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OPINIONS AND ORDERS

REHEARING ORDER

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT (FEBRUARY 8, 2022)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

JAY LIN; IRENE LIN, on Behalf of
Themselves and All Others Similarly Situated,

Appellants,

v.

HUDSON CITY SAVINGS BANK;
M&T BANK; PARKER MCCAY PA,

No. 21-1189

(D.N.J. No. 3-18-cv-15387)

Before: RESTREPO, MATEY and
SCIRICA, Circuit Judges.

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1. Motion filed by Appellees Hudson City Savings Bank and M&T Bank for summary affirmance and to dismiss.

2. Motion filed by Appellants Irene H. Lin and Mr. Jay J. Lin to strike Appellees' Motion filed on 07/12/2021.

3. Response filed by Appellants Irene H. Lin and Mr. Jay J. Lin in Support of the Appellants' Motion

to Strike and in Opposition to Appellees' Motion for summary affirmance and to dismiss.

4. Reply by Appellees Hudson City Savings Bank and M&T Bank to Appellants' Response to the Motion for summary affirmance and to dismiss.

5. Response filed by Appellees Hudson City Savings Bank and M&T Bank to Appellants' Motion to Strike.

6. Reply by Appellants Irene H. Lin and Mr. Jay J. Lin to Appellees' Response to Appellants' Motion to Strike.

7. Letter on behalf of Appellee Parker McCay. Appellee Parker McCay will adopt the Motion filed by Appellees Hudson City Savings Bank and M&T Bank for summary affirmance.

8. Response filed by Appellants Irene H. Lin and Mr. Jay J. Lin to Appellee Parker McCay's letter to adopt the Motion filed by Appellees Hudson City Savings Bank and M&T Bank for summary affirmance.

9. Reply filed by Appellee Parker McCay to Appellants' Response to Appellee' s letter to adopt the Motion filed by Appellees Hudson City Savings Bank and M&T Bank for summary affirmance.

Respectfully,

Clerk/JK

ORDER

The foregoing motion filed by Appellees Hudson City Savings Bank and M&T Bank for summary affirmance and to dismiss is granted to the extent it seeks to dismiss the appeal. Appellants' notice of appeal is untimely as to the orders entered on March 1, 2019, March 25, 2019, August 26, 2019 and July 1, 2020 because the notice of appeal was filed more than 30 days after entry the orders. *See* Fed. R. App. P. 4. Additionally, the appeal is improperly duplicative, as Appellants previously appealed, and this Court affirmed, the orders entered on August 26, 2019 and July 1, 2020. (*See* Nos. 19-3171 and 20-2390). This Court also lacks jurisdiction with respect to the order entered on January 31, 2021 as that order is not final within the meaning of 28 U.S.C. § 1291. *See Lazorko v. Pa. Hosp.*, 237 F.3d 242, 248 (3d Cir. 2000) ("An award of sanctions is not a final order, and thus not appealable, until the district court determines the amount of the sanction.").

The motion filed by Appellants Irene H. Lin and Mr. Jay J. Lin to strike Appellees' motion for summary affirmance or to dismiss is denied.

By the Court,

/s/ Anthony J. Scirica
Circuit Judge

Dated: February 8, 2022
JK/cc: Jay J. Lin, Esq.
All Counsel of Record

OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY (JANUARY 29, 2021)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Not for Publication

JAY LIN, IRENE LIN, on Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

v.

HUDSON CITY SAVINGS BANK, M&T BANK, and PARKER MCCAY, P.A.,

Defendants.

Case No. 3:18-cv-15387 (BRM) (LHG)

Before: Hon. Brian R. MARTINOTTI, United States District Judge.

MARTINOTTI, DISTRICT JUDGE

Before this Court is Defendants Hudson City Savings Bank ("Hudson City") and M&T Bank's ("M&T") (collectively, "Defendants") Renewed Motion for an Order Deeming Plaintiffs Vexatious Litigants, Enjoining Future Filings, and for Sanctions (the "Motion"). (ECF No. 47-2.) Plaintiffs Jay Lin ("Mr. Lin") and Irene Lin (collectively, "Plaintiffs") oppose the

Motion and Request Imposition of Sanctions against Defendants and their Attorneys. (ECF No. 61.) Having reviewed the submissions filed in connection with the Motion and having declined to hold oral argument pursuant to Federal Rule of Civil Procedure 78(b), for the reasons set forth below and for good cause shown, Defendants' Renewed Motion for an Order Deeming Plaintiffs Vexatious Litigants, Enjoining Future Filings, and for Sanctions is GRANTED in part and RESERVED in part.

I. Background

This matter stems from Defendants' state foreclosure complaint filed against Plaintiffs on May 28, 2010 and styled as *M&T Bank, successor by merger with Hudson City Savings Bank v. Jay J. Lin and Irene Lin, et al.*, Docket No. SWC-F-29667-10 (the "Foreclosure Action"). (ECF No. 47-2 at 2.) After several years of litigation, on December 5, 2016, the Superior Court of New Jersey granted Defendants' motion for summary judgment, and final judgment was entered against Plaintiffs on July 28, 2017. (*Id* at 10.) Throughout the Foreclosure Action, Plaintiffs challenged Defendants' right to foreclosure by filing, *inter alia*, (1) a motion to vacate summary judgment on June 16, 2017 (the "Motion to Vacate"), (2) a motion to stay the sheriff's sale pending appeal on August 21, 2017 (the "First Motion to Stay"), (3) an emergency motion to stay the sheriff's sale on October 23, 2018 (the "Second Motion to Stay"), and (4) an appeal. (*Id* at 11.)

On October 29, 2018, Plaintiffs filed a complaint (the "Complaint") in this Court against Defendants alleging Defendants violated, *inter alia,* the Fair

Debt Collection Practices Act, 15. U.S.C. § 1692, *et seq.* ("FDCPA") and the automatic stay imposed by 11 U.S.C. § 362(a). (ECF No. 1.) On January 4, 2019, Defendants filed a motion to dismiss. (ECF No. 21.) Also on January 4, 2019, Plaintiffs filed an emergency motion for an order to show cause why a preliminary injunction should not be issued, seeking an order "temporarily restraining [Defendants] stay [sic] further prosecution of all foreclosure cases including Plaintiffs' case" (ECF No. 22) as well as a request for default against Defendants. (ECF No. 20.) On January 7, 2019, Plaintiffs were informed the request for default against Defendants could not be "entered by the Clerk as requested because of the filing of the [ ] Motion to Dismiss by" Defendants. On January 11, 2019, the Court issued a memorandum order denying Plaintiffs' emergency motion for an order to show cause. (ECF No. 26.) On January 25, 2019, Defendants filed a motion for sanctions seeking an order deeming Plaintiffs "vexatious litigants" and enjoining future filings. (ECF No. 27.) On March 1, 2019, the Court administratively terminated Defendants' motion for sanctions. (ECF No. 35.) On August 26, 2019, the Court issued an order granting Defendants' motion to dismiss and dismissing Plaintiffs' complaint without prejudice (the "August 26, 2019 Order"). (ECF No. 43.) On September 23, 2019, Plaintiffs filed a notice of appeal informing the Court they had appealed the August 26, 2019 Order to the United States Circuit Court for the Third Circuit. (ECF No. 45.) On November 8, 2019, Defendants filed a motion to reopen the case for the limited purpose of adjudicating their renewed motion for sanctions. (ECF No. 47.) On November 22, 2019, Plaintiffs filed a cross-motion to (1) set aside the August 26, 2019 Order pursuant to Rule 60(b),

and (2) impose sanctions on Defendants. (ECF No. 49.) On November 29, 2019, Defendants filed an opposition to Plaintiffs' cross-motion. (ECF No. 50.) On February 28, 2020, the Third Circuit issued a mandate whereby Defendants' motion for summary affirmance was granted and Plaintiffs' motion for sanctions was denied. (ECF No. 55.) On July 1, 2020, the Court granted Defendants' motion to reopen the case for the limited purpose of adjudicating Defendants' renewed motion for sanctions motion, denied Plaintiffs' motion to set aside the August 26, 2019 Order, and denied Plaintiffs' motion for sanctions (the "July 1, 2020 Order"). (ECF No. 57.) On July 2, 2020, Plaintiffs filed a notice of appeal informing the Court they had appealed the July 1, 2020 Order to the United States Circuit Court for the Third Circuit. (ECF No. 58.) On July 31, 2020, Plaintiffs filed a response in opposition to Defendants' renewed motion for sanctions and request imposition of sanctions against Defendants and their attorneys. (ECF No. 61.) On August 10, 2020, Defendants filed a reply. (ECF No. 62.) On October 26, 2020, the Third Circuit issued a mandate whereby Defendants' motion for summary affirmance was granted and Plaintiffs' motion for sanctions was denied. (ECF No. 64.)

Presently before the Court is Defendants' Renewed Motion for an Order Deeming Plaintiffs Vexatious Litigants, Enjoining Future Filings, and for Sanctions that was filed on November 8, 2019 pursuant to the All Writs Act, 28 U.S.C. § 1651, and Federal Rule of Civil Procedure 11. (ECF No. 47-2 at 9.) On July 31, 2020, Plaintiffs filed a response in opposition and Request Imposition of Sanctions against Defendants

and their Attorneys. (ECF No. 61.) On August 10, 2020, Defendants filed a reply. (ECF No. 62.)

