $301,000 mortgage loan from ABN AMRO, an assumed name for CitiMortgage (CMI). Later, the Federal National Mortgage Association ("Fannie Mae") bought the mortgage from CMI, and Green Tree Servicing, LLC bought the servicing rights. So the Leeals started sending Green Tree their mortgage payments and directing discussion about the loan to Green Tree's customer service.

But a year later, the Leeals filed an action for declaratory judgment in state court, alleging that the mortgage note was void. They named only ABN AMRO and CMI as defendants, not Fannie Mae or Green Tree. The Leeals continued paying Green Tree, which had no inkling of the pending action. And when Green Tree merged into Ditech, the Leeals started paying Ditech. They did not notify Fannie Mae or Green Tree of the action until it was over.

Having no interest in the Leeals' case, CMI and ABN AMRO never appeared. So the state court issued a default judgment declaring the mortgage loan void. The Leeals stopped paying. Ditech notified the Leeals of their default on the remaining $299,980 balance and later began foreclosure. The Leeals responded with a second state action, this one asking the state to block the foreclosure because of the previous state court

judgment. The state court issued a temporary restraining order. And Ditech removed the case to federal court.

The district court first required Ditech to file a motion in state court to set aside, vacate, or otherwise obtain relief from the default judgment. But the state court denied it as untimely. Back in federal court again, Ditech filed an answer, a counter- complaint, and a motion for summary judgment based on res judicata and collateral estoppel—without avail. Finally, the district court granted Ditech's second summary judgment motion, which argued that the state court default judgment did not bind Ditech or Fannie Mae because they were not parties to the action.

The district court noted that, because the Leeals sought to determine their own personal obligations to CMI and ABN AMRO and did not name the property as a party, their state action was in personam. An in personam action, the court added, determines only "personal rights and obligations." (R. 55, Dist. Ct. Op., Page 12 (quoting Int'l Typographical Union v. Macomb County, 11 N.W.2d 242, 247 (Mich. 1943).) And it cited the principle that in personam judgments do not bind anyone who was not a party to the action, in part because of the serious due process concerns that would result. So the state court judgment made the mortgage loan "void" only between the Leeals and the companies ABN AMRO and CMI. Without disturbing the state court's judgment, the district court held that it did not bind Ditech. The Leeals
appealed.[1]

---

[1] Although the district court reserved the issue of attorneys' fees, that does notaffect the finality of the judgment for appeal purposes. *See Tahfs v. Proctor*, 316 F.3d584, 590 (6th Cir. 2003)

II.

We review summary judgment grants de novo, viewing the evidence in thelight most favorable to the non-movant and affirming only if there is no genuine issue of material fact. *Am. Council of Certified Podiatric Physicians & Surgeons v. Am. Bd.of Podiatric Surgery, Inc.*, 323 F.3d 366, 369–70 (6th Cir. 2003); FED. R. CIV. P. 56(a).

The Leeals raise four arguments that the district court erred. None are persuasive. First, they note that the district court based its ruling on the fact that the Leeals had sued the wrong people in state court. They say that this conclusionconflicts with the state court's default judgment, quoting it in its entirety. But theydo not provide any explanation for how the two conflicts.[2] And they cite no legalauthority. "It is not sufficient for a party to mention a possible argument in the most skeletal way, leaving the court to put flesh on its bones." McPherson v. Kelsey, 125 F.3d 989, 995–96 (6th Cir. 1997) (quoting Citizens Awareness Network, Inc. v. U.S. Nuclear Regulatory Comm'n, 59 F.3d 284, 293–94 (1st Cir. 1995) (ellipsis removed)). Because the Leeals gave no "effort at developed argumentation," this issue is waived.
Id. at 995.

---

[2] Even the text of the order that the brief quotes reflects that the state court judgment determined only the legal rights between the Leeals and the defendants listed in the state court action: "[T]here is no legal basis documented or otherwise which requires Plaintiff to make any payments to Defendants CitiMortgage, Inc. or Defendant Abn Amro Mortgage " (Appellant's Br. at 14. (quoting R. 5-10, Default
Judgment and Order, Page 3).)

The Leeals then argue that Michigan law prevents the district court from setting aside the default judgment. This argument is misguided in two ways. First, the district court did not set aside the default judgment, but rather clarified that it does not apply to non-parties. Second, the Leeals cite cases that describe the standard that Michigan appeals courts apply when reviewing default judgments on direct appeal. Since the district court was not reviewing the state court's judgment, but rather determining who it bound, these authorities are irrelevant.

The Leeals next state that Ditech does not have the "good cause" and "meritorious defense" necessary to set aside the default judgment. And they argue that Ditech has not shown "mistake, inadvertence, surprise, or excusable neglect" or any other reason to merit relief from the default judgment. These arguments again disregard the district court's ruling: the default judgment stands, but it only binds the parties that were before the court.

