

App. 1

UNPUBLISHED

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

No. 16-1659

AMINATA M. WILLIAMS,

Plaintiff-Appellant,

v.

21ST MORTGAGE CORPORATION,

Defendant-Appellee,

and

U. S. BANK N.A., Trustee for the RASC 2007-EMX1
Trust; OCWEN LOAN SERVICING; RESIDENTIAL
FUNDING COMPANY, LLC; JOHN DOES 1 through
10,

Defendants.

No. 17-4534

AMINATA M. WILLIAMS,

Plaintiff-Appellant,

v.

PER CURIAM:

In these consolidated appeals, Aminata Williams appeals from the district court's orders: (1) denying her motion for a preliminary injunction/temporary restraining order to prevent a foreclosure sale and, (2) dismissing her civil action as barred by res judicata. We have reviewed the record included on appeal as well as the district court's opinions and we find no reversible error. Accordingly we affirm on the reasoning of the district court. *Williams v. 21st Mortgage Corp.*, No. 8:16-cv-01210-PX (D. Md. filed May 3, 2016, and entered May 4, 2016; Mar. 27, 2017). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

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- b. Defendants U.S. Bank, Residential Funding, and John Doe 1 through 10 are DISMISSED WITHOUT PREJUDICE.
- 3. The clerk shall transmit copies of the Memorandum Opinion and this Order to the parties and CLOSE this case.

3/27/2017

Date

/S/

Paula Xinis

United States District Judge

I. BACKGROUND¹

A. Factual Background

Plaintiff Aminata M. Williams (“Plaintiff”) resides at 13107 Ogles Hope Drive, Bowie, Maryland 20720 (the “Property”). This matter arises out of foreclosure proceedings on the Property, initiated by Defendant Ocwen as attorney-in-fact for Defendant 21st Mortgage Corporation. See Amended Complaint, ECF No. 25 at 17; Defendant Ocwen’s Reply, ECF No. 44 at 3. Defendant Residential Funding Company, LLC (“Residential Funding”) was a prior holder of the note and deed of trust at issue, ECF No. 25 at 7; ECF No. 33-8 at 13, and Defendant U.S. Bank, N.A. (“U.S. Bank”) acted as Residential Funding’s trustee. ECF No. 25 at 11; see ECF No. 33-8 at 14. At the heart of Plaintiff’s claim is her purported rescission of her mortgage loan in 2008.

On September 25, 2006, Plaintiff refinanced her mortgage, executing a promissory note (the “Note”) in the original principal amount of \$732,000.00, payable to the Mortgage Lenders Network USA, Inc., ECF No. 33-6 at 1, and secured by a properly recorded deed of trust (the “Deed of Trust”). ECF No. 33-8; ECF No. 25

¹ In considering Defendants’ Motion to Dismiss, the Court relies upon the facts alleged in the Amended Complaint, materials attached thereto, as well as matters of public record. See *Philips v. Pitt County Memorial Hosp.*, 572 F.3d 176, 180 (4th Cir. 2009). All facts are viewed in the light most favorable to the Plaintiff.

Corporation is the holder of an invalid Note and Deed of Trust and lacked standing to initiate the foreclosure in 2013.

B. Procedural History

On August 27, 2009, Homecomings Financial, the financial institution which secured the mortgage at the time, filed an action to foreclose on the Property in the Circuit Court for Prince George's County Maryland in *Burson, et al. v. Williams*, CAE 09-25087. This action was dismissed without prejudice by the Substitute Trustees on January 13, 2011.

On April 27, 2010, Plaintiff filed a Chapter 7 bankruptcy petition in the District of Maryland, *In re Williams*, Ch. 7 Case No. 10-19317 ("2010 Bankruptcy Proceeding"), one of Plaintiff's seven bankruptcy petitions to date. Plaintiff received a Chapter 7 discharge on August 10, 2010 and the case was dismissed on February 3, 2012. As a result of this bankruptcy adjudication, Plaintiff received a discharge of the Note obligation. *See* 2010 Bankruptcy Proceeding, Discharge Order, ECF No. 26; Schedule F, ECF No. 1-1 (listing mortgage debt on 1307 [sic] Ogles Hope Drive in the amount of \$904,263.00).