II. Legal Standard

There are two types of sanctions Defendants seek: (1) an injunction to preclude Plaintiffs from filing any future suits relating to the Foreclosure Action without leave of this Court pursuant to the All Writs Act, and (2) sanctions pursuant to Rule 11.

A. All Writs Act

Courts have the inherent power to protect themselves from a party's oppressive and frivolous litigation. *See Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991); *see also Inst. for Motivational Living, Inc. v. Doulos Inst. for Strategic Consulting, Inc.*, Civ. A. No. 03-4177, 110 F. App'x 283 (3d Cir. 2004) (finding that "the District Court had inherent authority to impose [a] . . . sanction" against a vexatious pro se litigant). Under the All Writs Act, 28 U.S.C. § 1651, district courts are authorized "to issue injunctions restricting the filing of meritless pleadings by litigants where the pleadings raise issues identical or similar to those that have already been adjudicated." *In re Packer Ave. Assocs.*, 884 F.2d 745, 747 (3d Cir. 1989). However, that power is guarded: "such injunctions are extreme remedies and should be narrowly tailored and sparingly used." *Id.*; *Abdul-Akbar v. Watson*, 901 F.2d 329, 332 (3d Cir. 1990). Nevertheless, "the district courts in this circuit may issue an injunction to require litigants to obtain the approval of the court before filing further complaints." *Abdul-Akbar*, 901 F.2d at 332; *Truong v. Barnard*, Civ. A. No. 20-00074, 2020 WL 5743035, at *5 (D.N.J. Sept. 24, 2020).

The All Writs Act provides in pertinent part, "all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of the law." 28 U.S.C. § 1651(a). According to the Third Circuit, Section 1651(a) authorizes district courts to issue an injunction, thereby restricting the access to federal courts of parties who repeatedly file frivolous lawsuits. *Abdul-Akbar*, 901 F.2d at 332; *Banda v. Corzine*, Civ. A. No. 07-4508, 2007 WL 3243917, at *19 (D.N.J. Nov. 1, 2007) (providing that it is "well within the scope of the All Writs Act . . . for a district court to issue an order restricting the filing of meritless cases by a litigant whose manifold complaints aim to subject defendants to unwarranted harassment, and raise concern for maintaining order in the court's dockets").

Importantly however, before a court issues a litigation preclusion order, the court must give notice to the litigant to show cause why the proposed injunctive relief should not issue. *Telfair v. Office of U.S. Attorney*, 443 F. App'x 674, 677 (3d Cir. 2011) (citing *Brow v. Farrelly*, 994 F.2d 1027, 1038 (3d Cir. 1993)); *Copeland v. New Jersey*, Civ. A. No. 1:18-10554, 2019 WL 494823, at *3 (D.N.J. Feb. 8,2019); *see Robinson v. Section 23 Prop. Owner's Ass 'n, Inc.*, Civ. A. No. 1:16-09384, 2018 WL 6630513, at *8 (D.N.J. Dec. 18, 2018), *aff'd*, 785 F. App'x 940 (3d Cir. 2019) (providing that "Plaintiff shall be afforded 20 days to show cause as to why he should not be enjoined from filing any complaint in this District without first seeking judicial approval").

B. Rule 11

Rule 11 of the Federal Rules of Civil Procedure permits a court to impose sanctions on a party who has presented a pleading, motion, or other paper to the court without evidentiary support or for "any improper purpose." Fed. R. Civ. P. 11(b). "[T]he central purpose of Rule 11 is to deter baseless filings in District Court and thus, consistent with the Rule Enabling Act's grant of authority, streamline the administration and procedure of the federal courts." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393 (1990); *Reardon v. Murphy*, Civ. A. No. 1811372, 2019 WL 4727940, at *4 (D.N.J. Sept. 27, 2019).

District courts have the power to enjoin the filing of meritless actions "where the pleadings raise issues identical or similar to those that have been adjudicated." *In re Packer Ave. Assocs.*, 884 F.2d 745, 747 (3d Cir. 1989). However, such injunctions should be "narrowly tailored and sparingly used," *id.*, because "access to the courts is a fundamental tenet to our system [and] legitimate claims should receive a full and fair hearing no matter how litigious the plaintiff may be," *Abdul-Akbar,* 901 F.2d at 332 (quoting *In re Oliver*, 682 F.2d 443, 446 (3d Cir. 1982)).

There are "several methods of achieving the various goals of Rule 11," including reasonable attorneys' fees, expenses, or nonmonetary directives. *Doering v. Union Cty. Bd. of Chosen Freeholders*, 857 F.2d 191, 194 (3d Cir. 1988); *see* Fed. R. Civ. P. 11(c)(4). A court is granted broad discretion in choosing the nature and severity of sanctions in a particular case. *See DiPaolo v. Moran*, 407 F.3d 140, 146 (3d Cir. 2005); *Levy v. Jaguar Land Rover N. Am., LLC*, Civ. A. No. 19-13497, 2020 WL 563637, at *8 (D.N.J. Feb.

4, 2020). The rule is intended to discourage the filing of frivolous, unsupported, or unreasonable claims by "impos[ing] on counsel a duty to look before leaping and may be seen as a litigation version of the familiar railroad crossing admonition to 'stop, look, and listen.'" *Lieb v. Topstone Indus. Inc.*, 788 F.2d 151, 157 (3d Cir. 1986); *Keyes v. Nationstar Mortg., LLC*, Civ. A. No. 20-02649, 2020 WL 6111036, at *10 (D.N.J. Oct. 16, 2020).

Although a court retains the inherent right to sanction when rules of court or statutes also provide a vehicle for sanctioning misconduct, resort to these inherent powers is not preferred when other remedies are available." *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 278 F.3d 175, 189 (3d Cir. 2002) "Therefore, generally, a court's inherent power should be reserved for those cases in which the conduct of a party or an attorney is egregious and no other basis for sanctions exists." *Id* (citation omitted).

III. Decision

Defendants argue Plaintiffs' serial filings not only demonstrate a complete disregard for the authority of this Court and others, but also a pattern and practice of engaging in harassing and vexatious conduct aimed at Defendants. (ECF No. 47-2 at 9.) Plaintiffs oppose Defendants' motion and seek sanctions against Defendants. (ECF No. 61 at 4.) The Court agrees it is faced with Plaintiffs' pattern of vexatious litigation in this case.

Plaintiffs' series of frivolous motions, meritless complaints, appeals, and procedurally deficient actions have resulted in an unnecessary expenditure of time, energy, and resources of all involved. *See Reardon v.*

Sell, Civ. A. No. 88-5253, 1989 WL 85344, at *2 (D.N.J. July 24, 1989). Indeed, Plaintiffs' arguments that the Foreclosure Action could not proceed have been rejected time and time again. On July 21, 2017, the Honorable Margaret Goodzeit, P.J.Ch. of the Superior Court of New Jersey, Chancery Division, in denying Plaintiffs' Motion to Vacate, noted, among other things, Mr. Lin's supporting certification was deficient because it provided "no arguments, case law, or facts" to support reconsideration of summary judgment. (ECF No. 47-2 at 67.) According to Judge Goodzeit, the Motion to Vacate was "gravely untimely and improper at this juncture," and as such, "[n]o further motions to reconsider will be entertained." (*Id.*) Also on July 21, 2017, Judge Goodzeit, in assessing Plaintiffs' motion for sanctions against Defendants, determined the motion was grounded in "no basis . . . whatsoever" and was merely an "attempt to delay the inevitable." (*Id.*)[1] On September 15, 2017, in assessing the First Motion to Stay, Judge Goodzeit noted Plaintiffs' arguments were "raised and rejected by the Court in earlier proceedings," and "[c]onsidering Mr. Lin is an attorney, [he] should well know that such bankruptcy has no bearing on this matter." (*Id.* at 73 n.2.) (emphasis added). The Chancery Court also noted it was "troubled by Mr. Lin's continued reliance" on "irresponsible" claims. (*Id.*) (emphasis added). On August 1, 2018, the Superior Court of New Jersey, Appellate Division, affirmed Judge Goodzeit's orders denying the Motion to Vacate

[1] The Chancery Court denied Plaintiffs' previous attempt to impose sanctions against Defendants on January 2, 2013, because Plaintiffs "failed to follow" the Chancery Court's September 27, 2012 order. (ECF No. 47-2 at 67 n.1.)

and motion for sanctions. The Appellate Division found Plaintiffs' "arguments [we]re without sufficient merit to warrant discussion," and affirmed "Judge Goodzeit's cogent written decision." *Hudson City Sav. Bank v. Lin*, Civ. A. No.5483-16T3, 2018 WL 3636466, at *2 (N.J. Super. Ct. App. Div. Aug. 1, 2018). On October 26, 2018, in assessing Plaintiffs' Second Motion to Stay, Judge Goodzeit denied the motion because "in addition to being filed in the wrong action, [it] fails to meet the requirements of R. 4:52, for example, by failing to provide a brief in support of the injunctive relief." (*Id.* at 118.)