Finally, the Leeals dispute the district court's notation that Ditech had received no service or notice of the state court lawsuit when it was commenced. The Leeals respond that they sent Ditech a copy of the "Judgment" after the state court entered it. But service of process must happen before the case ends to provide an "opportunity to be heard and to present objections or defenses." Bunner v. Blow-Rite Insulation Co., 413 N.W.2d 474, 476 (Mich. Ct. App. 1987). That is why the Michigan court rule the Leeals cite requires that service be timely, Mich. Ct. R. 2.105(J)(3), which means that the plaintiff must have served the summons on the defendant within ninety-one days after the clerk issued it. Id. at 2.102(D), (E)(1). The Leeals do not allege that they timely served Ditech with a summons. They allege

that they mailed a copy of the judgment more than 130 days after they filed their action and after it was too late to respond. That is not service of process.

III.

None of the arguments the Leeals proffer show that they are entitled to relief.

We **AFFIRM**.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MATI LEEAL, *et al.*,

Plaintiffs,

Case No. 17-cv-10645
Hon. Matthew F. Leitman

v.

DITECH FINANCIAL LLC,
F/K/A GREEN TREE SERVICING, LLC,

Defendant.
_____/

JUDGMENT

In accordance with the Court's Opinion and Order Granting Defendant's Renewed Motion for Summary Judgment (ECF No. 55), dated March 5, 2020, and the Court's Order Granting Defendant's Motion to Dismiss Defendant's Counterclaims (ECF No. 58), dated May 27, 2020.

IT IS HEREBY ADJUDGED AND DECLARED that:

- Judgment is entered in favor of Defendant Ditech Financial LLC ("Ditech") and against Plaintiffs Mati Leeal and Malka Leeal on all of the claims raised against Ditech in the Leeals' Complaint (ECF No. 1, PageID.22–25).
- It is further declared that:
  A. The September 17, 2015, Default Judgment entered by the OaklandCounty Circuit Court,

Case No. 15-46929-CH, is not binding on Ditech;

B. The Mortgage – dated November 16, 2007, and recorded in Liber 39796 (*see* Mortgage, ECF No. 49-1, PageID.1170–1178; Note, ECF No. 49-1, PageID.1166–1168) – remains a valid andenforceable first lien Mortgage against the property at 29249 Chelsea Crossing, Farmington Hills, Michigan, as Mati Leeal and Malka Leeal could not adjudicate the underlying validity of the Noteand Mortgage when the proper parties in interest were not named orrepresented in the 2015 action before the Oakland County Circuit Court; and

C. Ditech is entitled to exercise its statutory and contractual rights under the Mortgage, including foreclosure.

- Counts II and III of Ditech's Counter-Complaint (ECF No. 17, PageID.539– 544) are **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

DAVID J. WEAVER
CLERK OF THE COURT

BY: s/Holly A. Monda Lang
Deputy Clerk

APPROVED:

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: June 23. 2020
Flint, Michigan

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MATI LEEAL, *et al.,*

Plaintiffs, Case No. 17-cv-10645
Hon. Matthew F. Leitman

v.

DITECH FINANCIAL LLC.,

Defendant.
_____/

ORDER (1) GRANTING DEFENDANT'S MOTION TO DISMISS DEFENDANT'S COUNTERCLAIMS (ECF No. 57) AND (2) DIRECTING DEFENDANT TO SUBMIT A PROPOSED JUDGMENT

On March 5, 2020, the Court issued an Opinion and Order Granting Defendant's Renewed Motion for Summary Judgment and Denying Without Prejudice Defendant's Request for Attorneys' Fees (ECF No. 55). Defendant Ditech Financial LLC ("Ditech") has now filed a motion: (1) to withdraw its request for attorneys' fees without prejudice to reasserting that claim in the event this litigation continues, (2) to dismiss its counterclaims in this case (*see* Counter-Complaint, ECF No. 17, PageID.526–545), and (3) for the Court to enter judgment in this case. (*See* Mot., ECF No. 57, PageID.1305–1306.)

Ditech's Motion (ECF No. 57) is **GRANTED** as follows:

- Ditech's request for attorneys' fees is hereby **WITHDRAWN WITHOUTPREJUDICE;**
- Ditech's counterclaims are hereby **DISMISSED WITHOUT PREJUDICE**; and
- The Court **DIRECTS** Ditech to submit a proposed judgment by not later than **June 10, 2020.** Plaintiffs shall submit any objections to Ditech's proposed judgment within **10 DAYS** after Ditech submits its proposed judgment. Thereafter, the Court will evaluate Ditech's proposed judgment and any objections by Plaintiffs and proceed accordingly.

IT IS SO ORDERED.

s/Matthew F. Leitman
Matthew F. Leitman
United States District Judge

Dated: May 27, 2020

I hereby certify that a copy of the foregoing document was served upon theparties and/or counsel of record on May 27, 2020, by electronic means and/or ordinary mail.

s/Holly A. Monda
Case Manager
(810) 341-9764

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MATI LEEAL, *et al.,*

Plaintiffs, Case No. 2:17-cv-10645
Hon. Matthew F. Leitman

v.

