

APPENDIX

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

MATI LEEAL, et al,

Plaintiffs,

v

NEWREZ LLC D/B/A SHELLPOINT MORTGAGE
SERVICING, et al.,

Case No. 22-10017

Hon. George Caram Steeh
Magistrate Judge
Elizabeth A. Stafford

Defendant(s).

**ORDER REGARDING REASSIGNMENT OF
COMPANION CASE**

This case appears to be a companion case to Case No. 17-10645. Pursuant to E.D. Mich LR 83.11, the Clerk is directed to reassign this case to the docket of the Honorable Matthew F. Leitman and Magistrate Judge David R. Grand.

s/George Caram Steeh
George Caram Steeh
United States District Judge

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

Pursuant to this order, case assignment credit will be given to the appropriate Judicial Officers. Case type: CIVIL

If the District Judge assigned to the companion case is located at another place of holding court, the office code will be changed accordingly.

cc: Parties and/or counsel of record
Honorable Matthew F. Leitman

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MALKA LEEAL,

Plaintiffs,

Case No. 22-cv-10017
Hon. Matthew F. Leitman

v.

NEWREZ LLC, *et al.*,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION TO
RE-ASSIGN CASE (ECF No. 6)**

In this action, Plaintiff Malka Leeal challenges the foreclosure of her home in Farmington Hills, Michigan. (See Compl., ECF No. 1-3.) Over the past several years, Leeal and her husband (who is now deceased) have filed a number of different actions attempting to prevent that foreclosure. For example, in 2015, the Leeals sought relief in the Oakland County Circuit Court. *See Leeal et al. v. ABN AMRO Mortgage Group, Inc., et al.*, Oakland County Cir. Ct. Case No. 2015-146929. That case was assigned to the Honorable Shalina Kumar, who was then a Judge on the Oakland County Circuit Court. Judge Kumar is now a Judge on this Court.

On January 25, 2022, Leeal filed a motion to re-assign this action to Judge Kumar. (See Mot., ECF No. 6.) Leeal argues that because Judge Kumar oversaw

her 2015 action in state court, it would promote “judicial economy” for Judge Kumar to also oversee this case. (*Id.*, PageID.85.)

The Court disagrees. Like Judge Kumar, this Court has also presided over substantial litigation filed by the Leeals arising out of the attempted foreclosure of their home. *See Leeal et al. v Ditech Financial, LLC*, E.D. Mich. Case No. 17-10645. Thus, because this Court is equally familiar with the facts underlying Leeal’s new action, the Court concludes that it would not promote judicial efficiency to transfer this case to Judge Kumar.

Accordingly, for all of the reasons explained above, Leeal’s motion to re- assign this action (ECF No. 6) is **DENIED**.

IT IS SO ORDERED.

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

Dated: February 8, 2022

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on February 8, 2022, by electronic means and/or ordinary mail.

s/Holly A. Ryan
Case Manager
(313) 234-5126

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

MATI LEEAL, et al.,
Plaintiffs,

Case No. 4:22-cv-10017-MFL-DRG
Hon. Matthew F. Leitman

v

NEWREZ LLC D/B/A SHELLPOINT MORTGAGE
SERVICING, et al.,

Defendants.

**ORDER OF REFERENCE TO UNITED STATES
MAGISTRATE JUDGE**

IT IS ORDERED that the following motion(s) are referred to United States Magistrate Judge David R. Grand for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B):

Motion for Summary Judgment – #9
Motion for Summary Judgment – #12

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

Certificate of Service

I hereby certify that on this date a copy of the foregoing notice was served upon the parties and/or counsel of record herein by electronic means or first class U.S. mail.

/Holly A. Ryan
Case Manager

NOT RECOMMENDED FOR PUBLICATION

No. 22-1917

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

FILED
Jun 22, 2023
DEBORAH S. HUNT, Clerk

MALKA LEEAL,

Plaintiff-Appellant,

v.

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

NEWREZ LLC, dba Shellpoint Mortgage Servicing;
FEDERAL NATIONAL MORTGAGE ASSOCIATION;
DITECH FINANCIAL LLC, fka
Green Tree Servicing, LLC, Defendants-Appellees.

ORDER

Before: NORRIS, SILER, and MURPHY, Circuit
Judges.

In this civil action, Malka Leeal, proceeding pro
se, appeals the district court's grant of the defendants'
motion for summary judgment based on res judicata.
This case has been referred to a panel of the court that,

upon examination, unanimously agrees that oral argument is not needed. *See Fed. R. App. P. 34(a).* Because the elements of res judicata are met, we affirm.

This case is another attempt by Mrs. Leeal to prevent the foreclosure of the home previously owned by her and her late husband, Mati Leeal, who was a party to the case before being dismissed upon Mrs. Leeal's motion after his death. In 2007, to purchase the property, the Leeals took out a \$301,000 loan, which was memorialized by a Note (signed by Mr. Leeal only) that was secured by a Mortgage (signed by both Mr. and Mrs. Leeal), from CitiMortgage, Inc. ("CMI"). CMI, at that time, went by the name of ABN AMRO Mortgage Group, Inc. (ABN AMRO). Defendant Federal National Mortgage Association (Fannie Mae) then purchased the Note from CMI. For several years, CMI remained the loan's servicer. In April 2014, though, CMI assigned both the servicing rights and the Mortgage to Green Tree Servicing, LLC (Green Tree).

On May 7, 2015, the Leeals filed a declaratory judgment action in state court against CMI and ABN AMRO to determine whether, among other things, the Note was void and whether they were obligated to make payments to CMI or ABN AMRO under the Note or Mortgage. But at that time, neither CMI nor ABN AMRO had any connection to the Mortgage or Note. As detailed above, the Note was owned by Fannie Mae and the Mortgage had been assigned to Green Tree, which continued to service the loan and accept loan payments from the Leeals. While the state court action was pending, Green Tree merged into defendant Ditech Financial, LLC (Ditech), which then began accepting loan payments from the Leeals.

On September 16, 2015, the state trial court entered default judgment against CMI and ABN AMRO because they failed to appear. The Leeals then, despite receiving notices of default from Ditech, stopped making payments on their loan.

Consequently, on January 26, 2017, Ditech commenced foreclosure proceedings. While foreclosure proceedings were pending, the Leeals sued Ditech in state court, claiming that it could not foreclose on their Mortgage in view of the judgment entered in the state court action that, according to the Leeals, voided the Note that was secured by the Mortgage. In March 2020, after the case had been removed to the district court, summary judgment was entered in favor of Ditech.

Leeal v. Ditech Financial, LLC, No. 2:17-cv- 10645, 2020 WL 1066100, at *1 (E.D. Mich. Mar. 5, 2020).

The district court reasoned that the default judgment entered against CMI and ABN AMRO—two uninterested parties—in the state court action “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.” *Id.* We affirmed. *Leeal v. Ditech Fin., LLC*, 849 F. App’x 144 (6th Cir. 2021).

Meanwhile, Ditech filed for Chapter 11 bankruptcy. New Residential Investment Group purchased some of Ditech’s mortgage assets, including the Leeals’ Mortgage; as a result, the Mortgage was assigned to defendant NewRez, LLC d/b/a/ Shellpoint Mortgage Servicing (Shellpoint). Shellpoint pursued foreclosure proceedings by publishing notices of sales and scheduled the foreclosure sale for November 30, 2021. However, the day before the scheduled sale, the Leeals filed this action against Shellpoint, Fannie

Mae, and Ditech in state court, alleging, on the whole, that there is a lack of documentation as to who owns their Note and Mortgage and that Fannie Mae has no “permission to foreclose.” The complaint brought claims for “illegal foreclosure by advertisement” and violations of Michigan Compiled Laws § 600.3204 and sought injunctive relief to halt the foreclosure sale. After the state court entered an order maintaining the status quo of the foreclosure proceedings, the case was removed to the district court on the basis of diversity jurisdiction.

The Leeals and the defendants filed cross-motions for summary judgment. Over Mrs. Leeal’s objections, the district court adopted a magistrate judge’s recommendation to grant the defendants’ motion based on res judicata. Thereafter, the district court denied Mrs. Leeal’s motion for reconsideration.

We review de novo both a grant of summary judgment, *Laster v. City of Kalamazoo*, 746 F.3d 714, 726 (6th Cir. 2014), and the application of res judicata, *Prod. Sols. Int’l, Inc. v. Aldez Containers, LLC*, 46 F.4th 454, 457 (6th Cir. 2022). Summary judgment is proper “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a).