Plaintiffs remained undeterred and filed a series of repetitive actions in federal court. *See Irene Lin and Jay Lin v. Hudson City Savings Bank M&T Bank Parker McCay P.A., et al.*, Case No. 3:17-cv-05511 (the "First Federal Court Action") and *Irene Lin v. M&T Bank et al*, Case No. 3:18-cv-15354 (the "Second Federal Court Action"). Both the First Federal Court Action and Second Federal Court Action attack the rulings entered by the Chancery Court. The First Federal Court Action was dismissed by this Court on September 20, 2017 and Plaintiffs' motion for leave to amend was denied on June 27, 2018. (ECF No. 47-2 at 12; *see* ECF Nos. 28, 37-38.) The Second Federal Court Action was voluntarily dismissed on January 30, 2019, after Defendants brought a motion seeking to deem Plaintiffs vexatious litigants. (ECF No. 47-2; *see* ECF Nos. 9-12.)

The Court also notes Mr. Lin has been sanctioned or admonished in his capacity as attorney for his abusive and frivolous filings several times. *See, e.g., In re Lin*, 647 F. App'x 107, 108 (3d Cir. 2016) (affirming "the Bankruptcy Court's award of sanctions

against Mr. Lin"); *In re Lin*, Civ. A. No. BR 13-20829, 2017 WL 1396042, at *2 (D.N.J. Apr. 18, 2017) (finding Mr. Lin continued asserting "arguments not previously raised and arguments that were substantially similar to those previously rejected by the Court. This reflects that [Mr. Lin] who has been sanctioned by the Court for similar conduct, has continued his wayward course of conduct. The Court, therefore, finds that sanctions are warranted."); *In re Lin*, Civ. A. No. BR 13-20829, 2016 WL 3951671, at *2 (D.N.J. July 21, 2016) (finding that "despite [Mr. Lin's] awareness of the applicable rules of procedure for filing a timely appeal, his appeal was untimely, and thus frivolous. Furthermore, [Mr. Lin] provided no explanation as to why the appeal of the Order was non-frivolous. Thus, the Court finds that the filing of this appeal warrants sanctions."); *In re Lin*, Civ. A. No. BR 13-20829, 2015 WL 6687997, at *2 (D.N.J. Oct. 30, 2015) (recognizing a "court should exercise this sanctioning power only in instances of serious and studied disregard for the orderly process of justice," and finding "this to be an instance where such sanctions are warranted") (citation omitted).

The Court finds the present case represents yet another attempt by Plaintiffs to re-litigate claims that have repeatedly been dismissed on various grounds by various courts. Here, Defendants' Motion requests an order (i) granting the Motion; (2) enjoining Plaintiffs from filing any future motions or pleadings related to the Foreclosure Action without prior leave of this Court; (3) imposing sanctions and awarding attorneys' fees to Defendants for the costs of defending this action; and (4) granting whatever sanctions the Court deems appropriate. (ECF No. 47-2 at 21.) Plaintiffs

have persisted with their incessant filings regardless of the fact that their cause is meritless and despite being repeatedly rejected by both New Jersey state and federal court. In light of the warnings and dismissals, it should have been clear to Plaintiffs, and in particular Mr. Lin, that pursuing their claims further would be frivolous. *See Robinson*, 2018 WL 6630513, at *7. This Court finds in the interests of repose, finality of judgments, protection of Defendants from unwarranted harassment, and concern for maintaining order in the Court's docket, Plaintiffs are deemed vexatious litigants and are obligated to pay Defendants an award of attorneys' fees for the costs of defending this action. In that connection, Defendants must submit a fee petition with supporting materials to the Court so the Court may determine the amount of monetary sanctions to be awarded. *See Pettway v. City of Vineland*, Civ. A. No. 13-470, 2015 WL 2344626, at *8 (D.N.J. May 14, 2015).

The Court also finds an injunction against Plaintiffs enjoining them from litigating their claims concerning the Foreclosure Action may be warranted. Before issuing a litigation preclusion order, however, the Court is obligated to permit Plaintiffs to show cause why the proposed injunctive relief should not issue. *See Telfair*, 443 F. App'x at 677. Therefore, the Court reserves on the issue of litigation preclusion until after the Court considers Plaintiffs' response to an order to show cause. *Reardon*, 2019 WL 4727940, at *4-6; *see Banda*, 2007 WL 3243917, at *21. Plaintiffs shall be afforded 20 days to show cause as to why they should not be enjoined from filing any future actions in this Court without first seeking judicial approval. *See Robinson*, 2018 WL 6630513, at *9-10.

IV. Conclusion

For the reasons set forth above, Defendants' Motion is GRANTED in part and RESERVED in part. Plaintiffs are ORDERED to show cause as to why they should not be subject to a litigation preclusion order. An appropriate order follows.

/s/ Brian R. Martinotti
United States District Judge

Dated: January 29, 2021

ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY (JANUARY 29, 2021)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JAY LIN, IRENE LIN, on Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

v.

HUDSON CITY SAVINGS BANK, M&T BANK, and PARKER MCCAY, P.A.,

Defendants.

Case No. 3:18-cv-15387 (BRM) (LHG)

Before: Hon. Brian R. MARTINOTTI, United States District Judge.

THIS MATTER is opened to this Court by Defendants Hudson City Savings Bank ("Hudson City") and M&T Bank's ("M&T") (collectively, "Defendants") Renewed Motion for an Order Deeming Plaintiffs Vexatious Litigants, Enjoining Future Filings, and for Sanctions (the "Motion"). (ECF No. 47-2.) Plaintiffs Jay Lin and Irene Lin (collectively, "Plaintiffs") oppose the Motion and Request Imposition of Sanctions against Defendants and their Attorneys. (ECF No. 61.) Having reviewed the submissions filed in connection with the

Motion and having declined to hold oral argument pursuant to Federal Rule of Civil Procedure 78(b), for the reasons set forth in the accompanying Opinion and for good cause shown,

IT IS on this 29th day of January 2021,

ORDERED that Defendants' Renewed Motion for an Order Deeming Plaintiffs Vexatious Litigants, Enjoining Future Filings, and for Sanctions (ECF No. 47-2) is GRANTED in part and RESERVED in part and it is further

ORDERED that Plaintiffs are deemed vexatious litigants; and it is further

ORDERED that Plaintiffs are obligated to pay Defendants an award of attorneys' fees for the costs of defending this action, the amount of which will be determined following the submission of a fee petition by Defendants, which shall be submitted within 20 days of the date of this Order such that the Court may determine the amount of monetary sanctions to be awarded; and it is further

ORDERED that Plaintiffs are permitted to submit any objections to the amounts claimed in the fee petition within 14 days of the filing of Defendants' fee petition; and it is finally

ORDERED that Plaintiffs are to SHOW CAUSE within 20 days of the date of this Order as to why they should not be subject to a litigation preclusion order.

/s/ Brian R. Martinotti
United States District Judge

OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY (JULY 1, 2020)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Not for Publication

JAY LIN, IRENE LIN, on Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

v.

HUDSON CITY SAVINGS BANK, M&T BANK, and PARKER MCCAY, P.A.,

Defendants.

Case No. 3:18-cv-15387-BRM-LHG

Before: Hon. Brian R. MARTINOTTI, United States District Judge.

MARTINOTTI, DISTRICT JUDGE

Before this Court is Defendants Hudson City Savings Bank ("Hudson City") and M&T Bank's ("M&T) (collectively, "Defendants") Motion to Reopen this case for the purpose of adjudicating their renewed motion for sanctions. (ECF No. 47.) Also before this Court is Plaintiffs Jay and Irene Lin's ("Plaintiffs") Motion to (1) set aside this Court's order of dismissal

and (2) for sanctions. (ECF No. 49.) Both Motions are opposed. (ECF Nos. 50 & 53.) Having reviewed the submissions filed in connection with the motions and having declined to hold oral argument pursuant to Federal Rule of Civil Procedure 78(b), for the reasons set forth below and for good cause shown, Defendants' Motion to Reopen the case is GRANTED, Plaintiffs' Motion to Set Aside this Court's order is DENIED, and Plaintiffs' Motion for Sanctions is DENIED.

I. Background[1]

On January 4, 2019, Defendants filed a Motion to Dismiss (ECF No. 21) and, on January 25, 2019, they additionally filed a Motion for Sanctions. (ECF No. 27.) On March 25, 2019, this Court administratively terminated the Motion for Sanctions, stating that Defendants may refile their Motion for Sanctions "if appropriate and permitted by the federal and local rules, at a later date." (ECF No. 39 (the "March 25, 2019 Order").)

On August 26, 2019, this Court issued an Order (the "August 26, 2019 Order") granting Defendants' Motion to Dismiss and dismissing Plaintiffs' Complaint without prejudice. (ECF No. 43.) On September 23, 2019, Plaintiffs filed a notice of appeal informing the Court they had appealed the August 26, 2019 Order to the United States Circuit Court for the Third Circuit. (ECF No. 45.) On November 8, 2019, Defendants filed a Motion to Reopen the Case for the limited purpose of adjudicating their Renewed Motion for Sanctions. (ECF No. 47.) On November 22, 2019,

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[1] For a more detailed account of the factual background, the Court refers to its August 27, 2019 Opinion. (ECF No. 44.)

Plaintiffs filed a cross-motion to (1) set aside the August 26, 2019 Order pursuant to Rule 60(b), and (2) impose sanctions on Defendants. (ECF No. 49.) On November 29, 2019, Defendants filed an Opposition to Plaintiffs' Motion. (ECF No. 50.) On February 6, 2020, the Third Circuit issued a mandate where Defendants' Motion for Summary Affirmance was granted and Plaintiffs' Motion for sanctions was denied. (ECF No. 55.)