DITECH FINANCIAL LLC.,

Defendant.
_____/

OPINION AND ORDER (1) GRANTING DEFENDANT'S RENEWED MOTION FOR SUMMARY JUDGMENT (ECF No. 49) AND DENYING WITHOUT PREJUDICE DEFENDANT'S REQUEST FOR ATTORNEYS' FEES

Plaintiffs Mati and Malka Leeal defaulted on their home mortgage loan, so Defendant Ditech Financial LLC ("Ditech"), the Leeals' loan servicer, initiated foreclosure proceedings against them. In this action, the Leeals contend that Ditechmay not foreclose on their mortgage because they (the Leeals) previously obtained a state-court default judgment in which the state court declared "void" the note secured by the mortgage. The Leeals insist that since the note secured by the mortgage was voided by the default judgment, the mortgage is no longer viable, andno foreclosure of the mortgage is permissible.

The problem for the Leeals is that they sued the wrong parties in the prior state-court action. Instead of suing the owner of the note and Ditech (which was the servicer and holder of the mortgage at that time), the Leeals sued the former note owner and the prior mortgage servicer – neither of whom had any interest in the note or the mortgage at that time. Under settled law, the default judgment entered against those two uninterested parties does not extinguish the actual note owner's valid ownership interest in the note, does not bar the note owner from enforcing the note, and does not bar Ditech from foreclosing on the mortgage that secures the note.

For these reasons, and the others set forth below, the Court GRANTS Ditech's renewed motion for summary judgment.

I

A

On November 16, 2007, the Leeals took out a $301,000 mortgage loan from ABN AMRO Mortgage Group, Inc. ("ABN AMRO"). (See Ditech Corporate Litigation Representative Stewart Derrick Decl. ¶ 4, ECF No. 49-1, PageID.1161.) The loan was memorialized by a note that identified ABN AMRO as the lender (the "Note"), and the Note was secured by a mortgage (the "Mortgage").[1] (See id.; see also Note, ECF No. 49-1, PageID.1166–1168; Mortgage, ECF No. 49-1,

[1] A note is a promise to repay a loan. *See Flagstar Bank, FSB v. Fed. Ins. Co.*, No. 05-70950, 2006 WL 3343765, at *12 (E.D. Mich. 2006). A mortgage "is a lien on real property intended to secure performance or payment on" that promise. *Prime Fin. Servs. LLC v. Vinton*, 761 N.W.2d 694, 703 (Mich. Ct. App. 2008). A mortgage is considered "a contingent interest in real property," while "a note secured by a mortgage is itself personal property." *Id.*

PageID.1170–1178.) At the time of this transaction, ABN AMRO was an assumed name for CitiMortgage, Inc. ("CMI"). (See CMI Senior Recovery Analyst John James Decl. ¶¶ 4–5, ECF No. 49-2, PageID.1207.) Thus, CMI was the actual lender of the funds to the Leeals.

On December 1, 2007, the Federal National Mortgage Association ("Fannie Mae") purchased the Leeals' loan from CMI. (See, e.g., Fannie Mae Assistant Vice President Erich Ludwig Decl. ¶¶ 4–5, ECF No. 49-3, PageID.1238.) Fannie Mae has owned the Leeal's loan ever since. (See id.)

In addition to being the original lender, CMI was the servicer for the Leeals' loan for a period of time beginning on March 1, 2008. (See James Decl. ¶ 7, ECF No. 49-2, PageID.1207.) As the loan servicer, CMI received and processed the Leeals' loan payments and corresponded with the Leeals by phone and by letters regarding their loan. (See id. ¶¶ 10–11, PageID.1208.)

On April 1, 2014, Green Tree Servicing, LLC ("Green Tree") acquired the servicing rights for the loan from CMI. (See James Decl. ¶ 8, ECF No. 49-2, PageID.1207–1208.) Both CMI and Green Tree notified the Leeals that the servicing of the loan had been transferred to Green Tree. (See 3/17/14 CMI Service Transfer Letter, ECF No. 49-2, PageID.1218–1219; 3/21/14 Green Tree Service Transfer Letter, ECF No. 49-1, PageID.1183–1186.) On April 11, 2014, CMI also assigned the Mortgage to Green Tree (see Derrick Decl. ¶ 7, ECF No. 49-1, PageID.1162), and CMI recorded this assignment of the Mortgage. (See Assignment of Mortgage, ECF No. 49-1, PageID.1188–1189.) The Leeals began making their loan payments to Green Tree in May 2014. (See Derrick Decl. ¶ 14, ECF No. 49-1, PageID.1163.) The Leeals also corresponded with Green Tree concerning the servicing of their loan. (See,

e.g., id. ¶¶ 9, 12, ECF No. 49-1, PageID.1162–1163; 6/1/15 Leeal Letter, ECF No. 49-1, PageID.1191; 6/5/15 Green Tree Letter, ECF No. 49-1, PageID.1193.)