In diversity cases, we apply the res judicata rules of the state in which the federal diversity court sits. See *Prod. Sols. Int’l*, 46 F.4th at 457-58. Here, that is Michigan, which takes a “broad approach to the doctrine of res judicata.” *Adair v. State*, 680 N.W.2d 386, 396 (Mich. 2004). The doctrine “bars a second, subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the

second case was, or could have been, resolved in the first.” *Id.*

Res judicata bars review of Mrs. Leeal’s claims. First, the prior federal action—which, contrary to Mrs. Leeal’s argument, was filed by both her and Mr. Leeal—was decided on the merits when the district court granted summary judgment in favor of Ditech. That decision was final and was affirmed by this court.

Second, both the prior federal action and the present action were asserted against Ditech. Although the present action is also asserted against Shellpoint and Fannie Mae, Mrs. Leeal does not dispute that those entities are in privity with Ditech. The Mortgage was purchased from Ditech and assigned to Shellpoint, making Shellpoint a successor in interest for res judicata purposes. And in the prior federal action, a Fannie Mae employee attested that Fannie Mae was the current owner of the loan and that Ditech was the loan’s servicer at that time, making Fannie Mae a nonparty who was “adequately represented” by a party (Ditech) to the original suit. *Adair*, 680 N.W.2d at 397.

Third, the issues raised in the present action were resolved, or could have been resolved, in the prior federal action. In the prior federal action, the district court determined—and we affirmed—that Ditech, then the loan servicer and holder of the Mortgage, could lawfully foreclose on the Mortgage notwithstanding the prior state-court default judgment, which rendered the Mortgage void between only the Leeals and CMI and ABN AMRO, not the Leeals and Ditech. *Leeal*, 2020 WL 1066100, at *1, *4-7; see *Leeal*, 849 F. App’x at 145-46. In the present action, the Leeals sought relief barring the defendants from continuing with foreclosure proceedings because the documents allegedly do not specify that the defendants have the

authority to do so. In other words, in both cases, the Leeals maintained that the defendants could not lawfully foreclose on their Mortgage and residential property and attempted to prevent them from doing so. Inasmuch as the present complaint challenges the same conduct—i.e., alleged unlawful foreclosure proceedings—that the Leeals challenged in the prior federal action, the claims raised in their present complaint could have been raised in that action. The district court therefore properly determined that Mrs. Leeal's claims are barred by res judicata.

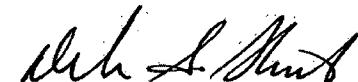
None of the arguments that Mrs. Leeal raises on appeal alters this conclusion. Her arguments all hinge on the premise that res judicata does not apply because (1) she did not sign the Note and signed the Mortgage only as a “dower, a non-borrower” and (2) Mr. Leeal—not she—is liable for the loan’s debt, which she claims was “extinguish[ed] upon [his] death.” We disagree. While Mrs. Leeal repeatedly argues that she did not sign, is not a borrower to, and is not liable on the Note, she could have—and should have—raised that argument in the prior federal action. *See Adair*, 680 N.W.2d at 398. In any event, Mrs. Leeal is bound by the terms of the Mortgage that she signed—i.e., the instrument that creates a security interest in the residential property and gives Shellpoint the authority to foreclose. True, Mrs. Leeal is not liable for the loan’s indebtedness, but, as aptly stated by the district court, “the fact that Mrs. Leeal was not herself obligated to repay the Note has no bearing on Shellpoint’s right or ability to foreclose on the Mortgage.” So even if the loan’s debt was “extinguish[ed] upon [Mr. Leeal’s] death”—an assertion for which Mrs. Leeal provides no legal authority in support—Mrs. Leeal was bound by

the terms of the Mortgage, including its terms that give Shellpoint the right to foreclose.

Finally, Mrs. Leeal argues that she has a “new claim” that arose after Mr. Leeal’s death and that is not barred by res judicata because it was not “ripe” at the time of the prior federal action. But if so, then she should have sought leave to amend her *complaint*—which she filed with Mr. Leeal while he was alive—as opposed to leave to amend the *case caption*. *See* Fed. R. Civ. P. 15(a)(2). She did not and cannot do so now. *See Mann v. Conlin*, 22 F.3d 100, 103 (6th Cir. 1994) (concluding that the plaintiffs’ argument that they should have been allowed to amend their complaint was not properly before this court because they “never requested leave to amend their complaint” in the district court).

Because Mrs. Leeal’s claims are barred by res judicata, we **AFFIRM** the district court’s judgment.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

United States Court of Appeals for the Sixth Circuit

U.S. Mail Notice of Docket Activity

The following transaction was filed on 06/22/2023.

Case Name:Malka Leeal v. NewRez LLC, et al

Case Number: 22-1917

Docket Text:

ORDER filed: Because Mrs. Leeal's claims are barred by res judicata, we AFFIRM the district court's judgment. Decision not for publication, pursuant to FRAP 34(a)(2)(C). Mandate to issue. Alan E. Norris, Circuit Judge; Eugene E. Siler, Jr., Circuit Judge and Eric E. Murphy, Circuit Judge.

The following documents(s) are associated with this transaction:

Document Description: Order

Notice will be sent to:

Ms. Malka Leeal
29249 Chelsea Crossing
Farmington Hills, MI 48331-0000

A copy of this notice will be issued to:

Ms. Kinikia D. Essix Mr. Steven A. Jacobs

No. 22-1917

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Jun 22, 2023

DEBORAH S. HUNT, Clerk

MALKA LEEAL,

Plaintiff-Appellant,

v.

NEWREZ LLC, dba Shellpoint Mortgage Servicing;
FEDERAL NATIONAL MORTGAGE ASSOCIATION;
DITECH FINANCIAL LLC, fka
Green Tree Servicing, LLC, Defendants-Appellees.

Before: NORRIS, SILER, and MURPHY, Circuit
Judges.

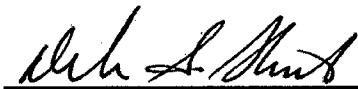
JUDGMENT

On Appeal from the United States District Court for
the Eastern District of Michigan at Flint.

THIS CAUSE was heard on the record from the
district court and was submitted on the briefs
without oral argument.

INCONSIDERATION THEREOF, it is ORDERED
that the judgment of the district court is
AFFIRMED.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MATI LEEAL and MALKA LEEAL,
Plaintiffs, Civil Action No. 22-10017
v. Matthew F. Leitman
United States District Judge
NEWREZ LLC d/b/a SHELLPOINT
MORTGAGE SERVICING, *et al.*,
Defendants.

**REPORT AND RECOMMENDATION TO GRANT
DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT (ECF No. 12), TO DENY
PLAINTIFFS' MOTION FOR SUMMARY
JUDGMENT (ECF No. 9), AND TO DISMISS
PLAINTIFFS' COMPLAINT**

Plaintiffs Mati Leeal and Malka Leeal (collectively the “Leeals”)¹ filed their complaint in the Oakland County Circuit Court against defendants NewRez LLC, d/b/a Shellpoint

¹ On April 6, 2022, Malka Leeal filed a “motion to amend case caption,” in which she seeks to remove Mati Leeal as a named plaintiff because he “passed away on August 10, 2022.” (ECF No. 17, PageID.458). Obviously, given the motion’s filing date, the August 10, 2022 date cannot be correct. Indeed, it appears Mati Leeal had passed away prior to the underlying complaint being filed in the Oakland County Circuit Court on November 29, 2021. (ECF No. 1-3, PageID.12). While Malka Leeal’s motion to amend has not been referred to the undersigned, the resolution of that motion has no bearing on any of the legal issues discussed herein.

Mortgage Servicing (“Shellpoint”) and Federal National Mortgage Association (“Fannie Mae”) (collectively “Defendants”), who then removed the action to this Court.² (ECF No. 1). In their complaint, the Leeals challenge the ability of Shellpoint to foreclose on a mortgage (the “Mortgage”) encumbering real property commonly known as 29249 Chelsea Crossing, Farmington Hills, Michigan (the “Property”). (*Id.*).

On March 2, 2022, Defendants filed a Motion for Summary Judgment Pursuant to Fed. R. Civ. P. 56(a). (ECF No. 12). On March 23, 2022, the Leeals filed two, virtually identical responses to Defendants’ motion (ECF Nos. 14, 15), and on April 5, 2022, Defendants filed a reply brief in support of their motion (ECF No. 16). Additionally, the Leeals filed their own motion for summary judgment on February 10, 2022 (ECF No. 9), to which Defendants responded on March 2, 2022 (ECF No. 11).