II. Legal Standard

A. Motion to Reopen Under Rule 60(b)

"Rule 60(b) allows a party to seek relief from a final judgment, and request reopening of his case, under a limited set of circumstances including fraud, mistake, and newly discovered evidence," *Gonzalez v. Crosby*, 545 U.S. 524, 529, (2005), as well as "inadvertence, surprise, or excusable neglect," Fed. R. Civ. P. 60(b)(1). "The remedy provided by Rule 60(b) is extraordinary, and special circumstances must justify granting relief under it." *Jones v. Citigroup, Inc.*, No. 146547, 2015 U.S. Dist. LEXIS 67643, at *3 (D.N.J. May 26, 2015) (quoting *Moolenaar v. Gov't of the Virgin Islands*, 822 F.2d 1342 (3d Cir. 1987)). A Rule 60(b) motion "may not be used as a substitute for appeal, and . . . legal error, without more cannot justify granting a Rule 60(b) motion." *Holland v. Holt*, 409 F. App'x 494,497 (3d Cir. 2010) (quoting *Smith v. Evans*, 853 F.2d 155, 158 (3d Cir. 1988)). A motion under Rule 60(b) may not be granted where the moving party could have raised the same legal argument by means of a direct appeal. *Id.*

III. Decision

A. Defendants' Motion to Reopen

Defendants request this Court reopen this case for the limited purpose of adjudicating their renewed Motion for Sanctions. (ECF No. 47-1 at 3.)

It is well established that this Court has "inherent authority both over its docket and over the persons appearing before it." *Ray v. Eyster (In re Orthopedic "Bone Screw" Prods. Liab. Litig.)*, 132 F.3d 152, 156 (3d Cir. 1997) (citing *US. v. Hudson*, 11 U.S. 32 (1812)). This Court initially terminated Defendants' Motion for Sanctions pending the adjudicating of their Motion to Dismiss. (ECF No. 39.) Notwithstanding the granting of the Motion to Dismiss and subsequent dismissal of this case, this Court retains the right to adjudicate collateral matters such as sanctions. *See In re Schaefer Salt Recovery, Inc.*, 542 F.3d 90, 98 (3d Cir. 2008). Therefore, pursuant to this Court's March 25, 2019 Order, this Court finds it appropriate to reopen this case for the purpose of adjudicating Defendants' renewed Motion for Sanctions. Accordingly, Defendants' Motion is GRANTED.

B. Plaintiffs' Motion to Set Aside Dismissal

Plaintiffs request this Court set aside its August 26, 2019 Order pursuant to Fed. R. Civ. P. 60(b). (ECF No. 49-1 at 7.) Specifically, Plaintiffs contend Defendants' "maliciously false statement" that Hudson City is no longer an independent corporation "enables the [C]ourt to grant Rule 60(b) relief setting aside the order of dismissal." (*Id.* at 9.) The Court disagrees.

Rule 60(b) allows this Court to "relieve a party . . . from a final judgment, order, or proceeding" where there is "newly discovered evidence" or "fraud, misrepresentation, or misconduct by an opposing party." Fed. R. Civ. P. 60(b)(2)-(3). Additionally, to prevail under 60(b), the new evidence must be material, could not have been discovered before trial, and would probably have changed the outcome of the trial. *See Compass Tech. v. Tseng Labs.*, 71 F.3d 1125, 1130 (3d Cir. 1995).

First, the "false statement" Plaintiffs allege Defendants made is not false. Evidence in the record demonstrates Hudson City merged into M&T Bank on November 1, 2015, thereby ceasing to exist as a separate entity. (*See* ECF No. 21-3, Ex. 1.) Nevertheless, even if Defendants made a "false statement," that statement is not material in that it would not "probably change the outcome" of the case. Indeed, this Court dismissed Plaintiffs' Complaint for lack of jurisdiction pursuant to *Rooker-Feldman*, *Colorado River*, the Entire Controversy Doctrine, *res judicata*, and collateral estoppel. (*See* ECF No. 44)[2] Further, this Court confirmed Plaintiffs' contention that Defendants made a "false statement" is without merit. (*See id.* at 18 n.9.) Therefore, Plaintiffs fail to demonstrate that this Court should set aside its August 26, 2019 dismissal. Accordingly, Plaintiffs' Motion to Set Aside the August 26, 2019 Order is DENIED.

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[2] On February 6, 2020, the Third Circuit granting summary affirmance as to the August 26, 2019 dismissal. (ECF No. 55.)

C. Plaintiffs' Motion for Sanctions

Plaintiffs contend Defendants should be subject to sanctions because Defendants have already filed several motions for sanctions, and their current Motion to Reopen is effectively a "frivolous" appeal of the August 26, 2019 Order.[3] The Court disagrees.

First, Defendants' current Motion to Reopen is not an appeal. Additionally, the March 25, 2019 Order explicitly allowed Defendants to re-file their motion for sanctions following adjudication of their Motion to Dismiss. (ECF No. 39.) Ultimately, Plaintiffs provide no basis for imposing sanctions on Defendants or their counsel. Accordingly, Plaintiffs' Motion for Sanctions is DENIED.

IV. Conclusion

For the reasons set forth above, Plaintiffs' Motion to Reopen is GRANTED, Defendants' Motion to Set Aside is DENIED, and Defendants' Motion for Sanctions is DENIED. An appropriate order will follow.

/s/ Brian R. Martinotti
United States District Judge

Date: July 1, 2020

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[3] The Third Circuit also denied Plaintiffs' Motion for Sanctions. (ECF No. 55.)

ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY (JULY 1, 2020)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JAY LIN, IRENE LIN, on Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

v.

HUDSON CITY SAVINGS BANK, M&T BANK, and PARKER MCCAY, P.A.,

Defendants.

Case No. 3:18-cv-15387-BRM-LHG

Before: Hon. Brian R. MARTINOTTI, United States District Judge.

THIS MATTER is opened to this Court by Defendants Hudson City Savings Bank ("Hudson City") and M&T Bank's ("M&T) (collectively, "Defendants") Motion to Reopen this case for the purpose of adjudicating their renewed motion for sanctions. (ECF No. 47.) Also before this Court is Plaintiffs Jay and Irene Lin's ("Plaintiffs") Motion to (1) set aside this Court's order of dismissal and (2) for sanctions. (ECF No. 49.) Both Motions are opposed. (ECF Nos. 50 & 53.) Having reviewed the submissions filed in connection with the

motions and having declined to hold oral argument pursuant to Federal Rule of Civil Procedure 78(b), for the reasons set forth below and for good cause shown

IT IS on this 1st day of July 2020,

ORDERED that Defendants' Motion to Reopen the case (ECF No. 47) is GRANTED; and it is further

ORDERED that Plaintiffs' Motion to Set Aside this Court's August 26, 2019 Order (ECF No. 49) is DENIED; and it is further

ORDERED that Plaintiffs' Motion for Sanctions (ECF No. 49) is DENIED, and it is further

ORDERED that the Clerk shall re-open this case and Defendants' Renewed Motion for Sanctions (ECF No. 47-2) shall be put on the docket as a new motion with a return date of August 3, 2020. Opposition due July 20, 2020 with Reply due July 27, 2020.

/s/ Brian R. Martinotti
United States District Judge

OPINION OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY (AUGUST 26, 2019)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Not for Publication

JAY LIN and IRENE LIN, on Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

v.

HUDSON CITY SAVINGS BANK, M&T BANK, and PARKER MCCAY, P.A.,

Defendants.

Civil Action No. 3:18-cv-15387-BRM-LHG

Before: Hon. Brian R. MARTINOTTI, United States District Judge.

MARTINOTTI, DISTRICT JUDGE

Before this Court is: (1) a Motion to Dismiss filed by Defendant Hudson City Savings Bank, M&T Bank ("Hudson") seeking to dismiss Plaintiffs Jay Lin and Irene Lin's, on behalf of themselves and all others similarly situated ("Plaintiffs") Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) (ECF No. 21); and (2) a Motion to Dismiss

filed by Defendant Parker McCay, P.A. ("Parker McCay") (together with Hudson, "Defendants") pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). (ECF No. 36.) Plaintiffs filed an Opposition to both Motions to Dismiss (ECF Nos. 29 & 38) and Defendants each filed a Reply Brief to Plaintiffs' Oppositions to their respective Motions to Dismiss. (ECF Nos. 30 & 41.) Having reviewed the submissions filed in connection with the motions and having declined to hold oral argument pursuant to Federal Rule of Civil Procedure 78(b), for the reasons set forth below and for good cause appearing, Hudson's Motion to Dismiss the Complaint is GRANTED, Parker McCay's Motion to Dismiss the Complaint is GRANTED, and the Complaint is DISMISSED WITH PREJUDICE.