On November 7, 2013, 21st Mortgage Corporation, through Substitute Trustees, initiated another foreclosure action in the Circuit Court for Prince George's County Maryland, CAEF13-33472 (the "State Foreclosure Action"). Plaintiff filed a Motion to Stay and or Dismiss in the State Foreclosure Action pursuant to

Upon review of the filings and opposition hereto, it is apparent to this Court that [Williams'] motion does not state a valid defense or present meritorious argument. [Williams] points the Court to 15 U.S.C. § 1635(a) in support of her claim that she rescinded her residential mortgage transaction in 2008, however 15 U.S.C. § 1635(e)(1)-(2) exempts mortgage and refinance transactions from section 1635 of the U.S. Code and 12 C.F.R. § 226.23 is inapplicable in this case. Additionally, [Williams'] request [for a hearing] is not timely filed . . .

ORDERED that [Williams'] emergency motion is DENIED without a hearing pursuant to MD Rule 14-211(b)(1); and it is further

ORDERED that this case shall continue in due course.

State Foreclosure Action, ECF No. 22. Plaintiff moved for reconsideration of this order, State Foreclosure Action, ECF No. 25, which was denied on September 16, 2016, State Foreclosure Action, ECF No. 29. Plaintiff has appealed the decision to the Maryland Court of Special Appeals. State Foreclosure Action, ECF No. 34.

Before the Circuit Court's May 5th order and the scheduled foreclosure sale of the property on the same day, Plaintiff filed the instant federal action on April 22, 2016. Plaintiff first sought a temporary restraining order and preliminary injunction to prevent the May 5th foreclosure sale from occurring. After briefing and oral argument, the Court denied Plaintiff's requests on

Plaintiff again filed, in a pro se capacity, another Chapter 13 bankruptcy action, triggering an automatic stay of the foreclosure sale. Case No. 16-16197-WIL. The bankruptcy court granted relief from the automatic stay, and subsequently dismissed the bankruptcy petition on June 16, 2016. Plaintiff is barred from refile for bankruptcy for at least one (1) year. Case No 16-16197-WIL, ECF No. 28.

On June 21, 2016, Defendant 21st Mortgage Corporation filed a Motion to Dismiss in this Court, ECF No. 33, which Defendant Ocwen joined. ECF No. 34. For the reasons that follow, Defendants' motion to dismiss will be GRANTED.

II. ANALYSIS

A. Dismissal of Defendants U.S. Bank, Residential Funding, and John Does 1 through 10

Defendants U.S. Bank and Residential Funding have failed to participate in this action, and after reviewing the Amended Complaint, their non-participation is sound. Where, as here, a Plaintiff has plainly failed to allege facts in a complaint setting forth a plausible claim for relief, a district court may *sua sponte* dismiss a defendant from a case for failure to state a claim. *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 391 (4th Cir. 1990); *see also Eriline Co. S.A. v. Johnson*, 440 F.3d 648, 655 n.10 (4th Cir. 2006) (“[A] district court may *sua sponte* dismiss a complaint for failure to state a claim.... Where the face of a

with respect to the foreclosure action, or any related claims, because Defendant has not foreclosed on the property and appears to have foregone the foreclosure action against the Plaintiffs.”); *see also Willis v. Bank of Am. Corp.*, No. ELH-13-02615, 2014 WL 3829520, at *36 (D. Md. Aug. 1, 2014) (listing cases). Simply put, Plaintiff fails to allege that any case or controversy exists between them and U.S. Bank or Residential Funding.

Similarly, Plaintiff’s request for injunctive relief to halt foreclosure proceedings does not reach U.S. Bank or Residential Funding because neither is involved in the underlying foreclosure action. ECF No. 25 at 17. Plaintiff also brings her claim of fraud and misrepresentation exclusively against Ocwen and 21st Mortgage Corporation. ECF No. 25 at 20. Accordingly, the Amended Complaint fails to state a claim against U.S. Bank and Residential Funding, and so they are dismissed from the action. *See Ricks v. Armstrong Int’l, Inc.*, No. 4:14-CV-37-BO, 2014 WL 2587611, at *2 (E.D.N.C. June 10, 2014).