An Order of Reference was entered on March 7, 2022, referring both dispositive motions to the undersigned for a report and recommendation pursuant to 28 U.S.C. § 636(b)(1)(B). (ECF No. 13). Having reviewed the pleadings and other papers on file, the Court finds that the facts and legal issues are adequately presented in the parties’ briefs and on the record, and it declines to order a hearing at this time.

² Also named as a defendant in this action is Ditech Financial, f/k/a Green Tree Servicing LLC (“Ditech”). However, there is no indication that this entity has been served with process in this case, and no appearance has been entered on its behalf. Regardless, the same arguments advanced by Shellpoint and Fannie Mae, and addressed herein, apply equally with respect to Ditech.

I. RECOMMENDATION

For the reasons set forth below, **IT IS RECOMMENDED** that Defendants' Motion for Summary Judgment (**ECF No. 12**) be **GRANTED**, Plaintiffs' Motion for Summary Judgment (**ECF No. 9**) be **DENIED**, and Plaintiffs' complaint be **DISMISSED**.

II. REPORT

A. Factual Background

1. The Mortgage and Prior Litigation

Much of the background surrounding the Mortgage at issue in this case was aptly summarized by the Honorable Matthew F. Leitman in another federal case (the "Prior Federal Action") in which the Leeals challenged the validity of the same Mortgage at issue in this case and the servicer's ability to enforce its terms, *Leeal v. Ditech Financial, LLC*, No. 17-10645, 2020 WL 1066100 (E.D. Mich. Mar. 5, 2020):

On November 16, 2007, the Leeals took out a \$301,000 mortgage loan from ABN AMRO Mortgage Group, Inc. ("ABN AMRO"). 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"). At the time of this transaction, ABN AMRO was an assumed name for CitiMortgage, Inc. ("CMI"). Thus, CMI was the actual lender of the funds to the Leeals.

On December 1, 2007, [Fannie Mae] purchased the Leeals' loan from CMI. Fannie Mae has owned the Leeals' loan ever since.

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. 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.

On April 1, 2014, Green Tree Servicing, LLC ("Green Tree") acquired the servicing rights for the loan from CMI. Both CMI and Green Tree notified the Leeals that the servicing of the loan had been transferred to Green Tree. On April 11, 2014, CMI also assigned the Mortgage to Green Tree, and CMI recorded this assignment of the Mortgage. The Leeals began making their loan payments to Green Tree in May 2014. The Leeals also corresponded with Green Tree concerning the servicing of their loan.

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"). 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.

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.

With the State-Court DJ Action pending, Green Tree – which, again, was unaware of that action – continued to service the Leeals’ loan. And the Leeals continued sending loan payments to Green Tree.

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. On August 31, 2015, Green Tree merged into Ditech and started operating under Ditech’s name. Thereafter, the Leeals made loan payments to Ditech.

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”).

* * * *

On September 17, 2015, one day after entry of the State-Court Default Judgment, Ditech received the Leeals’ last payment on their loan. At that

point, the Leeals still owed \$299,980 in principal on the loan. But they stopped making payments.

Ditech mailed the Leeals notices of default on November 27, 2015, and May 13, 2016. The Leeals still did not make any payments. So, on January 26, 2017, Ditech began foreclosure by advertisement proceedings on the Mortgage.

Id. at *1-2 (citations omitted).

On February 23, 2017, the Leeals filed a second lawsuit, challenging the ability of Ditech to foreclose upon the Mortgage based upon the State-Court Default Judgment. The case was removed to this Court, becoming the above-referenced Prior Federal Action. (Civil Action No. 17-10645). On March 5, 2020, Judge Leitman issued an Opinion and Order finding that the State-Court Default Judgment did not apply to Ditech and Fannie Mae, leaving the Mortgage valid and intact, and allowing enforcement of the Mortgage to proceed. *See Leeal*, 2020 WL 1066100, at *5-7.

The Leeals appealed that decision to the Sixth Circuit Court of Appeals, which affirmed, holding that the State-Court Default Judgment had no effect on the subsequent servicers or Fannie Mae, since the judgment was obtained against parties no longer having an interest in the Mortgage or Note. *Leeal v. Ditech Financial, LLC*, 849 F. App'x 144, 145-46 (6th Cir. 2021). Thus, it was determined that the Mortgage was valid and enforceable against the Leeals, and that it could be foreclosed upon. *Id.*

2. The Current Foreclosure and Litigation

On February 11, 2019, Ditech Holding Corporation, including its affiliate Ditech, filed for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the Southern District of New York. See *In re: Ditech Holding Corp., et al.*, Case No. 19- 10412. On October 1, 2019, New Residential Investment Group completed the purchase of some of Ditech’s mortgage assets. (ECF No. 12-6). As a result of the asset purchase, an assignment of the Mortgage was recorded to NewRez, LLC. (ECF No. 12-7). On October 11, 2021, an Assignment of Mortgage to NewRez, LLC, d/b/a Shellpoint Mortgage Servicing (i.e., defendant Shellpoint) was recorded with the Oakland County Register of Deeds. (ECF No. 12-8).

On November 2, 2021, Shellpoint initiated foreclosure proceedings by publishing the Notice of Sale on November 2, November 9, November 16, and November 23, 2021, in the *Oakland County Legal News*. (ECF No. 12-9). On November 5, 2021, a Notice of Sale was posted on the Property. (ECF No. 12-10). The foreclosure sale originally was scheduled for November 30, 2021.

However, on November 29, 2021, the Leeals filed the instant action in the Oakland County Circuit Court, naming Shellpoint and Fannie Mae as defendants.³ (ECF No. 1-3). In the complaint, despite the prior judicial findings that “[o]n December 1, 2007, [Fannie Mae] purchased the Leeals’ loan from CMI ... [and] has owned the Leeals’ loan ever since,” the Leeals allege principally that because “there is no mortgage assignment from ABN Amro ... Defendant

³ As the facts set forth herein demonstrate, Fannie Mae is neither the mortgagee nor the party seeking to foreclose; thus, it is unnecessarily named as a party.

[Fannie Mae] lacks the legal authority to foreclose on the [Property]" and that "Defendant [Ditech] was granted permission to foreclose, not [Fannie Mae]."
(*Id.*, PageID.15). The Leeals bring the following claims related to that general allegation: (1) illegal foreclosure by advertisement; (2) violation of MCL 600.3204; and (3) injunctive relief and request for an *ex parte* temporary restraining order ("TRO"). (*Id.*). Shellpoint appeared at the TRO hearing scheduled for December 15, 2021, and an order was entered maintaining the status quo of the foreclosure proceedings until further order of the Court. On January 4, 2022, the state court action was removed to this Court. (ECF No. 1). The foreclosure sale has been adjourned on a week-to-week basis pending further order of this Court.

Defendants now move for summary judgment, arguing that the Leeals' claims are barred by res judicata. (ECF No. 12). The Leeals have filed a cross-motion for summary judgment, arguing that Malka Leeal cannot be bound by decisions in the Prior Federal Action "because she is and never was a borrower[.]" (ECF No. 9, PageID.113). These arguments are addressed below.

B. Standard of Review

Federal Rule of Civil Procedure 56 provides: "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a); *see also Pittman v. Cuyahoga County Dep't of Children & Family Servs.*, 640 F.3d 716, 723 (6th Cir. 2011). A fact is material if it might affect the outcome of the

case under governing law. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In determining whether a genuine issue of material fact exists, the court assumes the truth of the non-moving party's evidence and construes all reasonable inferences from that evidence in the light most favorable to the non-moving party. *See Ciminillo v. Streicher*, 434 F.3d 461, 464 (6th Cir. 2006).

When the party without the burden of proof (generally the defendant) seeks summary judgment, that party bears the initial burden of informing the court of the basis for its motion and must identify particular portions of the record that demonstrate the absence of a genuine dispute as to any material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986); *Alexander v. CareSource*, 576 F.3d 551, 558 (6th Cir. 2009). "Once the moving party satisfies its burden, 'the burden shifts to the nonmoving party to set forth specific facts showing a triable issue.'" *Wrench LLC v. Taco Bell Corp.*, 256 F.3d 446, 453 (6th Cir. 2001) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986)). In response to a summary judgment motion, the opposing party may not rest on its pleadings, nor "rely on the hope that the trier of fact will disbelieve the movant's denial of a disputed fact" but must make an affirmative showing with proper evidence in order to defeat the motion." *Alexander*, 576 F.3d at 558 (quoting *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479 (6th Cir. 1989)). Indeed, "[t]he failure to present any evidence to counter a well-supported motion for summary judgment alone is grounds for granting the motion." *Id.* (quoting *Everson v. Leis*, 556 F.3d 484, 496 (6th Cir. 2009)). "Conclusory statements unadorned with supporting facts are insufficient to establish a factual

dispute that will defeat summary judgment.” *Id.* at 560 (citing *Lewis v. Philip Morris, Inc.*, 355 F.3d 515, 533 (6th Cir. 2004)).