I. Background

A. Factual Background

For the purposes of these Motions to Dismiss, the Court accepts the factual allegations in the Complaint as true and draws all inferences in the light most favorable to the plaintiff. *See Phillips v. Cty. of Allegheny,* 515 F.3d 224, 228 (3d Cir. 2008). Furthermore, the Court also considers any "document integral to or explicitly relied upon in the complaint." *In re Burlington Coat Factory Secs. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997) (quoting *Shaw v. Dig. Equip. Corp.*, 82 F.3d 1194, 1220 (1st Cir. 1996)).

i. The Foreclosure Action

During the financial crises of 2008, Plaintiffs incurred a financial obligation in the form of a

mortgage refinancing by Hudson. (ECF No. 1 ¶ 1.)[1] On May 23, 2007, Plaintiffs executed a mortgage (the "Mortgage") and note (the "Note") of $680,000 to Hudson, in connection with a property located in Warren, New Jersey (the "Property"), to pay off an existing mortgage of $200,000. (*Id*; ECF No. 36-8, Ex. 6.) On August 3, 2010, Hudson—through its counsel, non-party Zucker, Goldberg & Ackerman ("Zucker Goldberg")—filed a foreclosure action in the Superior Court of New Jersey, Somerset County, Chancery Division (the "Foreclosure Action") against Plaintiffs, alleging default by virtue of Plaintiffs' failure to tender a payment due on January 1, 2010. (*Id.* ¶¶ 2-3; ECF No. 36-8, Ex. 6.)[2]

Plaintiffs contested the Foreclosure Action. (ECF No. 36-8, Ex. 6.) On April 22,2013, after several years of litigation, Hudson filed a Motion for Summary Judgment before the Superior Court. (*Id.*; ECF No. 36-3, Ex. 1.) Shortly thereafter, Plaintiff Irene Lin filed a petition for Chapter 13 bankruptcy, which was subsequently converted to a Chapter 7 bankruptcy petition. (ECF No. 36-3, Ex. 1.) The Foreclosure Action was then stayed pending dismissal of the bankruptcy or entry of an order granting relief from the bankruptcy stay. (ECF No. 36-4, Ex. 2.) Once Hudson received relief from the stay, it refiled its Motion for Sum-

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[1] The facts alleged in the Complaint are extremely scant. Accordingly, this Court supplemented the facts as necessary with documents integral to, or relied on, in the Complaint pursuant to *In re Burlington Coat Factory*, 114 F.3d at 1426.

[2] Plaintiffs had also executed a Home Equity Line of Credit ("HELOC") with a maximum credit limit of $200,000 and which was secured by a second mortgage. (ECF No. 36-8, Ex. 6.)

mary Judgment before the Superior Court on October 28, 2016. (ECF No. 36-8, Ex. 6.)[3] On December 5, 2016, the Superior Court granted Hudson's Motion for Summary Judgment, noting that Hudson was foreclosing "only . . . on the Note and Mortgage dated May 23, 2007" and not on the HELOC. (ECF No. 36-9, Ex. 7.)

On June 16, 2017, Plaintiffs filed a Motion to Vacate the Entry of Summary Judgment before the Superior Court. (ECF No. 36-10, Ex. 8.) On July 21, 2017, the Superior Court denied Plaintiffs' Motion to Vacate, as well as two other motions filed by Plaintiffs, noting, *inter alia*: (1) Hudson sought only to foreclose on the May 23, 2007 Note and Mortgage; (2) Zucker Goldberg's 2015 Chapter 11 bankruptcy has "no bearing on the instant action;" (3) Plaintiff Irene Lin's bankruptcy did not preclude the Foreclosure Action; and (4) the substitution of counsel from Zucker Goldberg to Parker McCay was executed properly. (ECF No. 36-15, Ex. 13 at 7-8.) On July 28, 2017, the Superior Court entered final judgment in the Foreclosure Action. (ECF No. 36-19, Ex. 17.)

ii. The First Federal Action

On July 28, 2017, Plaintiffs filed a lawsuit in the United States District Court for the District of New

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[3] On August 3, 2015, Zucker Goldberg filed for Chapter 11 bankruptcy. (ECF No. 1 ¶ 7.) On August 7, 2015, Zucker Goldberg filed a substitution of attorney whereby it withdrew from the Foreclosure Action and Parker McCay became counsel for Hudson. (*Id.* ¶ 8.) Plaintiffs allege Hudson "settled with [Zucker Goldberg] of its claims in bankruptcy court" and Parker McCay "continued to prosecute Plaintiff[s'] foreclosure case and caused damages and irreparable damages to Plaintiffs." (*Id* ¶¶ 14-15.)

Jersey, *Irene Lin and Jay Lin v. Hudson City Savings Bank, M&T Bank Parker McCay P.A., et al.*, 3:17-cv-05511 (the "First Federal Action"). Plaintiffs asserted only an FDCPA cause of action, but also filed a Motion for a Preliminary Injunction by Order to Show Cause. (No. 175511, ECF Nos. 1 & 12.) Following motion practice and oral argument before this Court on September 20, 2017 regarding Hudson's Motion to Dismiss, this Court dismissed Plaintiffs' complaint for lack of subject matter jurisdiction, stating in pertinent part:

> Here, the Court has the benefit of a well-reasoned state court action, which addressed all four factors of an injunction when the plaintiff sought to stay his matter pending appeal. The issue now becomes what, if any, effect does the Court give to that decision. The Court must give that decision significant consideration. In fact, the consideration that the Court gives it deprives this Court of subject matter jurisdiction. *Rooker-Feldman* prevents any finding of subject matter jurisdiction before this Court. It bars the federal courts from hearing claims by losing state litigants alleging that a state court ruling is going to cause them harm.
>
> In *Exxon Mobil* the Supreme Court stated, "The *Rooker-Feldman* doctrine we hold today is confined to cases of the kind from which the doctrine acquired its name. Cases brought by state court losers" . . . in this case the plaintiff here . . . "complained of injuries caused by state court judgments" . . . in this case the plaintiff here . . . "commenced in inviting the district court to review the

> rejection of those claims," which is exactly what the plaintiff is seeking here. "It does not otherwise override or supplant a preclusion doctrine or argument the circumscribed doctrines that allow federal courts to stay or dismiss proceedings in deference to state court judgments."
>
> In this case, the plaintiff lost in state court. The plaintiff complains of the injuries that were caused by the state court judgment. Those injuries were rendered to judgment before this suit was filed, and basically the plaintiff is seeking another bite at the apple seeking this Court to review and reject the state court judgments.
>
> Furthermore, the plaintiff seeks redress under the FDCPA. As counsel has argued and this Court finds, the plaintiff in a state court matter was not a debt collector. They were the owner of the debt and, therefore, the act does not apply to them.
>
> For those reasons, the Order to Show Cause is denied. The complaint is dismissed, as this Court does not have subject matter jurisdiction over the matter.

(No. 17-5511, ECF No. 42 at 31:6-32:18)[4]

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[4] Notably, in a June 27, 2018 Opinion and Order, this Court also denied Plaintiffs' Motion for Leave to Amend, in which Plaintiffs sought to add an NJCFA claim, which they now assert in this action. (No. 17-5511, ECF Nos. 37 & 38.) In denying Plaintiffs' Motion for Leave to Amend in the First Federal Action, this Court held, *inter alia*:

On July 25, 2018, Plaintiffs filed a Notice of Appeal of this Court's dismissal of their case to the Third Circuit Court of Appeals. (No. 17-5511, ECF No. 39.) On December 10, 2018, shortly after filing this action, Plaintiffs voluntarily dismissed their appeal. (No. 17-5511, ECF No. 43.)

B. Procedural History of this Action

On October 29, 2018, Plaintiffs filed a Complaint (the "Complaint"), in which they sought class action certification, against Defendants asserting causes of action for: violations of the automatic stay imposed by 11 U.S.C. § 362(a) (Count One); violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA") (Count Two); violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 *et seq.* ("NJCFA") (Count Three); and unjust enrichment (Count Four). (ECF No. 1.)

On January 4, 2019, Hudson filed a Motion to Dismiss the Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). (ECF No. 21.) On February 1, 2019, Plaintiffs filed an Opposition to Hudson's Motion to Dismiss (ECF No. 29) and on February 12, 2019, Hudson filed a Reply Brief to

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> [T]he Court reviewed, on the record, the history of the State Court Action and found [Plaintiffs] had previously challenged the writ of execution several times, including by the filing of a motion for injunctive relief, where [they] sought a stay pending an appeal in the State Court Action. Consequently, "the Court ha[d] the benefit of a well-reasoned state court [decision]" which barred this Court's review under [the] *Rooker-Feldman* [doctrine].

(No. 17-5511, ECF No. 37 at 3.)

Plaintiffs' Opposition to its Motion to Dismiss (ECF No. 30).[5]

On January 25, 2019, Hudson filed a Motion for Sanctions seeking an order deeming Plaintiffs "vexatious litigants" and enjoining future filings. (ECF No. 27.) On February 15, 2019, Plaintiffs filed an Opposition to Hudson's Motion for Sanctions (ECF No. 32) and on February 25, 2019, Hudson filed a Reply Brief to Plaintiffs' Opposition to its Motion for Sanctions (ECF No. 34). On March 1, 2019, this Court entered an Order administratively terminating Hudson's Motion for Sanctions. (ECF No. 35.)