B

On May 7, 2015, the Leeals filed a declaratory-judgment action against CMI and ABN AMRO in the Oakland County Circuit Court (the "State-Court DJ Action"). (See State-Court DJ Action, ECF No. 5-6.) The Leeals alleged, among other things, that the Note was void, and they asked the state court to determine whether they had any continuing obligation to make payments to CMI or ABN AMRO under the Note or the Mortgage. (See id.)

Critically, at the time the Leeals filed the State-Court DJ Action, neither CMI nor ABN AMRO had any connection to the Leeals' loan or to the Mortgage. As explained above, the loan had been sold to Fannie Mae, and the Mortgage had been assigned to Green Tree. But the Leeals did not name either Fannie Mae or Green Tree as defendants in the State-Court DJ Action. Nor did the Leeals notify Fannie Mae or Green Tree that they had filed the State-Court DJ Action. (See, e.g., Proof of Service, ECF No. 5-7.)

C

With the State-Court DJ Action pending, Green Tree – which, again, was unaware of that action – continued to service the Leeals' loan. (See Derrick Decl. ¶ 14, ECF No. 49-1, PageID.1163.) And the Leeals continued sending loan payments to Green Tree. (See id.)

In the summer of 2015, Green Tree decided to merge into Ditech. Green Tree sent the Leeals a notice of the pending merger and name change on August 5, 2015. (See Notice of Ditech Merger, ECF No. 49-1, PageID.1195.) On August 31, 2015, Green Tree merged into Ditech and started operating under Ditech's name. (See Derrick Decl. ¶ 13, ECF No. 49-1, PageID.1163.) Thereafter, the Leeals made loan payments to Ditech. (See Derrick Decl. ¶ 14, ECF No. 49-1, PageID.1163.)

D

Unsurprisingly, neither CMI nor ABN AMRO ever appeared in the State- Court DJ Action. They had no interest to protect in that action and thus no need or incentive to appear.

Because CMI and ABN AMRO failed to appear, the state court issued a default judgment against them on September 16, 2015 (the "State-Court Default Judgment"). (See State-Court Default Judgment, ECF No. 5-10.) The State-Court Default Judgment declared that the Note and Mortgage were "void" and that the Leeals had no obligation to repay the funds that they had borrowed. In its entirety, the State-Court Default Judgment provides as follows:

> Upon the failure of the Defendants Abn Amro Mortgage Group, Inc. and CitiMortgage, Inc., to answer, plead or otherwisedefend this action and the Court having heard Plaintiff's Motion for Entry of Default Judgment, it is hereby ordered:
>
> IT IS HEREBY ORDERED that the Note dated November 16, 2007 and the Mortgage dated November 16, 2007 and recorded in Liber 39796, Page 368 with the Oakland County Register of

> Deeds which were entered into with Plaintiffs are void as Defendant Abn Amro Mortgage Group, Inc. ceased to exist as of the date of the execution of said mortgage and note and said Defendant was no longer authorized to transact businessin Michigan as of September 21, 2007;
>
> IT IS FURTHER ORDERED that Defendant Abn AmroMortgage Group, Inc. lacked legal capacity to enter into the notedated November 16, 2007 and the Mortgage dated November 16,2007 and recorded in Liber 39796, Page 368 with the Oakland County Register of Deeds entered into with Plaintiffs;
>
> IT IS FURTHER ORDERED that there is no legal basis documented or otherwise which requires Plaintiff to make any payments to Defendants CitiMortgage, Inc. or Defendant Abn Amro Mortgage Group, Inc. relative to the Mortgage and/or note with Plaintiffs dated November 16, 2007 and the Mortgage of thesame date and recorded in Liber 39796, Page 368 with theOakland County Register of Deeds.
>
> IT IS SO ORDERED.

(*Id.*, PageID.293–294.)

E

On September 17, 2015, one day after entry of the State-Court DefaultJudgment, Ditech received the Leeals' last payment on their loan. (*See* Derrick Decl.

¶¶ 14–15, ECF No. 49-1, PageID.1163.) At that point, the Leeals still owed $299,980 in principal on the loan. (*See id.* ¶ 18, PageID.1164; 10/8/18 Payoff Quote,ECF No. 49-1, PageID.1203.) But they stopped making payments.

Ditech mailed the Leeals notices of default on November 27, 2015, and May13, 2016. (*See* Notices of Default, ECF No. 49-1, PageID.1197–1201.) The Leeals still did not make any payments. So, on January 26, 2017, Ditech began foreclosure by advertisement proceedings on the Mortgage. (*See* Notice of Mortgage Foreclosure Sale, ECF No. 5-14, PageID.339.)