A moving party with the burden of proof (typically the plaintiff) faces a “substantially higher hurdle.” *Arnett v. Myers*, 281 F.3d 552, 561 (6th Cir. 2002). As set forth above, the moving party without the burden of proof needs only show that the opponent cannot sustain his burden at trial. “But where the moving party has the burden – the plaintiff on a claim for relief or the defendant on an affirmative defense – his showing must be sufficient for the court to hold that no reasonable trier of fact could find other than for the moving party.” *Calderone v. U.S.*, 799 F.2d 254, 259 (6th Cir. 1986) (internal citations omitted).

Accordingly, summary judgment in favor of the plaintiff “is inappropriate when the evidence is susceptible of different interpretations or inferences by the trier of fact.” *Harris v. Kowalski*, No. 05-cv-722, 2006 WL 1313863, at *3 (W.D. Mich. May 12, 2006) (quoting *Hunt v. Cromartie*, 526 U.S. 541, 553 (1999)).

C. Analysis

1. *Defendants’ Motion for Summary Judgment*

In their motion for summary judgment, Defendants argue that the Leeals’ instant action to stop the foreclosure sale is barred by the doctrine of res judicata because it has already been judicially determined that the Mortgage is valid and capable of being foreclosed on. (ECF No. 12, PageID.257-60). The preclusive effects of a former case are referred to collectively as the doctrine of “res judicata.” *See Migra v. Warren City School Dist. Bd. of Educ.*, 465 U.S. 75, 77 n.1 (1984) (citing Restatement (Second) of

Judgments, Introductory Note before Ch. 3 (1982); 18 C. Wright, A. Miller, & E. Cooper, *Federal Practice and Procedure* § 4402 (1981)). “Res judicata” includes “two preclusion concepts: ‘issue preclusion’ and ‘claim preclusion.’” *Id.* “Issue preclusion refers to the effect of a judgment in foreclosing relitigation of a matter that has been litigated and decided.” *Id.* (citing Restatement, *supra*, § 27). This is also referred to “as direct or collateral estoppel.” *Id.* “Claim preclusion refers to the effect of a judgment in foreclosing litigation of a matter that never has been litigated, because of a determination that it should have been advanced in an earlier suit.” *Id.*

“When the judgment upon which a party relies to make its claim preclusion argument was issued by a federal court,” as in this case, “we look to federal law to determine its preclusive effect.” *Heike v. Central Michigan Univ. Bd. of Trustees*, 573 F. App’x 476, 479 (6th Cir. 2014) (citing *Hamilton’s Bogarts, Inc. v. Michigan*, 501 F.3d 644, 650 (6th Cir. 2007)). Under federal law, claim preclusion applies when (1) there is a final decision on the merits in the first action by a court of competent jurisdiction; (2) the second action involves the same parties, or their privies, as the first; (3) the second action raises an issue actually litigated or which should have been litigated in the first action; and (4) there is an identity of claims between the first and second actions. *See id.* at 480 (citing *Sanders Confectionery Prods., Inc. v. Heller Fin. Inc.*, 973 F.2d 474, 480 (6th Cir. 1992)).

a. Final Adjudication on the Merits

Defendants argue that the first element of res judicata is satisfied because the Opinion and Order

issued by Judge Leitman in the Prior Federal Action was a decision granting summary judgment in favor of the moving defendants in that case. (ECF No. 12, PageID.257-58; *see also* ECF No. 12-2). The Leeals do not seriously contest Defendants' assertions that this ruling constituted a final adjudication on the merits. Indeed, courts have recognized that “[t]he grant of summary judgment most certainly constitutes a final adjudication on the merits for purposes of claim preclusion.” *Heike*, 573 F. App’x at 480. Thus, the first element is satisfied.

b. Same Parties or Privies

The second element of res judicata is also satisfied. Although Shellpoint and Fannie Mae were not named as defendants in the Prior Federal Action, they are privies of Ditech, the named defendant in that case, and thus the Leeals’ claims herein are subject to preclusive effect.

“The Sixth Circuit has found a nonparty to be ‘in privity, or sufficiently close to a party in the prior suit so as to justify preclusion,’ in the following three situations: (1) a non-party who has succeeded to a party’s interest in property is bound by any prior judgments against the party; (2) a non-party who controlled the original suit will be bound by the resulting judgment; and (3) federal courts will bind a non-party whose interests were represented adequately by a party in the original suit.” *See In re Air Crash at Detroit Metro. Airport, Detroit, Mich., on Aug. 16, 1987*, 976 F. Supp. 1076, 1079 (E.D. Mich. 1997) (quoting *Becherer v. Merrill Lynch, Pierce, Fenner & Smith*, 43 F.3d 1054, 1069- 70 (6th Cir. 1995)).

In this case, Ditech was the servicer of the loan during the Prior Federal Action. As set forth above, Shellpoint received its interest in the Mortgage on March 23, 2020 (ECF No. 12-7, PageID.305), which was *after* summary judgment was entered in the Prior Federal Action (ECF No. 12-2). Thus, Shellpoint falls into the first category of a non-party who has succeeded to a party's interest in property and is therefore bound by any prior judgment involving its predecessor in interest.

Similarly, Judge Leitman's opinion in the Prior Federal Action makes clear that Fannie Mae was aware of that litigation and, indeed, provided an affidavit to Ditech's counsel to evidence and support the interest it held in the Note. *See Leeal*, 2020 WL 1066100, at *1. Fannie Mae relied on Ditech to adequately represent its interests in that case, and as such was clearly in privity with Ditech. Thus, the second element of res judicata is satisfied.⁴

⁴ Malka Leeal tries to circumvent the application of Judge Leitman's ruling in the Prior Federal Action, arguing that she cannot be bound by this ruling because she "is and never was a borrower, nor did she sue any parties to obtain financial relief." (ECF No. 9, PageID.113). This argument misses the mark. First, the distinction Ms. Leeal now draws between a borrower and a non-borrower could have been litigated in the Prior Federal Action. Second, there is no dispute that Ms. Leeal was a party to the Prior Federal Action. "A 'party' to litigation is [o]ne by or against whom a lawsuit is brought." *United States ex rel Eisenstein v. City of New York*, 556 U.S. 928 (2009). Thus, as one of two individuals who initiated the Prior Federal Action, Ms. Leeal was a party to that action and therefore is bound by the Court's rulings in that case. Third, Shellpoint's foreclosure is with respect to *the Mortgage*, as that is the instrument that secures its interest in the Property. (ECF No. 12-9) ("Notice is given ... that the following mortgage will be foreclosed by a sale of the mortgaged premises"). Thus, the fact that Ms. Leeal was not herself obligated to repay the *Note* has no bearing on Shellpoint's right or ability to foreclose on the *Mortgage*. And, as discussed below, *infra* at 13 n.5, nothing about the foreclosure itself was improper.

c. Issues Actually Litigated or that Should Have Been Litigated

As the Sixth Circuit stated in *Heike*, the purpose of this third element of claim preclusion is to “compel litigants to bring all related claims in a single lawsuit.” See *Heike*, 573 F. App’x at 482. The Court stated that “the third element of claim preclusion not only prohibits parties from bringing claims they already have brought, but also from bringing those claims they should have brought.” *Id.* (citing *Sanders*, 973 F.2d at 482).

Here, the Leeals allege that the Mortgage cannot be foreclosed for various reasons, including because Fannie Mae has no authority to do so. (ECF No. 1-3, PageID.15, 16). Specifically, the Leeals argue that no assignment of mortgage exists from ABN AMRO to Fannie Mae, and because the Court only issued an order allowing Ditech to foreclose, Defendants cannot foreclose. (*Id.*, PageID.14-15). This argument is flawed in two respects. First, it ignores Judge Leitman’s finding in the Prior Federal Action that “[o]n December 1, 2007, [Fannie Mae] purchased the Leeals’ loan from CMI … [and] has owned the Leeals’ loan ever since.” Second, it misconstrues the portion of Judge Leitman’s order determining that the State-Court Default Judgment Action had no effect upon the Mortgage and Note since ABN AMRO no longer had an interest at the time the judgment was entered. Thus, it was determined that Ditech was servicing a valid mortgage, with Fannie Mae holding a valid note, both of which were capable of being enforced. See *Leeal*, 2020 WL1066100, at *6-7. As such, the Leeals’ claim that the Mortgage is

unenforceable is both incorrect, and subject to res judicata's bar from being relitigated in this case.⁵

d. Identity of Claims

With respect to the fourth element of res judicata, “[c]auses of action share an identity where the facts and events creating the right of action and the evidence necessary to sustain each claim are the same.” *Sanders*, 973 F.2d at 484. Moreover, even if this claim was not barred by the doctrine of res judicata, it would fail as a matter of law as all of MCL 600.3204’s requirements for foreclosing a mortgage by advertisement are satisfied. Section 3204 provides, in relevant part:

1. A party may foreclose a mortgage by advertisement if all of the following circumstances exist:
 - a. A default in a condition of the mortgage has occurred, by which the power to sell became operative.