On March 6, 2019, Parker McCay filed a Motion to Dismiss the Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) as well as a Motion for Sanctions pursuant to 15 U.S.C. § 1692k and to impose pre-filing requirements pursuant to 28 U.S.C. § 1651. (ECF No. 36.) On March 22, 2019, Plaintiffs filed a Cross-Motion for Sanctions against Parker McCay as well as an Opposition to Parker McCay's Motion to Dismiss the Complaint. (ECF No. 38.) On March 25, 2019, this Court issued an Order administratively terminating Parker McCay's Motion for Sanctions as well as Plaintiffs' Cross-Motion for Sanctions, while leaving active Parker McCay's Motion to Dismiss as well as Plaintiffs' Opposition thereto. (ECF No. 39.) On April 8, 2019, Parker McCay filed a

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[5] Also on January 4, 2019, Plaintiffs filed an Emergency Motion for an Order to Show Cause Why a Preliminary Injunction Should Not Be Issued, seeking an order "temporarily restraining [Defendants] stay [sic] further prosecution of all foreclosure cases including Plaintiffs' case." (ECF No. 22.) On January 11, 2019, this Court denied Plaintiffs' Motion for an Order to Show Cause. (ECF No. 26.)

Reply Brief to Plaintiffs' Opposition to its Motion to Dismiss. (ECF No. 41.)

II. Legal Standards

A. Rule 12(b)(1) Standard

"A challenge to subject matter jurisdiction under Rule 12(b)(1) may be either a facial or a factual attack." *Davis*, 824 F.3d at 346. A facial attack "challenges the subject matter jurisdiction without disputing the facts alleged in the complaint, and it requires the court to 'consider the allegations of the complaint as true.'" *Id.* (citing *Petruska v. Gannon Univ.*, 462 F.3d 294, 302 n.3 (3d Cir. 2006)). A factual attack, on the other hand, "attacks the factual allegations underlying the complaint's assertion of jurisdiction, either through the filing of an answer or 'otherwise present[ing] competing facts.'" *Id.* (quoting *Constitution Party of Pa. v. Aichele*, 757 F.3d 347, 358 (3d Cir. 2014)). A "factual challenge allows a court [to] weigh and consider evidence outside the pleadings." *Id.* (citation omitted). Thus, when a factual challenge is made, "no presumptive truthfulness attaches to [the] plaintiff's allegations." *Id.* (citing *Mortensen v. First Fed. Sav. & Loan Ass'n*, 549 F.2d 884, 891 (3d Cir. 1977)). Rather, "the plaintiff will have the burden of proof that jurisdiction does in fact exist," and the court "is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." *Id.*

The Third Circuit has "repeatedly cautioned against allowing a Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction to be turned into an attack on the merits." *Davis*, 824 F.3d at 348-49 (collecting cases). "[D]ismissal for lack of jurisdiction

is not appropriate merely because the legal theory alleged is probably false, but only because the right claimed is 'so insubstantial, implausible, foreclosed by prior decisions of this Court, or otherwise completely devoid of merit as not to involve a federal controversy.'" *Id.* at 350 (quoting *Kulick v. Pocono Downs Racing Ass'n, Inc.*, 816 F.2d 895, 899 (3d Cir. 1987)). "In this vein, when a case raises a disputed factual issue that goes both to the merits and jurisdiction, district courts must 'demand less in the way of jurisdictional proof than would be appropriate at a trial stage.'" *Id.* (citing *Mortensen*, 549 F.2d at 892 (holding that dismissal under Rule 12(b)(1) would be "unusual" when the facts necessary to succeed on the merits are at least in part the same as must be alleged or proven to withstand jurisdictional attacks)). These cases make clear that "dismissal via a Rule 12(b)(1) factual challenge to standing should be granted sparingly." *Id.*

B. Rule 12(b)(6) Standard

In deciding a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), a district court is "required to accept as true all factual allegations in the complaint and draw all inferences in the facts alleged in the light most favorable to the [plaintiff]." *Phillips v. Cty. of Allegheny*, 515 F.3d 224, 228 (3d Cir. 2008). "[A] complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). However, the plaintiff's "obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action." *Id* (citing *Papasan v. Allain*, 478 U.S. 265,

286 (1986)). A court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Papasan*, 478 U.S. at 286. Instead, assuming the factual allegations in the complaint are true, those "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555.

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 570). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for misconduct alleged." *Id.* This "plausibility standard" requires the complaint allege "more than a sheer possibility that a defendant has acted unlawfully," but it "is not akin to a probability requirement." *Id.* (quoting *Twombly*, 550 U.S. at 556). "Detailed factual allegations" are not required, but "more than an unadorned, the defendant-harmed-me accusation" must be pled; it must include "factual enhancements" and not just conclusory statements or a recitation of the elements of a cause of action. *Id* (citing *Twombly*, 550 U.S. at 555, 557).

"Determining whether a complaint states a plausible claim for relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679. "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" *Id* at 679 (quoting Fed. R. Civ. P. 8(a)(2)). However,

courts are "not compelled to accept 'unsupported conclusions and unwarranted inferences,'" *Baraka v. McGreevey*, 481 F.3d 187, 195 (3d Cir. 2007) (quoting *Schuylkill Energy Res. Inc. v. Pa. Power & Light Co.*, 113 F.3d 405, 417 (3d Cir. 1997)), nor "a legal conclusion couched as a factual allegation." *Papasan*, 478 U.S. at 286.

While, as a general rule, the court may not consider anything beyond the four corners of the complaint on a motion to dismiss pursuant to Rule 12(b)(6), the Third Circuit has held that "a court may consider certain narrowly defined types of material without converting the motion to dismiss [to one for summary judgment pursuant to Rule 56]." *In re Rockefeller Ctr. Props. Sec. Litig.*, 184 F.3d 280, 287 (3d Cir. 1999). Specifically, courts may consider any "document integral to or explicitly relied upon in the complaint." *In re Burlington Coat Factory*, 114 F.3d at 1426 (quoting *Shaw v. Dig. Equip. Corp.*, 82 F.3d 1194, 1220 (1st Cir. 1996)).

C. Rule 9(b)

Pursuant to Federal Rule of Civil Procedure 9(b), when alleging fraud, "a party must state with particularity the circumstances constituting fraud or mistake, although intent, knowledge, and other conditions of a person's mind may be alleged generally." *In re Lipitor Antitrust Litig.*, 868 F.3d 231, 249 (3d Cir. 2017) (citations omitted); *see also US. ex rel. Moore & Co., P.A. v. Majestic Blue Fisheries, LLC*, 812 F.3d 294, 307 (3d Cir. 2016) (holding that a "plaintiff alleging fraud must . . . support its allegations with all of the essential factual background that would accompany the first paragraph of any newspaper story—that is,

the who, what, when, where and how of the events at issue") (citations omitted). Accordingly, "a party must plead [its] claim with enough particularity to place defendants on notice of the 'precise misconduct with which they are charged.'" *United States ex rel. Petras v. Simparel, Inc.*, 857 F.3d 497, 502 (3d Cir. 2017) (quoting *Lum v. Bank of Am.*, 361 F.3d 217, 223-24 (3d Cir. 2004), *abrogated on other grounds by Twombly*, 550 U.S. at 557).

III. Decision

Defendants argue this Court lacks subject matter jurisdiction over this action pursuant to the *Rooker-Feldman* doctrine, this Court should abstain from exercising jurisdiction pursuant to the *Colorado River* abstention doctrine, Plaintiffs' claims are barred by the doctrines of collateral estoppel and *res judicata*, and that notwithstanding these doctrines, Plaintiffs fail to state a claim for which relief can be granted. (ECF No. 21-1 at 9-24; ECF No. 36-1 at 14-30)[6] Plaintiffs argue this Court should deny Defendants' Motions to Dismiss because neither Defendant submitted Corporate Disclosure Statements as required by Rule 7.1 and Defendants' reliance on Rule 12(b)(1) is "wholly without merit in the absence of existing state court judgment[s] subject to re-litigation in federal court." (ECF No. 29 at 2-9; ECF No. 38-1 at 2-12.) This Court analyzes each argument in turn.

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[6] Defendants further contend that Plaintiffs' proposed class is invalid as a matter of law and the class allegations contained in the Complaint should be dismissed or stricken. (ECF No. 21-1 at 2427; ECF No. 36-1 at 30.)

A. Rooker-Feldman Doctrine

Pursuant to the *Rooker-Feldman* doctrine, federal district courts lack subject matter jurisdiction to review and reverse state court judgments. *In re Knapper*, 407 F.3d 573, 580 (3rd Cir. 2005). *Rooker-Feldman* serves to bar a claim when: (1) the federal claim was actually litigated in state court before the plaintiff filed the federal action or, (2) "if the federal claim is inextricably intertwined with the state adjudication, meaning that federal relief can only be predicated upon a conviction that the state court was wrong." *Id.* The Third Circuit has held a federal claim is "inextricably intertwined" with an issue adjudicated by a state court when: "(1) the federal court must determine . . . the state court judgment was erroneously entered in order to grant the requested relief or, (2) the federal court must take an action that would negate the state court's judgment." *In re Madera*, 586 F.3d 228, 232 (3d Cir. 2009) (quoting *Walker v. Horn*, 385 F.3d 321, 330 (3d Cir. 2004)). A finding that *Rooker-Feldman* bars a litigant's claims divests a District Court of subject matter jurisdiction over those claims. *Desi's Pizza, Inc. v. City of Wilkes-Barre*, 321 F.3d 411, 419 (3d Cir. 2003) (citations omitted).

Significantly,

> [f]our requirements must be met for the [*Rooker-Feldman*] doctrine to apply: (1) the plaintiff lost in state court; (2) the plaintiff complains of injury caused by the state court judgment; (3) the state court judgment was rendered before the federal suit was filed; and (4) the plaintiff invites the district court to review and reject the state court judgment.