Finally, because Plaintiff has failed to substitute actual individuals in place of Defendants John Does 1 through 10, these Defendants are also dismissed. “The designation of a John Doe defendant is generally not favored in the federal courts; it is appropriate only when the identity of the alleged defendant is not known at the time the complaint is filed and the plaintiff is likely to be able to identify the defendant after further discovery.” *Chidi Njoku v. Unknown Special Unit Staff*, 217 F.3d 840 (4th Cir. 2000) (unpublished

B. Lack of Subject Matter Jurisdiction

Defendants challenge this Court's subject matter jurisdiction on two grounds, contending that Plaintiff lacks standing to bring the action and, alternatively, that the *Rooker-Fledman* [sic] doctrine applies to bar Plaintiffs' claims. Plaintiff bears the burden of proving the existence of subject matter jurisdiction. *See Evans v. B.F. Perkins, Co.*, 166 F.3d 642, 647 (4th Cir. 1999). When a defendant argues lack of subject matter jurisdiction, the allegations in the complaint are assumed to be true under the same standard as in a Rule 12(b)(6) motion, and "the motion must be denied if the complaint alleges sufficient facts to invoke subject matter jurisdiction." *Kerns v. United States*, 585 F.3d 187, 192 (4th Cir. 2009). When a defendant asserts that facts outside of the complaint deprive the court of jurisdiction, the Court "may consider evidence outside the pleadings without converting the proceeding to one for summary judgment." *Velasco v. Gov't of Indonesia*, 370 F.3d 392, 398 (4th Cir. 2004); *Kerns*, 585 F.3d at 192. The court should grant a Rule 12(b)(1) motion based on a factual challenge to subject matter jurisdiction "only if the material jurisdictional facts are not in dispute and the moving party is entitled to prevail as a matter of law." *Evans*, 166 F.3d at 647 (quoting *Richmond, Fredericksburg & Potomac R. Co. v. United States*, 945 F.2d 765, 768 (4th Cir. 1991)).

contend Plaintiff pays no tax obligations or bills, evidencing her lack of injury. The Court is not persuaded.

Plaintiff's injury stems from her interest in the Property from a recorded deed. *See* ECF No. 33-8 at 15; *cf. Graves v. OneWest Bank, FSB*, No. PWG-14-1995, 2015 WL 2452418, at *4 (D. Md. May 20, 2015) (finding standing lacking where there was no recorded deed because "[w]ithout ownership, Mr. Graves would not suffer any injury from Defendant's actions with regard to the Property."), *reconsideration denied sub nom. Graves v. One West Bank*, No. PWG14-1995, 2015 WL 6769115 (D. Md. Nov. 2, 2015), *aff'd sub nom. Graves v. Onewest Bank, FSB*, 653 F. App'x 788 (4th Cir. 2016). Moreover, Plaintiff's allegation of a recession [sic] directly challenges the validity of the lien and the right of the lender to foreclose as contemplated by Maryland law. *See generally Bates v. Cohn*, 417 Md. 309, 318-19 (2010) ("Before a foreclosure sale takes place, the defaulting borrower may file a motion to 'stay the sale of the property and dismiss the foreclosure action.'" (quoting Md. Rule 14-211(a)(1)). The borrower, in other words, may petition the court for injunctive relief, challenging "the validity of the lien or . . . the right of the [lender] to foreclose in the pending action." Md. Rule 14-211(a)(3)(B). *Cf. Franklin v. Bbw [sic] Law Grp., LLC*, No. DKC 16-0455, 2016 WL 2756576, at *5 (D. Md. May 12, 2016) (finding plaintiff had standing where "Plaintiff's claims concerning the foreclosure proceeding [arise] . . . from Defendant's conduct since Plaintiff filed for bankruptcy."), *reconsideration denied*, No. DKC 16-0455, 2016 WL 3136879 (D. Md. June 6,