⁵ Similarly, the Leeals’ Count II claim for violating MCL 600.3204 lacks merit. (ECF No. 1-3, PageID.16). MCL 600.3204 sets forth the specific circumstances under which a party may foreclose a mortgage by advertisement, and there is no reason the Leeals could not have brought in the Prior Federal Action a claim under this statute, asserting that an assignment of mortgage to Fannie Mae was needed in order to foreclose.

^{b.} An action or proceeding has not been instituted, at law, to recover the debt

secured by the mortgage or any part of the mortgage or, if an action or proceeding has been instituted, either the action or proceeding has been discontinued or an execution on a judgment rendered in the action or proceeding has been returned unsatisfied, in whole or in part. . . .

- c. The mortgage containing the power of sale has been properly recorded.
- d. The party foreclosing the mortgage is either the owner of the indebtedness or of an interest in the indebtedness secured by the mortgage or the servicing agent of the mortgage.

MCL 600.3204(1)(a)-(d).

Here, (a) a default in a condition of the Mortgage occurred when the Leeals failed to continue to make payments when due; (b) rather than commence an action to recover the debt, Shellpoint commenced the foreclosure proceedings that are the subject of the instant action; (c) the Mortgage contains the requisite power of sale language and was properly recorded; and (d) Shellpoint – the party foreclosing the mortgage – is the mortgagee of record. (ECF No. 12-5, PageID.290). Preclusion law for determining whether two suits involve the same claim or cause of action depends on factual overlap.” *United States v. Tohono O’odham Nation*, 563 U.S. 307, 316 (2011).

Here, the Leeals’ claims in the Prior Federal Action share an identity to those asserted in this lawsuit because all of the claims stem from the same set of operative facts – namely, the Leeals’ failure to make Mortgage payments when due and the

(ECF No. 9, PageID.113). As set forth above, see *supra* at 11 n.4, however, there is no merit to this argument. Thus, where the evidence establishes that summary judgment in favor of Defendants is appropriate, it is equally clear that the Leela's motion for summary judgment should be denied.

III. CONCLUSION

For the reasons set forth above, **IT IS RECOMMENDED** that Defendants' Motion for Summary Judgment (**ECF No. 12**) be **GRANTED**, Plaintiffs' Motion for Summary Judgment (**ECF No. 9**) be **DENIED**, and Plaintiffs' complaint be **DISMISSED**.

Dated: June 27, 2022
Ann Arbor, Michigan

s/David R. Grand
DAVID R. GRAND
United States Magistrate
Judge

NOTICE TO THE PARTIES REGARDING OBJECTIONS

The parties to this action may object to and seek review of this Report and Recommendation, but are required to act within fourteen (14) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and Fed.R.Civ.P. 72(b)(2). Failure to file specific objections constitutes a waiver of any further right of appeal.

Thomas v. Arn, 474 U.S. 140 (1985); *Howard v. Secretary of HHS*, 932 F.2d 505, 508 (6th Cir.1991); *United States v. Walters*, 638 F.2d 947, 949–50 (6th Cir.1981). The filing of objections which raise some

issues, but fail to raise others with specificity, will not preserve all the objections a party might have to this Report and Recommendation. *Willis v. Secretary of HHS*, 931 F.2d 390, 401 (6th Cir.1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir.1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this magistrate judge. A party may respond to another party's objections within 14 days after being served with a copy. *See Fed. R. Civ. P. 72(b)(2); 28 U.S.C. §636(b)(1)*. Any such response should be concise, and should address specifically, and in the same order raised, each issue presented in the objections.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or First Class U.S. mail addresses disclosed on the Notice of Electronic Filing on June 27, 2022.

s/Eddrey O. Butts
EDDREY O. BUTTS
Case Manager

No. 22-1917

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MALKA LEEAL,

Plaintiff-Appellant,

FILED
Jul 14, 2023
DEBORAH S. HUNT, Clerk

v.

NEWREZ LLC, dba Shellpoint Mortgage
Servicing; FEDERAL NATIONAL MORTGAGE
ASSOCIATION; DITECH FINANCIAL LLC, fka
Green Tree Servicing, LLC.,

ORDER

Before: NORRIS, SILER, and MURPHY,
Circuit Judges.

Malka Leeal, proceeding pro se, petitions for rehearing of this court's order that affirmed the district court's grant of the defendants' motion for summary judgment based on res judicata. She also moves to expand the record.

Upon consideration, this court concludes that it did not misapprehend or overlook any point of law or fact when it affirmed the district court's judgment. *See* Fed. R. App. P. 40(a). Therefore, the motion to expand the record and the petition for rehearing are **DENIED**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

United States Court of Appeals for the Sixth Circuit

U.S. Mail Notice of Docket Activity

The following transaction was filed on 07/14/2023.

Case Name:Malka Leeal v. NewRez LLC, et al

Case Number: 22-1917

Docket Text:

ORDER filed : Upon consideration, this court concludes that it did not misapprehend or overlook any point of law or fact when it affirmed the district court's judgment. See Fed. R. App. P. 40(a). Therefore, the motion to expand the record and the petition for rehearing are DENIED. Alan E. Norris, Circuit Judge; Eugene E. Siler, Jr., Circuit Judge and Eric E. Murphy, Circuit Judge.

The following documents(s) are associated with this transaction:

Document Description: Order

Notice will be sent to:

Ms. Malka Leeal
29249 Chelsea Crossing
Farmington Hills, MI 48331-0000

A copy of this notice will be issued to:

Ms. Kinikia D. Essix
Mr. Steven A. Jacobs

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
100 EAST FIFTH STREET, ROOM 540 POTTER
STEWART U.S. COURTHOUSE
CINCINNATI, OHIO 45202-3988

Deborah S. Hunt
Clerk

Tel. (513) 564-7000
www.ca6.uscourts.gov

Filed: July 24, 2023

Ms. Kinikia D. Essix
Eastern District of Michigan at Flint
600 Church Street
Suite 140 Federal Building
Flint, MI 48502-0000

Re: Case No. 22-1917, Malka Leeal v. NewRez LLC, et
al Originating Case No. 4:22-cv-10017

Dear Ms. Essix:

Enclosed is a copy of the mandate filed in this case.

Sincerely yours,

s/Patricia J. Elder,
Senior Case Manager
for Gretchen Abruzzo, Case Manager

cc: Mr. Steven A. Jacobs
Ms. Malka Leeal

Enclosure

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No: 22-1917

Filed: July 24, 2023

MALKA LEEAL
Plaintiff - Appellant

v.

NEWREZ LLC, dba Shellpoint Mortgage Servicing;
FEDERAL NATIONAL MORTGAGE ASSOCIATION;
DITECH FINANCIAL LLC, fka Green Tree Servicing,
LLC

Defendants - Appellees

MANDATE

Pursuant to the court's disposition that was filed 06/22/2023 the mandate for this case hereby issues today.

COSTS: None

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MALKA LEEAL,

Plaintiffs,

Case No. 22-cv-10017

Hon. Matthew F. Leitman

v.

NEWREZ LLC, *et al.*,

Defendants.

JUDGMENT

In accordance with the Order entered on this day:

IT IS ORDERED AND ADJUDGED that
JUDGMENT is entered in favor of Defendants and
against Plaintiff.

KINIKIA ESSIX
CLERK OF THE COURT

BY: s/Holly A. Ryan
DEPUTY CLERK

APPROVED:

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

Dated: September 6, 2022
Detroit, Michigan

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MALKA LEEAL,

Plaintiffs,

Case No. 22-cv-10017

Hon. Matthew F. Leitman

v.

NEWREZ LLC, *et al.*,

Defendants.

