

App. 1

704 Fed. Appx. 241 (Mem)
United States Court of Appeals, Fourth Circuit.

Jason VICKS; Mekeisha Vicks, Plaintiffs-Appellants,

v.

OCWEN LOAN SERVICING, LLC; John Does 1-5,
Defendants-Appellees.

No. 17-1786

Submitted: November 20, 2017 |

Decided: November 27, 2017

Appeal from the United States District Court
for the Western District of North Carolina, at
Charlotte. Frank D. Whitney, Chief District Judge.
(3:16-cv-00263-FDW).

Attorneys and Law Firms

Jason and Mekeisha Vicks, Appellants Pro Se.

Dennis Kyle Deak, TROUTMAN SANDERS, LLP,
Raleigh, North Carolina, for Appellees.

Before WILKINSON, DUNCAN, and THACKER,
Circuit Judges.

Opinion

Affirmed by unpublished per curiam opinion.

PER CURIAM:

Appellants Jason and Mekeisha Vicks appeal the district court's order dismissing the remainder of their civil complaint under Fed. R. Civ. P. 12(b)(6).^{*} We review the district court's Rule 12(b)(6) dismissal de novo. *Mason v. Mach. Zone, Inc.*, 851 F.3d 315, 319 (4th Cir. 2017).

Our review of the record reveals no reversible error. First, the district court properly concluded that Appellants' claims are barred by collateral estoppel. See *State v. Summers*, 351 N.C. 620, 528 S.E.2d 17, 20 (2000) (describing doctrine); *Thomas M. McInnis & Assocs., Inc. v. Hall*, 318 N.C. 421, 349 S.E.2d 552, 557 (1986) (same); *Funderburk v. JPMorgan Chase Bank, N.A.*, 241 N.C. App. 415, 775 S.E.2d 1, 6-7 (2015) (applying doctrine to foreclosure context); see also *Sartin v. Macik*, 535 F.3d 284, 288 (4th Cir. 2008)

^{*} We previously affirmed the dismissal of Appellants' complaint in part but vacated in part and remanded for further proceedings on Appellants' remaining claims. *Vicks v. Ocwen Loan Servicing, LLC*, 676 Fed. Appx. 167, 169 (4th Cir. 2017).

(discussing privity). Further, even assuming, without deciding, that *In re Lucks*, 369 N.C. 222, 794 S.E.2d 501 (2016), could impact this holding, we conclude Appellants' claims remain subject to dismissal as impermissible collateral attacks on the May 2011 order of the Union County Superior Court Clerk authorizing foreclosure on Appellants' property, as well as the subsequent state appellate court decisions addressing that order. *See Howse v. Bank of Am., N.A.*, 804 S.E.2d 552, 555-57 (2017) (addressing collateral attacks in foreclosure context); *Clayton v. N.C. State Bar*, 168 N.C. App. 717, 608 S.E.2d 821, 822 (2005) (describing doctrine). Finally, insofar as Appellants raise claims premised on their contention that their mortgage debt was extinguished in 2013, we conclude that those claims patently fail to state a claim for relief. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (stating standard); *Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 166 (4th Cir. 2016) ("[I]f a plaintiff attaches documents and relies upon the documents to form the basis for a claim or part of a claim, dismissal is appropriate if the document negates the claim." (internal quotation marks omitted)).

Accordingly, we affirm the district court's judgment. 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.

United States Court of Appeals, Fourth Circuit.

Jason VICKS; Mekeisha Vicks, Plaintiffs-Appellants,

v.

OCWEN LOAN SERVICING, LLC; John Does 1-5,
Defendants-Appellees.

No. 17-1786

FILED: January 2, 2018

O R D E R

The court denies the petition for rehearing and rehearing en banc. No judge requested a poll under Fed. R. App. P. 35 on the petition for rehearing en banc.

Entered at the direction of the panel: Judge Wilkinson, Judge Duncan and Judge Thacker.

For the Court

/s/ Patricia S. Connor, Clerk

676 Fed. Appx. 167

United States Court of Appeals, Fourth Circuit.

Jason VICKS; Mekeisha Vicks, Plaintiffs-
Appellants,

v.

OCWEN LOAN SERVICING, LLC; John Doe 1-5,
Defendants-Appellees.

No. 16-1909

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Submitted: January 20, 2017

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Decided: January 25, 2017

Appeal from the United States District Court for
the Western District of North Carolina, at Charlotte.
Frank D. Whitney, Chief District Judge. (3:16-cv-
00263-FDW)

Attorneys and Law Firms

Jason Vicks, Mekeisha Vicks, Appellants Pro Se.

Dennis Kyle Deak, Troutman Sanders, LLP, Raleigh,
North Carolina, for Appellee Ocwen Loan Servicing,
LLC.

Before WILKINSON, DUNCAN, and THACKER,
Circuit Judges.

Opinion

Affirmed in part, vacated in part, and remanded by
unpublished per curiam opinion.