Gage v. Wells Fargo Bank NA AS, 521 F. App'x 49, 50-51 (3d Cir. 2013) (*citing Great Western Mining & Mineral Co. v. Fox Rothschild LLP*, 615 F.3d 159, 166 (3d Cir. 2010)). Where, on the other hand, the federal plaintiff presents "some independent claim, albeit one that denies a legal conclusion that a state court has reached," the doctrine does not apply. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 292 (2005), quoted in *Turner v. Crawford Square Apartments III, L.P.*, 449 F.3d 542, 547-48 (3d Cir. 2006). In such an instance, jurisdiction exists and the court should then consider "whether the defendant prevails under principles of preclusion." *Exxon Mobil*, 544 U.S. at 292.

The *Rooker-Feldman* doctrine "is a narrow doctrine that applies only in limited circumstances." *Shibles v. Bank of Am., NA.*, No. 17-2386, 2018 WL 1448670, at *2 (3d Cir. Mar. 23, 2018) (citations omitted); *In re Philadelphia Entm't & Dev. Partners*, 879 F.3d 492, 499 (3d Cir. 2018) ("[F]ederal courts had been applying the *Rooker-Feldman* doctrine too broadly and consequently it clarified that the doctrine is confined to 'limited circumstances' where 'state-court losers complain[ ] of injuries caused by state-court judgments rendered before the district court proceedings commend and invit[e] district court review and rejection of those judgments.") (citation omitted). The four requirements "must be met for the doctrine to apply." *Gage*, 521 F. App'x at 50-51.

Here, the four criteria necessary to invoke the *Rooker-Feldman* doctrine are satisfied. First, final judgment was entered in the Foreclosure Action against Plaintiffs on July 28, 2017. (ECF No. 36-19, Ex. 17.) Prior to the entry of final judgment in the

Foreclosure Action, Plaintiffs argued unsuccessfully that the action should have been stayed due to Zucker Goldberg's bankruptcy and by operation of the automatic stay. (ECF No. 36-9, Ex. 7; ECF No. 36-10, Ex. 8; ECF No. 36-11, Ex. 9.) Second, Plaintiffs complain of injuries caused by the Foreclosure Action, as they specifically allege "Defendants continued to prosecute Plaintiff[s'] foreclosure case and caused damages and irreparable damages to Plaintiffs." (ECF No. 1 ¶ 15.) Third, the entry of final judgment in the Foreclosure Action and the orders denying Plaintiffs' other motions were all rendered prior to Plaintiffs' filing of this action. (ECF No. 36-3, Ex. 1.) Finally, Plaintiffs seek a determination from this Court that would necessarily find that the Superior Court erred with respect to the validity of the foreclosure proceedings, thereby requiring this Court to improperly undertake the role of reviewing and overruling orders from the Superior Court.

The *Rooker-Feldman* doctrine prohibits this Court from providing relief that would reverse the decisions, directly or indirectly invalidate the determinations, prevent the enforcement of the orders, or void the rulings, orders, or judgments issued by the Superior Court in the Foreclosure Action. *See Jacobsen v. Citi Mortg. Inc.*, 715 F. App'x 222, 223 (3d Cir. 2018) (upholding dismissal of the claims brought in connection with a state foreclosure action as being barred by the *Rooker-Feldman* doctrine), *pet for reh's & reh'g en banc denied*, No. 17-3267 (3d Cir. Apr. 30, 2018). This is true even if Plaintiffs have asserted federal claims in the Federal Action. *See Todd v. U.S. Bank Nat'l Ass'n*, 685 F. App'x 103, 105-06 (3d Cir. 2017) (upholding dismissal of the claims that were brought

in connection with a state foreclosure action pursuant to the *Rooker-Feldman* doctrine, even though the plaintiff therein asserted claims under the FDCPA), *pet. for reh'g & reh'g en banc denied*, Nos. 16-1126 & 16-1255 (3d Cir. May 18, 2017), *cert. denied*, 138 S. Ct. 449 (2017).

In their opposition, Plaintiffs rely on *Chung v. Shapiro & Denardo, LLC*, No. 14-6899, 2015 WL 3746332 (D.N.J. June 15, 2015) in asserting that this Court may hear their FDCPA claim despite the Superior Court's entry of summary judgment in the Foreclosure Action. (ECF No. 29 at 4-5; ECF No. 38-1 at 5-6.) Specifically, Plaintiffs contend the FDCPA is controlling where there is a conflict between state and federal law and that such a conflict exists between New Jersey state law and the FDCPA, which Plaintiffs assert offers "greater protections." (ECF No. 29 at 2-4; ECF No. 38-1 at 4-6.) Plaintiffs' argument is baseless. The decision in *Chung* does not address the application of the *Rooker-Feldman* doctrine whatsoever, but rather, with whether New Jersey's Fair Foreclosure Act conflicts with the FDCPA. *Chung*, 2015 WL 3746332, at *2-3. *Chung* concerned whether a debt collector's direct contact with a debtor despite his retention of counsel violated the FDCPA. *Id.* at *1. The plaintiff in *Chung* did not claim that his injuries were caused by a state court judgment nor did he invite the District Court to review or reject the judgment of the state court. *Id.* at *2-3. As such, *Chung* provides no support whatsoever to Plaintiffs' position. Accordingly, the *Rooker-Feldman* doctrine deprives this Court of subject matter jurisdiction to hear this matter.

B. *Colorado River* Abstention Doctrine

As this Court has determined that the *Rooker-Feldman* doctrine divests it of jurisdiction, it need not consider Defendants' arguments that this Court must abstain from hearing this matter pursuant to the *Colorado River* abstention doctrine.[7] Nevertheless, this Court determines that it may abstain from hearing this matter pursuant to the *Colorado River* doctrine. Under the *Colorado River* abstention doctrine, a federal court may abstain exercising jurisdiction when there is a "parallel" concurrent proceeding pending in state court. *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976). In the context of *Colorado River* abstention, "parallel" means that the state and federal proceedings involve the same parties and "substantially identical claims [raising] nearly identical allegations and issues." *Nationwide Mut. Fire Ins. Co. v. George V. Hamilton, Inc.*, 571 F.3d 299, 307 (3d Cir. 2009). A federal court should invoke *Colorado River* abstention only in "exceptional circumstances." *Colo. River*, 424 U.S. at 813. This Court's task "is not to find some substantial reason for the exercise of federal jurisdiction," but to determine whether exceptional circumstances "justify the surrender of that jurisdiction." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 25 (1983).[8]

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[7] Similarly, this Court also need not consider whether the entire controversy doctrine or the doctrines of *res judicata* and collateral estoppel bar Plaintiffs' claims. Nevertheless, the application of each doctrine is discussed in turn.

[8] In *Colorado River*, the Supreme Court identified four factors to be considered in determining whether "exceptional circumstances"

Here, this action has the same parties as did the Foreclosure Action and identical underlying operative facts from which Plaintiffs claim they are entitled to relief. Plaintiffs merely craft different causes of action to seek relief from the disposition of their state case. Moreover, "exceptional circumstances," as defined in *Colorado River*, exist such that this Court should abstain from exercising jurisdiction: exercising jurisdiction over this matter would create concurrent jurisdiction as well as the potential for contradicting rulings; any ruling from this Court in Plaintiffs' favor would implicate the validity of the state court's judgments; and the state court exercised jurisdiction over this matter far before the Complaint was filed before this Court. Accordingly, this Court abstains from asserting jurisdiction.

C. Entire Controversy Doctrine

Similarly, the entire controversy doctrine and the principles of *res judicata* and collateral estoppel bar Plaintiffs' suit. New Jersey's entire controversy doctrine is "an extremely robust claim preclusion device that requires adversaries to join all possible claims stemming from an event or series of events in one suit." *Chavez v. Dole Food Co.*, 836 F.3d 205, 228 n.130 (3d Cir. 2016). The doctrine

> requires a party to bring in one action all affirmative claims that it might have against another party or be forever barred from

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exist: (1) issues created when two separate courts exercise concurrent jurisdiction over the same matter; (2) the inconvenience of the federal forum; (3) the goal of avoiding piecemeal litigation; and (4) the order in which the state and federal courts obtained respective jurisdiction. *Colo. River*, 424 U.S. at 817-18.

> bringing a subsequent action involving the same underlying facts. The central consideration is whether the claims arise from related facts or the same transaction or series of transactions.

Opdycke v. Stout, 233 F. App'x 125, 129 (3d Cir. 2007) (marks and citations omitted); *see also Ricketti v. Barry*, 775 F.3d 611, 613 (3d Cir. 2015). "The purposes of the doctrine are threefold: (1) the need for complete and final disposition through the avoidance of piecemeal decisions; (2) fairness to parties to the action and those with a material interest in the action; and (3) efficiency and the avoidance of waste and the reduction of delay." *Ditrolio v. Antiles*, 662 A.2d 494, 502 (N.J. 1995). The Third Circuit has ruled that "[a] federal court hearing a federal cause of action is bound by New Jersey's Entire Controversy Doctrine, an aspect of the substantive law of New Jersey, by virtue of the Full Faith and Credit Act, 28 U.S.C. § 1738 (1994)." *Litgo N.J., Inc. v. Comm'r N.J. Dep't of Envtl. Prot.*, 725 F.3d 369, 400 n.2 (3d Cir. 2013) (quoting *Rycoline Prods. v. C & W Unlimited*, 109 F.3d 883, 887 (3d Cir. 1997)).