**ORDER (1) OVERRULING OBJECTIONS TO
REPORT AND RECOMMENDATION (ECF No.
22); (2) ADOPTING RECOMMENDED
DISPOSITION OF REPORT AND
RECOMMENDATION (ECF No. 21);
(3) GRANTING DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT (ECF No. 12); (4)
DENYING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT (ECF No. 9); AND (5)
GRANTING PLAINTIFF'S MOTION
TO AMEND CASE CAPTION (ECF No. 17)**

This civil action is at least the second attempt by Plaintiff Malka Leeal¹to avoid the legitimate

¹ Malka Leeal and her husband Mati filed this action as co-Plaintiffs on November 29, 2021. (See Compl., ECF No. 1-3.) On April 6, 2022, Malka Leeal filed a motion to amend the case caption and remove her husband as a plaintiff due to his death. (See Mot., ECF No. 17.) Pursuant to Federal Rule of Civil Procedure 25(a)(2), the Court GRANTS Malka Leeal's motion, notes Mati Leeal's death for the record, DISMISSES Mati Leeal as a plaintiff, and AMENDS the case caption to reflect that Malka Leeal is the sole Plaintiff in this action

foreclosure of the mortgage on her residence. This Court previously rejected one such attempt, and the Sixth Circuit affirmed this Court's decision. In this action, the assigned Magistrate Judge has issued a report and recommendation in which he recommends that the Court again enter judgment against Leeal (the "R&R"). (See R&R, ECF No. 21.) Leeal then filed objections to the R&R. (See Objections, ECF No. 21.) The Court has carefully reviewed the objections and concludes they are wholly without merit. Accordingly, for the reasons explained below, Leeal's objections are **OVERRULED**, the recommended disposition of the R&R is **ADOPTED**, and this action will be **DISMISSED**.

I

The broader factual background of this action is set forth in the R & R. (See R&R, ECF No. 21, PageID.475-480.) The essential facts for purposes of this order are that in 2007, the Leeals took out a \$301,000 mortgage loan for a home in Farmington Hills, Michigan. Then, in 2015, the Leeals stopped paying their mortgage. When the Leeals' mortgage servicer, Ditch Financial, LLC, initiated foreclosure proceedings due to the Leaals' failure to pay, the Leeals sued. On March 5, 2020, this Court issued an Opinion and Order ruling against the Leeals and allowing the foreclosure to proceed. *See Leeal v. Ditech Financial, LLC*, 2020 WL 1066100 (E.D. Mich. Mar. 5, 2020). The Leeals then appealed to the Sixth Circuit. That court affirmed and held that the mortgage was valid and could be foreclosed upon. *See Leeal v. Ditech Financial, LLC*, 849 F. App'x 144 (6th Cir. 2021).

While that litigation was pending, Ditech filed for bankruptcy, and the Leeals' mortgage was assigned

to a new company, NewRez, LLC. (See ECF No. 12-7.) NewRez, which was doing business as Shellpoint Mortgage Servicing, re-initiated foreclosure proceedings in November 2021. But one day before the scheduled foreclosure sale, the Leeals filed this action in the Oakland County Circuit Court in which they again sought to stop the foreclosure. (See Compl., ECF No. 1-3.) Defendants thereafter removed this action to this Court. (See Notice of Removal, ECF No. 1.)

There are now two motions pending before the Court. First, Defendants have moved for summary judgment based on *res judicata*. (See Defs. Mot., ECF No. 12.) Leeal has also moved for summary judgment. (See Leeal Mot., ECF No. 9.) In Leeal's motion, she insists that she is not bound by the Court's previous rulings against her. (See *id.*)

Both motions were referred to the assigned Magistrate Judge. On June 27, 2022, he issued the R&R in which he recommended that the Court (1) grant Defendants' motion and (2) deny Leeal's motion. (See R&R, ECF No. 21.) The Magistrate Judge first carefully reviewed all of the elements of *res judicata* and concluded that Leeal's attempt to avoid foreclosure was barred by that doctrine. (See *id.*, PageID.482-487.) He therefore recommended that the Court grant Defendants' motion for summary judgment. (See *id.*) He then recommended that the Court deny Leeal's motion and dismiss her Complaint because there was "no merit" to Leeal's argument that she was not bound by the Court's previous rulings. (*Id.*, PageID.487- 488; *see also id.*, PageID.484-485 at n.4.) Leeal filed objections to the R&R on July 11, 2022. (See Objections, ECF No. 22.) The Court will address each objection individually below.

II

When a party objects to portions of a Magistrate Judge's report and recommendation, the Court reviews those portions *de novo*. *See Fed.R.Civ.P. 72(b)(3); Lyons v. Comm'r of Soc. Sec.*, 351 F.Supp.2d 659, 661 (E.D. Mich. 2004).

The Court has no duty to conduct an independent review of the portions of the R&R to which the parties did not object. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985). “An ‘objection’ that does nothing more than state a disagreement with a magistrate’s suggested resolution, or simply summarizes what has been presented before, is not an ‘objection’ as that term is used in this context.” *Aldrich v. Bock*, 327 F.Supp.2d 743, 747 (E.D. Mich. 2004). Moreover, “[t]he filing of vague, general, or conclusory objections does not meet the requirement of specific objections and is tantamount to a complete failure to object.” *Zimmerman v. Cason*, 354 F. App’x 228, 230 (6th Cir. 2009).

III

Leeal’s objections are difficult to follow and largely appear to repeat arguments that she has made before either in previous litigation, in this action before the Magistrate Judge, or both. To the extent that Leeal’s objections fail to “specifically address how [the Magistrate Judge’s] factual and legal recommendations were incorrect,” they are insufficient as a matter of law. *Fields v. Lapeer 71-A District Court Clerk*, 2 F. App’x 481, 482 (6th Cir. 2001) (holding that plaintiff had “waived any challenge to the district court’s conclusions” because his objections to report and recommendation did not specifically address the Magistrate Judge’s reasoning). *See also Miller v.*

Currie, 50 F.3d 373, 380 (6th Cir. 1995) (“[A] general objection to a magistrate’s report, which fails to specify the issues of contention, does not satisfy the requirement that an objection be filed”). Likewise, to the extent that Leeal simply repeats arguments that she presented on summary judgment to the Magistrate Judge, the objections fail. *See, e.g., Potter v. Comm’r of Soc. Sec.*, 2015 WL 452173, at *4 (E.D. Mich. Feb. 3, 2015) (holding objections to report and recommendation were waived where objections were “nothing more than a re-submission of [plaintiff’s] original motion for summary judgment” and did not address reasoning of the Magistrate Judge’s report). Simply put, because Leeal’s objections largely do not address the Magistrate Judge’s reasoning or legal analysis in any real detail, and instead mainly repeat many of the same arguments that the Court has previously rejected, her objections must be overruled.

While the Court has concluded that the objections are deficient as a general matter, the Court will nonetheless proceed to address them on an individual basis. Leeal has raised four objections to the R&R. The Court has carefully reviewed each of them and concludes that they are without merit.

In Leeal’s first objection, she objects to what she calls a “standing” provision of the R&R. (*See Objections*, ECF No. 22, PageID.496.) She then quotes two provisions of the factual background section of the R&R which described (1) the Court’s previous ruling against Leeal and (2) the claims Leeal brought in this action. (*See id.*) Leeal appears to argue that the Magistrate Judge erred when he failed to “include” in this section of the R&R a discussion of Leeal’s 2015 state-court case that she had filed against her former mortgage servicer. (*Id.*, PageID.496-497.) This

objection is nearly impossible to understand, objects only to the background facts described by the Magistrate Judge, and does not purport to show any legal error. Moreover, contrary to Leeal’s argument in this objection, the Magistrate Judge did discuss Leeal’s 2015 state-court litigation, and he explained how this Court had previously held that a default judgment that Leeal had obtained in that suit did not allow her to avoid the foreclosure initiated by Ditech. (See R&R, ECF No. 21, PageID.477-478.) This objection is therefore **OVERRULED**.

Leeal next objects to a second “standing provision” of the R&R. (See Objections, ECF No. 22, PageID.498-499.) More specifically, Leeal objects to the following sentence in the R&R: “Unsurprisingly, neither CMI no[r] ABN ARMO []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.” (*Id.*, PageID.498, quoting R&R, ECF No. 21, PageID.477.) This objection fails for several reasons. First, the quoted sentence is not one written by the Magistrate Judge. It was written by *this* Court in its March 5, 2020, ruling granting summary judgment to Ditech and against the Leeals in the prior action before this Court. *See Leeal*, 2020 WL 1066100, at *2. Thus, to the extent that Leeal believed that that statement was in error, she needed to raise that argument in *that* case. Second, Leeal has not persuaded the Court that the statement to which she objects is in any way material to this case. Finally, Leeal has not shown any legal error by the Magistrate Judge in quoting this sentence in the factual background section of the R&R. For all of these reasons, this objection is **OVERRULED**.