PER CURIAM:

Jason and Mekeisha Vicks (“Appellants”) appeal the district court’s order dismissing their civil action against Ocwen Loan Servicing, LLC (“Appellee”), arising from Appellee’s involvement in mortgage foreclosure proceedings in North Carolina state court related to Appellants’ residential property. The district court dismissed four of Appellants’ claims for lack of subject matter jurisdiction, invoking the *Rooker-Feldman** doctrine. It dismissed their remaining claim of intentional infliction of emotional distress (“IIED”) pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim. For the reasons that follow, we affirm in part, vacate in part, and remand for further proceedings.

We review de novo the district court’s

* *D.C. Ct. App. v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983); *Rooker v. Fid. Tr. Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923).

determination that it lacked subject matter jurisdiction over Appellants' claims. *Flame S.A. v. Freight Bulk Pte. Ltd.*, 807 F.3d 572, 580 (4th Cir. 2015). The *Rooker-Feldman* doctrine bars state-court losers from seeking review in federal court of "injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005). Under this narrow doctrine, federal courts may entertain claims previously examined by a state court, so long as those claims do not seek review of the state court decision itself. See *Elyazidi v. SunTrust Bank*, 780 F.3d 227, 233 (4th Cir. 2015). Where a federal complaint raises claims independent of, but in tension with, a state court judgment, the *Rooker-Feldman* doctrine "is not an impediment to the exercise of federal jurisdiction" simply because "the same or a related question was earlier aired between the parties in state court," and any tension created by the concurrent federal and state proceedings "should be managed through the doctrines of preclusion, comity, and abstention." *Thana v. Bd. of License Comm'rs for Charles Cty., Md.*, 827 F.3d 314, 320 (4th Cir. 2016) (internal quotation marks omitted).

The district court concluded that Appellants' claims were barred by the *Rooker-Feldman* doctrine as "inextricably intertwined" with the state court's foreclosure order because success on their federal claims would require the district court to determine

that the state court order was wrongly decided or to take action that would render that order ineffectual. While we have previously articulated a similar standard, see *Plyler v. Moore*, 129 F.3d 728, 731 (4th Cir. 1997), subsequent authority from the Supreme Court and this court has clarified the *Rooker-Feldman* doctrine's narrow scope. As we have explained,

[u]nder *Exxon*, [the] “inextricably intertwined” language does not create an additional legal test for determining when claims challenging a state-court decision are barred, but merely states a conclusion: if the state-court loser seeks redress in the federal district court for the injury caused by the state-court decision, his federal claim is, by definition, “inextricably intertwined” with the state-court decision, and is therefore outside of the jurisdiction of the federal district court.

Davani v. Va. Dep’t of Transp., 434 F.3d 712, 719 (4th Cir. 2006); see also *Thana*, 827 F.3d at 319–20 (describing doctrine's narrow application). Thus, as the court also has clarified, the mere fact that a ruling favorable to the federal plaintiff may call into question the correctness of a state court judgment has no bearing on the federal court's jurisdiction over the plaintiff's claims under *Rooker-Feldman*. See *Thana*, 827 F.3d at 322.

Here, Appellants' first four claims for relief seek

either a declaration that Appellee has no rights to the loan proceeds or damages against Appellee for violations of the Real Estate Settlement Procedures Act (“RESPA”), *see* 12 C.F.R. § 1024.35 (2016), and several provisions of North Carolina state law. While success on these claims could call into question the validity of the state court’s May 2011 order authorizing foreclosure, the claims do not seek appellate review of that order or fairly allege injury caused by the state court in entering that order. We therefore conclude that the district court erred in applying the *Rooker-Feldman* doctrine to bar Appellants’ claims. Further, while we are not precluded from affirming the dismissal of these claims on alternative grounds, *see Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992), upon review of the record and the parties’ submissions on appeal, we conclude that prudence counsels in favor of reserving further judgment on the propriety of Appellants’ claims to the district court in the first instance. We therefore vacate the district court’s dismissal of Appellants’ first four claims for relief and remand for further proceedings.

Appellants also challenge the district court’s dismissal of their IIED claim. We review *de novo* a district court’s dismissal for failure to state a claim. *King v. Rubenstein*, 825 F.3d 206, 214 (4th Cir. 2016). To survive Rule 12(b)(6) dismissal, “a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173

apply in this case. *Vicks*, No. 16-1909, 2017 WL 360546, at *2. The Fourth Circuit further stated, however, that it “express[es] no opinion as to the legal sufficiency of [Plaintiffs] reinstated claims or to the application of the doctrines of issue preclusion and claim preclusion to those claims.” *Id.* Upon remand to this Court, Defendant filed the instant Amended and Renewed Motion to Dismiss (Doc. No. 20) requesting that the Court dismiss the first four claims in Plaintiffs’ Complaint pursuant to Fed. R. Civ. P. 12(b)(6).²

In order to survive a 12(b)(6) motion to dismiss for failure to state a claim upon which relief can be granted, Plaintiffs’ “complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’ ” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads sufficient factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). While the Court accepts plausible factual allegations in the complaint as true and considers those facts in the light most favorable to a plaintiff in ruling on a motion to dismiss, a court “need not accept as true unwarranted inferences, unreasonable conclusions, or arguments.” *Eastern Shore Mkt.’s Inc. v. J.D. Assoc.’s, LLP*, 213 F.