F

In response to the foreclosure proceedings, on February 23, 2017, the Leeals filed this action against Ditech in the Oakland County Circuit Court. (*See* Verified Compl., ECF No. 5-14.) The Leeals asked the state court to block Ditech from foreclosing on the Mortgage. They contended that Ditech had no right to foreclose even though (1) roughly $300,000 remained owing on their loan and (2) they had not made a payment on the loan in eighteen months. All of the Leeals' claims rest on their contention that Ditech could not foreclose because (1) the State-Court Default Judgment voided the Note, (2) the Mortgage thus no longer secured a valid note, and (3) there can be no foreclosure on a mortgage that does not secure a valid note. (*See id.* ¶¶ 19–30, PageID.310–311.) As the Leeals' counsel has acknowledged, if the Court accepts their argument that Ditech may not foreclose, then they would be permitted keep their house *without ever repaying the roughly $300,000 that remains owing on*

their loan. (*See* 9/14/17 Hr'g Tr. at 28–30, ECF No. 9, PageID.398–400.)

The same day that the Leeals filed their complaint, the Oakland County Circuit Court issued a temporary restraining order that prevented Ditech from foreclosing. (*See* TRO, ECF No. 1, PageID.10–11.)

Ditech removed the action to this Court on March 1, 2017. (*See* Notice of Removal, ECF No. 1, PageID.1–8.) Ditech filed a motion to dismiss on March 17, 2017. (*See* Mot. to Dismiss, ECF No. 3.) On September 15, 2017, the Court deniedDitech's motion, stayed the case, and directed Ditech to file a motion in the State- Court DJ Action seeking to set aside, vacate, or otherwise obtain relief from the State-Court Default Judgment. (*See* Order, ECF No. 8.) The Court instructed Ditechto file such a motion because the Court believed that the state court might reconsider its judgment when informed that the Leeals failed to name as defendants the then- owner of the loan and the then-servicer and holder of the Mortgage. (*See* 9/14/17 Hr'g Tr. at 53–57, ECF No. 9, PageID.423–427.)

Ditech then returned to state court and moved that court to vacate the State- Court Default Judgment. The state court did not reach the merits of Ditech's motion.Instead, it denied the motion on the ground that Ditech failed to seek relief from theState-Court Default Judgment in a timely manner. (*See* Notice of Entry of Order, ECF No. 10; 12/12/17 Hr'g Tr. at 38–39, ECF No. 12-1, PageID.486–487.)

The proceedings in this action then resumed. Ditech filed an answer to the Leeals' Complaint on May 21, 2018. (*See* Answer, ECF No. 17.) Ditech also brought a Counter-Complaint against the Leeals seeking a declaratory judgment that the State-Court Default Judgment was not binding on Ditech. (*See id.* ¶¶ 47–61,

PageID.535–539.) Ditech brought additional counterclaims contending, in the alternative, that Ditech has an equitable mortgage on the Leeals' property and that the Leeals have been unjustly enriched. (*See id.* ¶¶ 62–83, PageID.539–544.)

G

On October 31, 2018, Ditech filed a motion for summary judgment. (*See* Mot.for Summ. J., ECF No. 30.) Ditech primarily argued that the State-Court Default Judgment was not binding on Ditech through either *res judicata* or collateral estoppel. (*See id.*, PageID.676–683.) On August 9, 2019, the Court held a hearing on Ditech's motion. (*See* 8/9/19 Hr'g Tr., ECF No. 44.) The Court was not convinced that *res judicata* and collateral estoppel were the appropriate legal principles to apply to the case, and the Court denied Ditech's motion without prejudice. (*See id.* at 29, 43–44, 55, PageID.1089, 1103–1104, 1115; Order, ECF No. 41.)

At the Court's invitation, Ditech has now filed a renewed motion for summaryjudgment. (*See* Renewed Mot. for Summ. J., ECF No. 49.) Ditech's current motion argues that the State-Court Default Judgment is not binding upon, and did not determine any rights of, either Ditech (the current servicer of the Leeals' loan) or Fannie Mae (the current owner of the Leeals' loan) because neither were parties to the State-Court DJ Action. Rather than focusing on principles of *res judicata* and collateral estoppel, the current motion focuses upon the scope of an *in personam* judgment like the State-Court Default Judgment.

Ditech requests "that this Court enter summary judgment in favor of Ditech on the Leeals' complaint,

and on Count I of Ditech's counterclaim for declaratory judgment, finding that: (1) Ditech did not illegally foreclose or violate MCLA 600.3204; (2) the Default Judgment does not impair Ditech's right to foreclose; and (3) Ditech has a valid and enforceable interest in the note and mortgage entitling Ditech to foreclose." (*Id.*, PageID.1156.) Ditech also asks the Court "to award Ditech its attorneys' fees and costs under Section 9 of the mortgage, and to dissolvethe temporary restraining order currently entered against it." (*Id.*, PageID.1156–1157.)