More recently, the Supreme Court has sought “to refocus lower courts that had extended the *Rooker-Feldman* doctrine ‘far beyond the contours of the *Rooker* and *Feldman* cases. . . .’” *Smalley v. Shapiro & Burson, LLP*, 526 F. App’x. 231, 237 (4th Cir. 2013) (unpublished opinion) (quoting *Exxon*, 544 U.S. at 283). The Fourth Circuit has since emphasized that preclusion doctrines, not *Rooker-Feldman*, should be applied unless the state court proceedings were the cause of the injury. *Thana v. Bd. of License Comm’rs for Charles Cty., Md.*, 827 F.3d 314, 320 (4th Cir. 2016); *Smalley*, 526 F. App’x. at 237 and n.2. As the Fourth Circuit recently held:

[T]he distinction between preclusion principles and the *Rooker-Feldman* doctrine can sometimes be subtle, but it is nonetheless important to maintain. Preclusion principles are designed to address the tension between two concurrent, independent suits that results when the two suits address the same subject matter, claims, and legal principles. Whereas the *Rooker-Feldman* doctrine, by contrast, assesses only whether the process for appealing a state court judgment to the Supreme Court under 28 U.S.C. § 1257(a) has been sidetracked by an action filed in a district court specifically to review that state court judgment. Thus, if a plaintiff in federal court does not seek review of the state court judgment itself but instead “presents an independent claim, it is not an impediment to the exercise of federal jurisdiction that the same or a

See ECF No. 33-1 at 14-20. A motion to dismiss under Rule 12(b)(6) tests the sufficiency of the complaint. *Presley v. City of Charlottesville*, 464 F.3d 480, 483 (4th Cir. 2006) (citation and internal quotation marks omitted). When ruling on a motion under Rule 12(b)(6), the court must “accept the well-pled allegations of the complaint as true,” and “construe the facts and reasonable inferences derived therefrom in the light most favorable to the plaintiff.” *Ibarra v. United States*, 120 F.3d 472, 474 (4th Cir. 1997). “The mere recital of elements of a cause of action, supported only by conclusory statements, is not sufficient to survive a motion made pursuant to Rule 12(b)(6).” *Walters v. McMahan*, 684 F.3d 435, 439 (4th Cir. 2012) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). Factual allegations “must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations omitted). “To satisfy this standard, a plaintiff need not ‘forecast’ evidence sufficient to prove the elements of the claim. However, the complaint must allege sufficient facts to establish those elements.” *Walters*, 684 F.3d at 439 (citation omitted). “Thus, while a plaintiff does not need to demonstrate in a complaint that the right to relief is ‘probable,’ the complaint must advance the plaintiff’s claim ‘across the line from conceivable to plausible.’” *Id.* (quoting *Twombly*, 550 U.S. at 570).

Res judicata and estoppel are affirmative defenses. See Fed. R. Civ. P. 8(c)(1); see also *Georgia Pac.*

may be considered by a court without converting the motion under Rule 12(d). *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007); *Katyle v. Penn Nat'l Gaming, Inc.*, 637 F.3d 462, 466 (4th Cir. 2011). Here, the Court may take judicial notice of the prior litigation between the parties and consider related documentation. *Andrews v. Daw*, 201 F.3d 521, 524 n.1 (4th Cir. 2000) (“[W]hen entertaining a motion to dismiss on the ground of res judicata, a court may take judicial notice of facts from a prior judicial proceeding when the res judicata defense raises no disputed issue of fact.”).

Because the relevant prior proceeding was in a Maryland state court, this Court will apply Maryland law regarding *res judicata*. See *Migra*, 465 U.S. at 81. “*Res judicata* and collateral estoppel are based upon the judicial policy that the losing litigant deserves no rematch after a defeat fairly suffered, in adversarial proceedings, on issues raised, or that should have been raised.” *Grady Mgmt., Inc. v. Epps*, 98 A.3d 457, 472 (Md. Ct. Spec. App. 2014). “Res judicata . . . bars a party from relitigating a claim that was decided or could have been decided in an original suit.” *Laurel Sand & Gravel Co. v. Wilson*, 519 F.3d 156, 161 (4th Cir. 2008) (citing *Pueschel v. United States*, 369 F.3d 345, 355 (4th Cir. 2004)). When a federal court litigant asserts *res judicata* based on a state court judgment, “[the] federal court must give to [the] state court judgment the same preclusive effect as would be given that judgment under the law of the State in which the