Leeal's third objection in its entirety is as follows: "Plaintiff Objection [sic] to the below provision of the Magistrate Judge's Report and [R]ecomendation. 'Ms. Leeal could have litigated in the Prior Federal Action.' (Objections, ECF No. 22, PageID.499.) To the extent that Leeal is purporting to quote the R&R in this objection, the quote she identifies is not found in the R&R. It appears that Leeal may instead be referencing the Magistrate Judge's analysis in footnote four of the R&R. In that footnote, the Magistrate Judge rejected Leeal's argument that she was not bound by the Court's ruling against her in her previous suit against Ditech:

Malka Leeal tries to circumvent the application of Judge Leitman's ruling in the Prior Federal Action, arguing that she cannot be bound by this ruling because she "is and never was a borrower, nor did she sue any parties to obtain financial relief." (ECF No. 9, PageID.113). This argument misses the mark. First, the distinction Ms. Leeal now draws between a borrower and a nonborrower could have been litigated in the Prior Federal Action. Second, there is no dispute that Ms. Leeal was a party to the Prior Federal Action. "A 'party' to litigation is [o]ne by or against whom a lawsuit is brought." *United States ex rel Eisenstein v. City of New York*, 556 U.S. 928 (2009). Thus, as one of two individuals who initiated the Prior Federal Action, Ms. Leeal was a party to that action and therefore is bound by the Court's rulings in that case.

(R&R, ECF No. 21, PageID.484 n.4.) Leeal has not shown any error in this analysis. While Leeal insists that she was a "non-

party” to the previous action against Ditech (Objections, ECF No. 22, PageID.500), Leeal is wrong. That case was brought in the name of both Mati and Malka Leeal. Indeed, the caption of the Leeals’ Complaint in that action lists both Mati and Malka Leeal as “Plaintiffs” and it was signed and verified by *both* Mati and Malka Leeal. (See Complaint, E.D. Mich. Case No. 17-10645, ECF No. 1, PageID.12, 21.) Leeal was therefore a party to the previous action, and for all of the reasons cogently explained by the Magistrate Judge, Leeal is bound by the results of that litigation. Leeal’s third objection is therefore **OVERRULED**.

Finally, in Leeal’s fourth objection, she argues that the Magistrate Judge erred when he concluded that her action here is barred by the doctrine of *res judicata*. (See Objections, ECF No. 22, PageID.501-504.) This objection does no more than generally take issue with the Magistrate Judge’s overall conclusion and repeat many of the same arguments that Leeal raised in her previous three objections. As with her other objections, Leeal has not shown any error in the Magistrate Judge’s legal analysis. Thus, for all of the reasons explained above, this objection is **OVERRULED**.

IV

For more than seven years, Leeal has avoided paying her mortgage and has used litigation to avoid valid foreclosures initiated due to her failure to pay. The time for Leeal to face the consequences of her failure to pay has come. Accordingly, for the reasons explained above, **IT IS HEREBY ORDERED** as follows:

- Leeal’s motion to amend the case caption (ECF No. 17) is **GRANTED**;

- Leeal's objections to the R&R (ECF No. 22) are **OVERRULED**;
- The recommended disposition of the R&R (ECF No. 21) is **ADOPTED**;
- Defendants' motion for summary judgment (ECF No. 12) is **GRANTED**;
- Leeal's motion for summary judgment (ECF No. 9) is **DENIED**; and
- Leeal's Complaint is **DISMISSED WITH PREJUDICE. IT IS SO ORDERED.**

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

Dated: September 6, 2022

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on September 6, 2022, by electronic means and/or ordinary mail.

s/Holly A. Ryan
Case Manager
(313) 234-5126

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MALKA LEEAL,

Plaintiffs,

Case No. 22-cv-10017

Hon. Matthew F. Leitman

v.

NEWREZ LLC, *et al.*,

Defendants.

**ORDER (1) OVERRULING OBJECTIONS TO
REPORT AND RECOMMENDATION (ECF No.
22); (2) ADOPTING RECOMMENDED
DISPOSITION OF REPORT AND
RECOMMENDATION (ECF No. 21);
(3) GRANTING DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT (ECF No. 12); (4)
DENYING PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT (ECF No. 9); AND (5)
GRANTING PLAINTIFF'S MOTION
TO AMEND CASE CAPTION (ECF No. 17)**

This civil action is at least the second attempt by Plaintiff Malka Leeal¹to avoid the legitimate

¹ Malka Leeal and her husband Mati filed this action as co-Plaintiffs on November 29, 2021. (See Compl., ECF No. 1-3.) On April 6, 2022, Malka Leeal filed a motion to amend the case caption and remove her husband as a plaintiff due to his death. (See Mot., ECF No. 17.) Pursuant to Federal Rule of Civil Procedure 25(a)(2), the Court GRANTS Malka Leeal's motion, notes Mati Leeal's death for the record, DISMISSES Mati Leeal as a plaintiff, and AMENDS the case caption to reflect that Malka Leeal is the sole Plaintiff in this action

foreclosure of the mortgage on her residence. This Court previously rejected one such attempt, and the Sixth Circuit affirmed this Court's decision. In this action, the assigned Magistrate Judge has issued a report and recommendation in which he recommends that the Court again enter judgment against Leeal (the "R&R"). (See R&R, ECF No. 21.) Leeal then filed objections to the R&R. (See Objections, ECF No. 21.) The Court has carefully reviewed the objections and concludes they are wholly without merit. Accordingly, for the reasons explained below, Leeal's objections are **OVERRULED**, the recommended disposition of the R&R is **ADOPTED**, and this action will be **DISMISSED**.

I

The broader factual background of this action is set forth in the R & R. (See R&R, ECF No. 21, PageID.475-480.) The essential facts for purposes of this order are that in 2007, the Leeals took out a \$301,000 mortgage loan for a home in Farmington Hills, Michigan. Then, in 2015, the Leeals stopped paying their mortgage. When the Leeals' mortgage servicer, Ditch Financial, LLC, initiated foreclosure proceedings due to the Leaals' failure to pay, the Leeals sued. On March 5, 2020, this Court issued an Opinion and Order ruling against the Leeals and allowing the foreclosure to proceed. *See Leeal v. Ditech Financial, LLC*, 2020 WL 1066100 (E.D. Mich. Mar. 5, 2020). The Leeals then appealed to the Sixth Circuit. That court affirmed and held that the mortgage was valid and could be foreclosed upon. *See Leeal v. Ditech Financial, LLC*, 849 F. App'x 144 (6th Cir. 2021).

While that litigation was pending, Ditech filed for bankruptcy, and the Leeals' mortgage was assigned

to a new company, NewRez, LLC. (See ECF No. 12-7.) NewRez, which was doing business as Shellpoint Mortgage Servicing, re-initiated foreclosure proceedings in November 2021. But one day before the scheduled foreclosure sale, the Leeals filed this action in the Oakland County Circuit Court in which they again sought to stop the foreclosure. (See Compl., ECF No. 1-3.) Defendants thereafter removed this action to this Court. (See Notice of Removal, ECF No. 1.)

There are now two motions pending before the Court. First, Defendants have moved for summary judgment based on *res judicata*. (See Defs. Mot., ECF No. 12.) Leeal has also moved for summary judgment. (See Leeal Mot., ECF No. 9.) In Leeal's motion, she insists that she is not bound by the Court's previous rulings against her. (See *id.*)

Both motions were referred to the assigned Magistrate Judge. On June 27, 2022, he issued the R&R in which he recommended that the Court (1) grant Defendants' motion and (2) deny Leeal's motion. (See R&R, ECF No. 21.) The Magistrate Judge first carefully reviewed all of the elements of *res judicata* and concluded that Leeal's attempt to avoid foreclosure was barred by that doctrine. (See *id.*, PageID.482-487.) He therefore recommended that the Court grant Defendants' motion for summary judgment. (See *id.*) He then recommended that the Court deny Leeal's motion and dismiss her Complaint because there was "no merit" to Leeal's argument that she was not bound by the Court's previous rulings. (*Id.*, PageID.487- 488; *see also id.*, PageID.484-485 at n.4.) Leeal filed objections to the R&R on July 11, 2022. (See Objections, ECF No. 22.) The Court will address each objection individually below.