II

A movant is entitled to summary judgment when it "shows that there is no genuine dispute as to any material fact." *SEC v. Sierra Brokerage Servs., Inc.*, 712 F.3d 321, 326–27 (6th Cir. 2013) (citing Fed. R. Civ. P. 56(a)). When reviewing therecord, "the court must view the evidence in the light most favorable to the non-moving party and draw all reasonable inferences in its favor." *Id.* (quoting *Tysinger v. Police Dep't of City of Zanesville*, 463 F.3d 569, 572 (6th Cir. 2006)). "The mereexistence of a scintilla of evidence in support of the [non-moving party's] position will be insufficient; there must be evidence on which the jury could reasonably findfor [that party]." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).Summary judgment is not appropriate when "the evidence presents a sufficient disagreement to require submission to a jury." *Id.* at 251–52. Indeed, "[c]redibility determinations, the weighing of the evidence, and the drafting of legitimate inferences from the facts are jury functions, not those of a judge." *Id.* at 255.

III

A

The Court agrees with Ditech that the State-Court Default Judgment does notbar Ditech from foreclosing on the Mortgage. As explained below, that judgment did not "void" Fannie Mae's ownership interest in the Note. Thus, contrary to the Leeals' argument, the Mortgage continues to secure a viable note, and the judgmentdoes not prevent Ditech from foreclosing on the Mortgage in the event of a default.

The State-Court Default Judgment did not affect Fannie Mae's interest in the Note because the judgment was entered in an *in personam* action to which Fannie Mae was not a party. An *in personam* action seeks "the determination of personal rights and obligations of defendants." *Int'l Typographical Union v. Macomb Cty.*, 11 N.W.2d 242, 247 (Mich. 1943). It is "brought against a person rather than property." *Chevalier v. Estate of Barnhart*, 803 F.3d 789, 801 (6th Cir. 2015) (quoting Black's Law Dictionary, at 36 (10th ed. 2014)). A judgment in an *in personam* action binds only the named parties and those in privity with the named parties. Indeed, "[i]t is a principle of general application in Anglo-Americanjurisprudence that one is not bound by a judgment in personam in a litigation in which he is not designated as a party or to which he has not been made a party by service of process." *Hansberry v. Lee*, 311 U.S. 32, 38, 40 (1940). Any attempt to bind a non-party and non-privy to a judgment entered in an *in personam* action would raise serious due process concerns. *See Richards v. Jefferson Cty., Ala.*, 517 U.S. 793, 797 n.4 (1996) ("[A State] cannot, without disregarding the requirement of due process, give a

conclusive effect to a prior judgment against one who is neither a party nor in privity with a party therein." (quotation omitted)).

An *in rem* action, in contrast to an *in personam* action, "is one taken directly against property." *City of Detroit v. 19675 Hasse*, 671 N.W.2d 150, 163 (Mich. Ct. App. 2003) (quoting Black's Law Dictionary, at 793 (6th ed. 1991)). Such an action "determin[es] the title to property and the rights of the parties, not merely among themselves, but also against all persons at any time claiming an interest in that property," or is "an action in which the named defendant is real or personal property." *Chevalier*, 803 F.3d at 802 (quoting Black's Law Dictionary, at 36 (10thed. 2014)). "A judgment in rem binds all the world," not just the parties named in the action. *L.A. Young Spring & Wire Corp. v. Falls*, 292 N.W. 498, 503 (Mich. 1940).

Here, the State-Court DJ Action was an *in personam* action because the Leeals (1) sought a determination of their personal rights and obligations under the Note and the loan vis-à-vis the two named defendants – CMI and ABN AMRO – and (2)did not file suit against or in the name of real or personal property. *See Eisner v. Williams*, 298 N.W. 507, 510 (Mich. 1941) (an action "to try title or right to the debt"is "an action in personam"); *see also Williamson v. Falkenhagen*, 227 N.W. 429, 429 (Minn. 1929) ("The action against the securities company and its receiver is solely to set aside the transfer of the note and mortgage to that company; in effect, to determine that plaintiff and not that company is the owner of the debt evidenced by them. . . . [T]he action is clearly an action in personam."). Thus, the judgement entered in that action – i.e., the State-Court Default Judgment – was an *in personam* judgment rather than an *in rem* judgment.

As an *in personam* judgment, the State-Court Default Judgment did not void or impair the rights of Fannie Mae (the owner of the Note) and/or Ditech (the servicer and holder of the Mortgage) because they were not named parties nor were they in privity with the named parties.[2] Stated another way, while the State-Court Default Judgment may have determined that the Note and the Mortgage were "void" as between the Leeals, on one hand, and ABN AMRO and CMI, on the other hand, that judgment did not void the Note or Mortgage as between the Leeals, Fannie Mae, and Ditech. And since the State-Court Default Judgment did not impair the rights of Fannie Mae and Ditech with respect to the Note and the Mortgage, the judgment did not preclude Ditech from foreclosing on the Mortgage when the Leeals stopped making payments on their loan.

The Court's conclusion is supported by two analogous Michigan Supreme Court quiet title cases cited by Ditech. (See Renewed Mot. for Summ. J., ECF No. 49, PageID.1148–1149.)