The entire controversy doctrine applies to foreclosure proceedings but encompasses only "germane" counterclaims. N.J. Ct. R. 4:64-5. New Jersey courts have held that the exact claims raised by Plaintiffs herein—FDCPA, NJCFA, and unjust enrichment—are indeed "germane" counterclaims that must be raised during a foreclosure action. *See Coleman v. Chase Home Finance, LLC*, 446 F. App'x 469, 472 (3d Cir. 2011); *see also Murray v. Crystex Composites, LLC*, 618 F. Supp. 2d 352, 360 (D.N.J. 2009). Plaintiffs failed to assert these claims in the Foreclosure

Action. Accordingly, the entire controversy doctrine bars Plaintiffs' suit.

D. *Res Judicata* (Claim Preclusion)

The doctrine of "*Res judicata*, or claim preclusion, is a court-created rule that is designed to draw a line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand." *Purtner v. Heckler*, 771 F.2d 682, 689-90 (3d Cir. 1985) (footnote and citation omitted). The doctrine "bars a party from initiating a second suit against the same adversary based on the same 'cause of action' as the first suit." *Duhaney v. Atty. Gen. of U.S.*, 621 F.3d 340, 347 (3d Cir. 2010) (citing *In re Mullarkey*, 536 F.3d 215, 225 (3d Cir. 2008). "A party seeking to invoke *res judicata* must establish three elements: '(1) a final judgment on the merits in a prior suit involving (2) the same parties or their privies and (3) a subsequent suit based on the same cause of action.'" *Id.* (quoting *In re Mullarkey*, 536 F.3d at 225). "The doctrine of *res judicata* bars not only claims that were brought in a previous action, but also claims that could have been brought." *In re Mullarkey*, 536 F.3d at 225 (citing *Post v. Hartford Ins. Co.*, 501 F.3d 154, 169 (3d Cir. 2007)).

Here, *res judicata* bars Plaintiffs' claims against Defendants. Plaintiffs' claims arise from the same transactions and occurrences as the Foreclosure Action, and the issues raised in the Complaint both could have—and in some cases were—raised in the Foreclosure Action. (ECF No. 36-4, Ex. 2.) Moreover, it is indisputable that Plaintiffs and Hudson were parties to the Foreclosure Action and that a final judgment

was entered therein. (ECF No. 36-3, Ex. 1.) Therefore, *res judicata* precludes Plaintiffs' claims.

E. Collateral Estoppel

Finally, Plaintiffs' claims are similarly precluded by the doctrine of collateral estoppel. Collateral estoppel prevents a party from re-litigating an issue when:

> (1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.

Twp. of Middletown v. Simon, 937 A.2d 949, 954 (N.J. 2008). Here, Plaintiffs seek to re-litigate before this Court an identical issue for which a judgment on the merits was rendered in the Foreclosure Action. Accordingly, the doctrine of collateral estoppel bars Plaintiffs' suit as well.

As this Court has determined that it lacks subject matter jurisdiction to adjudicate Plaintiffs' claims, it need not analyze Defendants' arguments that Plaintiffs have failed to state claims for violations of the automatic stay pursuant to 11 U.S.C. § 362(a), violations of the FDCPA, violations of the NJCFA, and unjust enrichment. Similarly, this Court also need not consider Defendants' contentions that Plaintiffs'

proposed class is invalid as a matter of law. Accordingly, Defendants' Motions to Dismiss are GRANTED.[9]

IV. Conclusion

For the reasons set forth above, Defendants' Motions to Dismiss are GRANTED and the Complaint is DISMISSED WITHOUT PREJUDICE.

/s/ Brian R. Martinotti
United States District Judge

Date: August 26, 2019

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[9] Plaintiffs' argument that Defendants' Motions to Dismiss should be denied because Defendants failed to submit Corporate Disclosure Statements is without merit. Hudson was wholly acquired by M&T Bank in November of 2015, and as a result, is no longer an independent corporation. A Rule 7.1 Disclosure Statement was filed for M&T Bank. (ECF No. 19.) Meanwhile, Parker McCay is a professional association organized pursuant to the Professional Service Corporation Act, N.J. Stat. Ann. 14A:17-1 *et seq.* ("PSCA"). As such, Parker McCay could not possibly have a parent corporation or have 10% or more of its stock owned by a publicly held corporation, as such would be prohibited under Section 10 of the PSCA. Nevertheless, Parker McCay filed a Corporate Disclosure Statement. (ECF No. 40.)

ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY (AUGUST 26, 2019)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JAY LIN, IRENE LIN, on Behalf of Themselves and All Others Similarly Situated,

Plaintiffs,

v.

HUDSON CITY SAVINGS BANK, M&T BANK, and PARKER MCCAY, P.A.,

Defendants.

Civil Action No. 3:18-cv-15387-BRM-LHG

Before: Hon. Brian R. MARTINOTTI, United States District Judge.

THIS MATTER is opened to this Court by: (1) a Motion to Dismiss filed by Defendant Hudson City Savings Bank, M&T Bank ("Hudson") seeking to dismiss Plaintiffs Jay Lin and Irene Lin's, on behalf of themselves and all others similarly situated ("Plaintiffs") Complaint pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6) (ECF No. 21); and (2) a Motion to Dismiss filed by Defendant Parker McCay, P.A. ("Parker McCay") (collectively, with Hudson, "Defendants") pursuant to Federal Rules of

Civil Procedure 12(b)(1) and 12(b)(6). (ECF No. 36). Plaintiffs filed an Opposition to both Motions to Dismiss (ECF Nos. 29 & 38) and Defendants each filed a Reply Brief to Plaintiffs' Oppositions to their respective Motions to Dismiss. (ECF Nos. 30 & 41). Having reviewed the submissions filed in connection with the motion and having declined to hold oral argument pursuant to Federal Rule of Civil Procedure 78(b), for the reasons set forth in the accompanying Opinion and for good cause shown,

IT IS on this 26th day of August 2019,

ORDERED that Hudson City's Motion to Dismiss (ECF No. 21) is GRANTED; and it is further

ORDERED that Parker McCay's Motion to Dismiss (ECF No. 36) is GRANTED; and it is further

ORDERED that the Complaint (ECF No. 1) is DISMISSED WITHOUT PREJUDICE; and it is finally

ORDERED that the matter be marked closed.

/s/ Brian R. Martinotti
United States District Judge

ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY (MARCH 25, 2019)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JAY LIN, ET AL.,

Plaintiffs,

v.

HUDSON CITY SAVINGS BANK, ET AL.,

Defendants.

Civ. A. No. 3:18-CV-15387-BRM-LHG

Before: Hon. Brian R. MARTINOTTI,
United States District Judge.

THIS MATTER is before the Court *sua sponte.* The Court will not hear any motions for sanctions prior to adjudicating the motions to dismiss filed by Defendants Hudson County Savings Bank and M&T Bank (ECF No. 21) and Parker McCay (ECF No. 36). Any motions for sanctions, cross-motions for sanctions, or arguments related to sanctions will not be entertained at this time. Parties may re-file their motions, if appropriate and permitted by the federal and local rules, at a later date. Accordingly,

IT IS on this 25th day of March 2019,

ORDERED that Defendant Parker McCay's Motion to Dismiss (ECF No. 36) will REMAIN ACTIVE, but the portion related to sanctions is administratively terminated; and it is further

ORDERED that Plaintiff's cross-motions for sanctions is ADMINISTRATIVELY TERMINATED and will only be considered to the extent it serves as an opposition to Parker McCay's Motion to Dismiss.

/s/ Brian R. Martinotti
United States District Judge

ORDER OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY (MARCH 1, 2019)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

JAY LIN, ET AL.,

Plaintiffs,

v.

HUDSON CITY SAVINGS BANK, ET AL.,

Defendants.

Civ. A. No. 3:18-CV-15387-BRM-LHG

Before: Hon. Brian R. MARTINOTTI,
United States District Judge.

THIS MATTER is before the Court on Defendants Hudson County Savings Bank and M&T Bank's ("Defendants") Motion to Dismiss (ECF No. 21) and Motion for Sanctions (ECF No. 27). Having reviewed the docket, the motions, and the papers submitted in connection therewith, and for good cause appearing,

IT IS on this 1st day of March 2019,

ORDERED that Defendants' Motion for Sanctions (ECF No. 27) is ADMINISTRATIVELY TERMINATED. Remaining pending motions will be adjudicated in due course.

/s/ Brian R. Martinotti
United States District Judge

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT DENYING PETITION FOR REHEARING EN BANC (MARCH 31, 2022)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

JAY LIN; IRENE LIN, on Behalf of
Themselves and All Others Similarly Situated,

Appellants,

v.

HUDSON CITY SAVINGS BANK;
M&T BANK; PARKER MCCAY PA

No. 21-1189

(D.C. Civ. No. 3-18-cv-15387)

Before: CHAGARES, Chief Judge, McKEE, JORDAN, SHWARTZ, RESTREPO, BIBAS, PORTER, MATEY, and SCIRICA*, Circuit Judges.

The petition for rehearing filed by appellants in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred

* As to panel rehearing only.

in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

/s/ Anthony J. Scirica
Circuit Judge

Dated: March 31, 2022
JK/cc: All Counsel of Record