² The Fourth Circuit affirmed this Court’s dismissal of Plaintiffs’ IIED claim. Therefore, that issue is not before this Court upon remand.

3d 175, 180 (4th Cir. 2000).

Plaintiff's first two claims are barred by the doctrine of collateral estoppel. Under that doctrine, "a final judgment on the merits prevents relitigation of issues actually litigated and necessary to the outcome of the prior action in a later suit involving a different cause of action between the parties or their privies." *Thomas M. McInnis & Assocs., Inc. v. Hall*, 349 S.E.2d 552, 557 (1986). In North Carolina, before authorizing a foreclosure to proceed, the clerk must determine that a valid debt exists, the debtor is in default, the trustee has the right to foreclose, and sufficient notice was given. See N.C. Gen. Stat. § 45-21.16(d). A party may appeal the foreclosure action to the superior court for a *de novo* hearing that is limited to the same issues. *Funderburk v. JPMorgan Chase Bank, N.A.*, 775 S.E.2d 1, 6 (N.C. Ct. App. 2015). "Any issue that the clerk decides in a foreclosure proceeding under N.C. Gen. Stat. § 45-21.16(d) is conclusive unless appealed and reversed and cannot be relitigated in a subsequent lawsuit." *Hardin v. Bank of Am., N.A.*, No. 7:16-CV-75-D, 2017 WL 44709, at *5 (E.D.N.C. Jan. 3, 2017).

Plaintiffs' first two claims rests upon the premise that no valid debt existed and that Defendant failed to provide the required pre-foreclosure notice. (Doc. No. 1, ¶¶ 35, 40). The North Carolina clerk, however, resolved these issues against Plaintiffs in the foreclosure proceeding, which is binding and conclusive on those issues. Plaintiffs fail to allege a legitimate reason why

this Court should disregard the valid and binding state court determinations, and those determinations are fatal to Plaintiffs' first two claims.

Plaintiff's third and fourth claims allege that Defendant violated state law by proceeding with the foreclosure without providing the required pre-foreclosure notice and by unfairly collecting the debt. (Doc. No. 1, ¶¶ 41, 48). Plaintiffs, however, cannot prosecute claims based upon errors that run contrary to the final and binding Order of Foreclosure in which the clerk found that Wells Fargo was allowed to proceed with foreclosure under the Deed of Trust. See *Funderburk*, 775 S.E.2d at 7 ("Where the foreclosures were conducted pursuant to orders by the clerk and superior court judge, we hold plaintiffs cannot recover damages resulting from the foreclosures."). Accordingly, these claims also fail.

"Moreover, to the extent that [Plaintiffs] failed to raise any of these issues as a defense in the underlying foreclosure proceeding, the doctrine of res judicata bars [Plaintiffs] from raising them here." *Hardin*, No. 7:16-CV-75-D, 2017 WL 44709, at *5; see *Goins v. Cone Mills Corp.*, 367 S.E.2d 335, 336-37 (N.C. Ct. App. 1988) (noting that res judicata bars "every ground of recovery or defense which was actually presented or which could have been presented in the previous action").³ Plaintiffs

³ Plaintiffs cite to *In re Lucks*, 794 S.E.2d 501 (N.C. 2016), for the proposition that the doctrines of collateral estoppel and res judicata do not apply to non-judicial foreclosure actions. In that

were a party to and addressed their concerns with the foreclosure through all levels of the state court judicial system, including the Clerk, Superior Court, and the Court of Appeals. Not only were Plaintiffs consistently denied the relief they sought, but the foreclosure was consistently upheld.

In sum, Plaintiffs essentially seek to attack and undermine the legitimacy of the state foreclosure proceedings that found a valid debt, in default, subject to foreclosure, and the validity of the foreclosure has been previously litigated in various state court actions. Plaintiffs may not now challenge collection and foreclosure efforts predicated upon a valid Order of Foreclosure. Accordingly, Plaintiffs' claims are barred by the doctrines of collateral estoppel and res judicata, and Plaintiffs' Complaint fails to state a claim upon which relief can be granted under Fed. R. Civ. P. 12(b)(6).

IT IS, THEREFORE, ORDERED that Defendant's Amended and Renewed Motion to Dismiss (Doc. No. 20) is GRANTED, and Plaintiffs' Complaint

case, however, the North Carolina Supreme Court held that the doctrines do not apply in their "traditional" sense in that once the clerk or trial court denies authorization for a foreclosure sale, a creditor may not seek a non-judicial foreclosure based on the *same default*. *Id.* at 506-07. The creditor "may nonetheless proceed with foreclosure by judicial action" or "proceed with foreclosure based upon a *different default*." *Id.* at 507. Accordingly, contrary to Plaintiff's assertion, *In re Lucks* did not hold that res judicata and collateral estoppel do not apply to the circumstances presented in this case.

App. 18

(Doc. No. 1) is DISMISSED.

The Clerk of Court is respectfully directed to close this case.

IT IS SO ORDERED.