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[2] The Leeals have not established that Ditech or Fannie Mae were in privity with CMI or ABN AMRO with respect to the State-Court DJ Action. "In Michigan, [t]obe in privity is to be so identified in interest with another party that the first litigant represents the same legal right that the later litigant is trying to assert." *Leaf v. Refn*,742 F. App'x 917, 922 (6th Cir. 2018) (quotation omitted). In the State-Court DJ Action, CMI and ABN AMRO were not "representing" *any* "legal right" – much less the right that Ditech seeks to enforce through foreclosure – because CMI and ABN AMRO had no interest in the subject matter of the action; the Leeals had wrongly named those entities as parties and they did not even appear. Thus, ABN AMRO and CMI were not in privity with Fannie Mae and Ditech with respect to the State-Court DJ Action. At one point, the Leeals briefly argued that Ditech was in privity with CMI. (*See* Resp., ECF No. 35, PageID.792–793.) The Leeals' evidenceof privity was (1) emails between Ditech and CMI employees about the loan (*see* CMI–Ditech Email Chain, ECF No. 35-16), and (2) a letter from CMI to the Michigan Department of Insurance and Financial Services informing it that Ditech'slitigation department was reviewing Ditech's attempts to collect on the loan. (*See* 8/1/17 Letter, ECF No. 35-17.) These letters do not demonstrate that Ditech was "so identified in interest" with CMI during the State-Court DJ Action that CMI represented "the same legal right" that Ditech is asserting here. *Id.*

First, in Giegling v. Helmbold, the court addressed the following question: "Could the [defendants'] claimed right of access, as an abutting property holder to a public street, be adjudicated as to them in a suit in which they were not parties?" 98 N.W.2d 536, 537 (Mich. 1959). No, the court concluded: "Every man is entitled to his day in court. And, on this record, the [defendants] have not had theirs." *Id.* The court explained that "[a] decree quieting title does not extinguish the property rights of persons not made parties to the action." *Id.* And the defendants were not barred by the doctrine of *res judicata*, because the doctrine"applies only when the issues *and the parties* or their privies in the prior litigation are identical." *Id.* (emphasis in original).

Second, in *Schweikart v. Stivala*, the court similarly concluded that a defendant was not bound by the plaintiff's prior quiet title decree because the defendant was not named in the quiet title suit. *See* 45 N.W.2d 26, 30 (Mich. 1950)."As to defendant herein, who was not a party to plaintiffs' suit to quiet title, the decree of the court, which pertained only to those who were defendants or intervening defendants in that case, is of no persuasive or binding force." *Id.*

Here, as in *Giegling* and *Schweikart,* the State-Court Default Judgment did not limit or impair the rights of Fannie Mae and Ditech in the Note and the Mortgage because Fannie Mae and Ditech were not parties to the State-Court DJ Action. And the State-Court Default Judgment did not bar Ditech from foreclosing on the Mortgage when the Leeals stopped making payments on their loan.

B

The Leeals resist this conclusion on three grounds. (*See* Resp., ECF No. 51, PageID.1262–1267.) None persuade the Court to rule in their favor.

First, the Leeals highlight that they were never aware that Fannie Maepurchased their loan from ABN AMRO and thus they could not have known that they needed to name Fannie Mae as a party in the State-Court DJ Action. (*See id.*, PageID.1262–1264.) But whether or not the Leeals' knew that Fannie Mae owned their debt is irrelevant to whether the State-Court Default Judgment binds non-partyFannie Mae. Indeed, the Leeals have not cited any authority to support their contention that a non-party (like Fannie Mae) may be bound by an *in personam* judgment on the ground that the plaintiff's failure to sue the non-party was based upon an error or lack of knowledge. Rather, as explained above, only named parties and their privies can be bound by an *in personam* judgment. *See Hansberry*, 311 U.S. at 40; *Richards*, 517 U.S. at 798.

Second, the Leeals insist that the Court cannot deviate from the State-Court Default Judgment. (*See* Resp., ECF No. 51, PageID.1264.) The Court agrees that itmay not upset the state court's ruling. But that proposition does not help the Leeals.The Leeals lose here because the State-Court Default Judgment did not adjudicate the rights of Fannie Mae and Ditech. Thus, this Court does not disturb the State- Court Default Judgment in any way when it rules that Ditech and Fannie Mae are not bound by that judgment and that the judgment does not prevent Ditech from foreclosing on the Mortgage.

Third (and relatedly), the Leeals insist that Ditech may not foreclose because the State-Court

Default Judgment extinguished the Note, and without a valid underlying note, there is no basis to foreclose on the Mortgage. (*See id.*) Again, however, the State-Court DJ Action only determined the rights of the named parties:CMI and ABN AMRO. The State-Court Default Judgment had no bearing on whether Fannie Mae or Ditech had a valid interest in the Note and Mortgage.