II

When a party objects to portions of a Magistrate Judge's report and recommendation, the Court reviews those portions *de novo*. See Fed.R.Civ.P. 72(b)(3); *Lyons v. Comm'r of Soc. Sec.*, 351 F.Supp.2d 659, 661 (E.D. Mich. 2004). The Court has no duty to conduct an independent review of the portions of the R&R to which the parties did not object. See *Thomas v. Arn*, 474 U.S. 140, 149 (1985). "An 'objection' that does nothing more than state a disagreement with a magistrate's suggested resolution, or simply summarizes what has been presented before, is not an 'objection' as that term is used in this context." *Aldrich v. Bock*, 327 F.Supp.2d 743, 747 (E.D. Mich. 2004). Moreover, "[t]he filing of vague, general, or conclusory objections does not meet the requirement of specific objections and is tantamount to a complete failure to object." *Zimmerman v. Cason*, 354 F. App'x 228, 230 (6th Cir. 2009).

III

Leeal's objections are difficult to follow and largely appear to repeat arguments that she has made before either in previous litigation, in this action before the Magistrate Judge, or both. To the extent that Leeal's objections fail to "specifically address how [the Magistrate Judge's] factual and legal recommendations were incorrect," they are insufficient as a matter of law. *Fields v. Lapeer 71-A District Court Clerk*, 2 F. App'x 481, 482 (6th Cir. 2001) (holding that plaintiff had "waived any challenge to the district court's conclusions" because his objections to report and recommendation did not specifically address the Magistrate Judge's reasoning). See also *Miller v.*

Currie, 50 F.3d 373, 380 (6th Cir. 1995) (“[A] general objection to a magistrate’s report, which fails to specify the issues of contention, does not satisfy the requirement that an objection be filed”). Likewise, to the extent that Leeal simply repeats arguments that she presented on summary judgment to the Magistrate Judge, the objections fail. *See, e.g., Potter v. Comm’r of Soc. Sec.*, 2015 WL 452173, at *4 (E.D. Mich. Feb. 3, 2015) (holding objections to report and recommendation were waived where objections were “nothing more than a re-submission of [plaintiff’s] original motion for summary judgment” and did not address reasoning of the Magistrate Judge’s report). Simply put, because Leeal’s objections largely do not address the Magistrate Judge’s reasoning or legal analysis in any real detail, and instead mainly repeat many of the same arguments that the Court has previously rejected, her objections must be overruled.

While the Court has concluded that the objections are deficient as a general matter, the Court will nonetheless proceed to address them on an individual basis. Leeal has raised four objections to the R&R. The Court has carefully reviewed each of them and concludes that they are without merit.

In Leeal’s first objection, she objects to what she calls a “standing” provision of the R&R. (*See Objections*, ECF No. 22, PageID.496.) She then quotes two provisions of the factual background section of the R&R which described (1) the Court’s previous ruling against Leeal and (2) the claims Leeal brought in this action. (*See id.*) Leeal appears to argue that the Magistrate Judge erred when he failed to “include” in this section of the R&R a discussion of Leeal’s 2015 state-court case that she had filed against her former mortgage servicer. (*Id.*, PageID.496-497.) This

objection is nearly impossible to understand, objects only to the background facts described by the Magistrate Judge, and does not purport to show any legal error. Moreover, contrary to Leeal's argument in this objection, the Magistrate Judge did discuss Leeal's 2015 state-court litigation, and he explained how this Court had previously held that a default judgment that Leeal had obtained in that suit did not allow her to avoid the foreclosure initiated by Ditech. (See R&R, ECF No. 21, PageID.477-478.) This objection is therefore **OVERRULED**.

Leeal next objects to a second "standing provision" of the R&R. (See Objections, ECF No. 22, PageID.498-499.) More specifically, Leeal objects to the following sentence in the R&R: "Unsurprisingly, neither CMI no[r] ABN ARMO [e]ver appeared in the State-Court DJ Action. They had no interest to protect in that action and thus no need or incentive to appear." (*Id.*, PageID.498, quoting R&R, ECF No. 21, PageID.477.) This objection fails for several reasons. First, the quoted sentence is not one written by the Magistrate Judge. It was written by *this* Court in its March 5, 2020, ruling granting summary judgment to Ditech and against the Leeals in the prior action before this Court. *See Leeal*, 2020 WL 1066100, at *2. Thus, to the extent that Leeal believed that that statement was in error, she needed to raise that argument in *that* case. Second, Leeal has not persuaded the Court that the statement to which she objects is in any way material to this case. Finally, Leeal has not shown any legal error by the Magistrate Judge in quoting this sentence in the factual background section of the R&R. For all of these reasons, this objection is **OVERRULED**.

Leeal's third objection in its entirety is as follows: "Plaintiff Objection [sic] to the below provision of the Magistrate Judge's Report and [R]ecomendation. 'Ms. Leeal could have litigated in the Prior Federal Action.'" (Objections, ECF No. 22, PageID.499.) To the extent that Leeal is purporting to quote the R&R in this objection, the quote she identifies is not found in the R&R. It appears that Leeal may instead be referencing the Magistrate Judge's analysis in footnote four of the R&R. In that footnote, the Magistrate Judge rejected Leeal's argument that she was not bound by the Court's ruling against her in her previous suit against Ditech:

Malka Leeal tries to circumvent the application of Judge Leitman's ruling in the Prior Federal Action, arguing that she cannot be bound by this ruling because she "is and never was a borrower, nor did she sue any parties to obtain financial relief." (ECF No. 9, PageID.113). This argument misses the mark. First, the distinction Ms. Leeal now draws between a borrower and a nonborrower could have been litigated in the Prior Federal Action. Second, there is no dispute that Ms. Leeal was a party to the Prior Federal Action. "A 'party' to litigation is [o]ne by or against whom a lawsuit is brought." *United States ex rel Eisenstein v. City of New York*, 556 U.S. 928 (2009). Thus, as one of two individuals who initiated the Prior Federal Action, Ms. Leeal was a party to that action and therefore is bound by the Court's rulings in that case.

(R&R, ECF No. 21, PageID.484 n.4.) Leeal has not shown any error in this analysis. While Leeal insists that she was a "non-

party" to the previous action against Ditech (Objections, ECF No. 22, PageID.500), Leeal is wrong. That case was brought in the name of both Mati and Malka Leeal. Indeed, the caption of the Leeals' Complaint in that action lists both Mati and Malka Leeal as "Plaintiffs" and it was signed and verified by *both* Mati and Malka Leeal. (See Complaint, E.D. Mich. Case No. 17-10645, ECF No. 1, PageID.12, 21.) Leeal was therefore a party to the previous action, and for all of the reasons cogently explained by the Magistrate Judge, Leeal is bound by the results of that litigation. Leeal's third objection is therefore **OVERRULED**.

Finally, in Leeal's fourth objection, she argues that the Magistrate Judge erred when he concluded that her action here is barred by the doctrine of *res judicata*. (See Objections, ECF No. 22, PageID.501-504.) This objection does no more than generally take issue with the Magistrate Judge's overall conclusion and repeat many of the same arguments that Leeal raised in her previous three objections. As with her other objections, Leeal has not shown any error in the Magistrate Judge's legal analysis. Thus, for all of the reasons explained above, this objection is **OVERRULED**.

IV

For more than seven years, Leeal has avoided paying her mortgage and has used litigation to avoid valid foreclosures initiated due to her failure to pay. The time for Leeal to face the consequences of her failure to pay has come. Accordingly, for the reasons explained above, **IT IS HEREBY ORDERED** as follows:

- Leeal's motion to amend the case caption (ECF No. 17) is **GRANTED**;

- Leeal's objections to the R&R (ECF No. 22) are **OVERRULED**;
- The recommended disposition of the R&R (ECF No. 21) is **ADOPTED**;
- Defendants' motion for summary judgment (ECF No. 12) is **GRANTED**;
- Leeal's motion for summary judgment (ECF No. 9) is **DENIED**; and
- Leeal's Complaint is **DISMISSED WITH PREJUDICE. IT IS SO ORDERED.**

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

Dated: September 6, 2022

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on September 6, 2022, by electronic means and/or ordinary mail.

s/Holly A. Ryan
Case Manager
(313) 234-5126

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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

On September 6, 2022, this Court entered an order granting Defendant's motion for summary judgment and denying Plaintiffs motion for summary judgment. (See Order, ECF No. 24.) On September 20, 2022, Plaintiff Malka Leeal filed a motion for reconsideration. (See Mot., ECF No. 26.) The motion is DENIED because Leeal has not shown that the Court committed any error, much less an error that would warrant reconsideration.

IT IS SO ORDERED.

s/Matthew F. Leitman

MATTHEW F. LEITMAN

UNITED STATES DISTRICT JUDGE

Dated: September 21, 2022

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on September 21, 2022, by electronic means and/or ordinary mail.

s/Holly A. Ryan

Case Manager

(313) 234-5126