Corporation is the defendant. ECF No. 25 at 2, Amended Complaint. In the State Foreclosure Action, Ocwen was the loan servicer and acted as attorney-in-fact for 21st Mortgage Corporation. Defendant Ocwen, therefore, is also in privity with 21st Mortgage. See ECF No. 25 at 17; ECF No. 44 at 3; *Jones v. HSBC Bank USA, N.A.*, 444 F. App'x 640, 644 (4th Cir. 2011) (finding privity where the sole party that prosecuted the foreclosure action on behalf of the loan servicer and noteholder was the party to the federal action); *Anyanwutaku v. Fleet Mortg. Grp., Inc.*, 85 F. Supp. 2d 566, 571 (D. Md.), *aff'd*, 229 F.3d 1141 (4th Cir. 2000) (citing *FWB Bank v. Richman*, 354 Md. 472, 498 (1999)) (“Although the actual parties to the foreclosure action are not the same in both suits, those who were substituted are in privity with those named in the original suit.”); *Prudencio v. Capital One, N.A.*, No. PWG-16-2693, 2016 WL 6947016, at *2 (D. Md. Nov. 28, 2016) (citing *Jones v. HSBC Bank USA, N.A.*, No. RWT 09CV2904, 2011 WL 382371, at *5 (D. Md. Feb. 3, 2011) (finding that “because all defendants share a mutuality of interest with respect to the validity of the foreclosure judgment, the first element of the claim preclusion test is met”)).

As to the second prong, Maryland uses the transaction test to determine whether the claims in this case are identical to those in the prior proceeding. See *Kent Cnty. Bd. of Educ. v. Bilbrough*, 525 A.2d 232, 238 (Md. 1987). “Under the transaction test, a ‘claim’ includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the

“In a foreclosure proceeding, . . . if the defendant indeed does challenge the right to sell prior to the sale and the court actually determines that right after a proper hearing, that issue cannot be relitigated in a subsequent phase of the action.” *Id.* (quoting *Morgan*, 68 Md. App. at 92). Accordingly, the Circuit Court’s denial of Plaintiff’s motion to dismiss the foreclosure proceeding constitutes a final judgment for *res judicata* purposes. See *Morgan*, 510 A.2d at 270; cf. *Talley v. Ocwen Loan Servicing*, No. 16-CV-389, 2016 WL 1321427, at *2 (D. Md. Apr. 5, 2016), (finding *res judicata* applicable in a pending foreclosure action where “the state court has already permitted the parties to schedule a foreclosure sale and denied Plaintiff’s objections”), *aff’d in part, vacated in part on other grounds, remanded sub nom. Talley v. Ocwen Loan Servicing, LLC*, No. 16-1478, 2017 WL 218858 (4th Cir. Jan. 19, 2017). This is so even though the state decision is currently on appeal. See *Powell v. Breslin*, 59 A.3d 531, 538-39 (Md. 2013) (collecting cases). Accordingly, the third and final prong is satisfied, and Plaintiff’s claims in this case are barred under the doctrine of *res judicata*. Defendants’ Motion to Dismiss is granted.

D. Dismissal with Prejudice

“The determination whether to dismiss with or without prejudice under Rule 12(b)(6) is within the discretion of the district court.” *Weigel v. Maryland*, 950 F. Supp. 2d 811, 825-26 (D. Md. 2013) (quoting *180S, Inc. v. Gordini U.S.A., Inc.*, 602 F. Supp. 2d 635, 638-39 (D. Md. 2009)). Generally, the plaintiff should be

Therefore, dismissal must be with prejudice. *See id.* (citing *McLean*, 566 F.3d at 400-01); *Weigel*, 950 F. Supp. 2d at 825-26.

III. CONCLUSION

Based on the foregoing, this Court GRANTS the Defendants' motion to dismiss WITH PREJUDICE. Defendants U.S. Bank, Residential Funding, and John Doe 1 through 10 are DISMISSED WITHOUT PREJUDICE. A separate order will follow.

3/27/2017

Date

/S/

Paula Xinis

United States District Judge