C

As noted above, the Court previously denied two dispositive motions by Ditech – a motion to dismiss and a motion for summary judgment. In denying the motion to dismiss, the Court suggested that if the state court did not vacate the State Court Default Judgment, then Ditech would lose here. (*See* 9/14/17 Hr'g Tr. at 57, ECF No. 9, PageID.427.) And in denying summary judgment, the Court suggestedthat it may be possible that the State-Court DJ Action had an impact on the rights of Fannie Mae and Ditech. (*See* 8/9/19 Hr'g Tr. at 43–44, ECF No. 44, PageID.1103–1104.)

The Court has carefully reconsidered its earlier positions concerning the effect of the State-Court Default Judgment and has concluded that its earlier inclinations were wrong. After reviewing the authorities cited above concerning the scope of *in personam* judgments, the Court has realized that the State-Court Default Judgment does not impair or limit the rights of Fannie Mae and Ditech. As Justice Frankfurtersaid, "Wisdom too often never comes, and so one ought not to reject it merely because it comes late." *Henslee v. Union Planters Nat'l Bank & Tr. Co.*, 335 U.S. 595, 600 (1949) (Frankfurter, J., dissenting).

IV

For the reasons explained above, the Court hereby **ORDERS** that:

- Ditech's Renewed Motion for Summary Judgment on all of the Leeals'claims is **GRANTED** and those claims are **DISMISSED WITH PREJUDICE**;
- Ditech's Renewed Motion for Summary Judgment on Count I of its counterclaim, seeking a declaratory judgment that the State-CourtDefault Judgment is not binding on Ditech, is **GRANTED**
- The temporary restraining order against Ditech is EXTINGUISHED.[3]
- Ditech may proceed to foreclose on the Mortgage; and
- Ditech's request for attorneys' fees under the terms of the Mortgage **is DENIED WITHOUT PREJUDICE**. To the extent that Ditech wishes to recover such fees and costs, it may bring a stand-alone request that the Court will consider at a later date.

IT IS SO ORDERED.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

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[3] *See Burniac v. Wells Fargo Bank, N.A.*, 810 F.3d 429, 435 (6th Cir. 2016) ("Because the summary judgment was a final order, its issuance immediately extinguished the state court's preliminary injunction.").

Dated: March 5, 2020

I hereby certify that a copy of the foregoing document was served upon theparties and/or counsel of record on March 5, 2020, by electronic means and/or ordinary mail.

s/Holly A. Monda
Case Manager
(810) 341-9764

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MATI LEEAL, *et al.*,

Plaintiffs, Case No. 2:17-cv-10645
Hon. Matthew F. Leitman

v.

DITECH FINANCIAL LLC.,

Defendant.
_____/

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARYJUDGMENT (ECF #30) WITHOUT PREJUDICE

On August 9, 2019, the Court held a hearing on Defendant's motion for summary judgment (ECF #30). For the reasons stated on the record, Defendant's motion is **DENIED** without prejudice.

IT IS SO ORDERED.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: August 12, 2019

I hereby certify that a copy of the foregoing document was served upon theparties and/or counsel of record on August 12, 2019, by electronic means and/or ordinary mail.

s/Holly A. Monda
Case Manager
(810) 341-9764

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MATI LEEAL, *et al.*,

Plaintiffs,

Case No. 2:17-cv-10645
Hon. Matthew F. Leitman

v.

DITECH FINANCIAL LLC.,

Defendant.
_____/

ORDER (1) DENYING DEFENDANT'S MOTION TO DISMISS (ECF #3),(2) STAYING THIS CASE, AND (3) DIRECTING DEFENDANT TO FILE MOTION IN STATE ACTION

This matter came before the Court for a hearing on Defendant Ditech Financial LLC's ("Ditech Financials') Motion to Dismiss Pursuant to Fed. R. Civ. Pro. 12(b)(6) ("Motion to Dismiss") (ECF #3) on September 14, 2017. For the reasons stated on the record during the hearing, the Court **HEREBY ORDERS** as follows:

(1) Ditech Financials' Motion to Dismiss (ECF #3) is **DENIED**.

(2) This case is **STAYED** until further order of the Court.

(3) Within thirty (30) days of this order, Ditech Financial shall file in Oakland County Circuit Court a motion seeking to set aside, vacate, or

otherwise obtain relief from the judgment of the Oakland County Circuit Court in Case No. 2015-146929.

(4) Not later than seven (7) days after the Oakland County Circuit Court enters a written order deciding Ditech Financials' motion to be filed pursuant to paragraph (3) above, counsel for Ditech Financial shall electronically file a copy of that order with this Court. Counsel for Ditech Financial shall also send the Court's case manager an email informing the Court of the order. The email shall be sent to Holly_Monda@mied.uscourts.gov.

s/Matthew F. Leitman
MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: September 15, 2017

I hereby certify that a copy of the foregoing document was served upon theparties and/or counsel of record on September 15, 2017, by electronic means and/or ordinary mail.

s/Holly A. Monda
Case Manager
(810) 341-9764