No. 24A837

IN THE

SUPREME COURT OF THE UNITED STATES

MARK MAZZA,
LISA MAZZA,

Petitioners,

v.

BANK OF NEW YORK MELLON,

Respondent.

APPENDIX
ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MARK MAZZA
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APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

THE BANK OF NEW YORK MELLON,
Plaintiff
v.
MARK MAZZA, et al.,
Defendants

CIVIL ACTION NO. 17-5453

ORDER

AND NOW, this **24th** day of **May, 2023**, after considering Plaintiff's Motion to Dismiss the Defendants' Counterclaims with Prejudice and for Summary Judgment in Ejectment (ECF No. 49), and any responses thereto, it is hereby **ORDERED** that the motion is **GRANTED**. It is further **ORDERED** as follows:

1. All counterclaims filed by Defendants are **DISMISSED with prejudice**.

2. Defendants' request for an extension of time (EMF No. 52) is **DENIED as moot**.

3. Defendants' Motion for Discovery (ECF No. 54) is **DENIED** .

4. Defendants' Motion to Vacate (ECF No, 55) is **DENIED** .

5. The Clerk of Court shall mark this case **CLOSED. AND IT IS SO ORDERED**

s/ Eduardo C. Robreno
EDUARDO C. ROBRENO, J.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION NO. 17-5453

THE BANK OF NEW YORK MELLON,
Plaintiff
v.
MARK MAZZA, et al.,
Defendants

M E M O R A N D U M

EDUARDO C. ROBRENO, J. May 24, 2023

I. INTRODUCTION

Plaintiff, Bank of New York Mellon ("BNYM") brings this ejectment action under Pennsylvania law against Defendants, Mark and Lisa Mazza ("the Mazzas") . There are several motions pending before the Court. First, Plaintiff has filed a motion to summary judgment/motion to dismiss the Defendants' counter claims with prejudice.[1]

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[1] After these issues were ripe for decision and the day before a hearing scheduled before the Court, Mark Mazza filed for bankruptcy, resulting in a stay of this action against him. See In re Mark D. Mazza, 22-lok~l3245 (E.D. Pa. Bankr.). Following additional delays resulting from Mr. Mazza's motion practice and f allure to meet bankruptcy court deadlines, the bankruptcy court granted BNYM's motion for relief from the bankruptcy stay. See Order Granting Relief from Stay, 22-bk-13245 ECF No. 55 (E.D. Pa. Bankr. May 17, 2023) . The Order provides: Debtor shall be bound by this Order in any conversion of the instant bankruptcy ease or in

See Pl.'s Mot. for Summ. J. ("Pl.'s Mot."), ECE" No. 49.[2] The Mazzas timely filed a response. See Defs. f Resp. to Pl.'s Mot. for Summ. J. ("Defs. Resp."), ECF No. 57. BNYM filed a reply brief on December 4, 2022. See Pl.'s Reply in Support of Pl.'s Mot. (\\pl_rs Rep."), ECF No. 60.

The Mazzas have filed a Motion for Extension of Time to Respond to Plaintiff's Motion for Summary Judgment (EGF No. 52)[3], a Motion for Discovery

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any subsequently filed bankruptcy case. Any future Automatic Stays issued relating to the interest in the subject property of Movant shall be null and void and will not prevent the foreclosure of the Mortgaged Premises from proceeding and from being valid in all respects, and Movant shall not be required to obtain relief from any automatic stay that would otherwise be imposed by the filing of any subsequent case.

Id. Mr. Mazza has filed a notice of appeal of the bankruptcy order lifting the stay, but the stay is no longer in place. See Notice of Appeal, 22-bk-13245 (E.D. pa. Bankr. May 18, 2023), ECF No. 58.

[2] In their response, the Mazzas argue that BNYIWS motion was filed out of time. This Court conducted an in-person hearing in this case and a related case on September 21, 2022, and at that time, the Court inquired of BNYM's counsel when he would have a motion for summary judgment ready for filing. BNYM's counsel replied that he would be ready to file a motion for summary judgment in fifteen days. However, this was not incorporated into a scheduling order. When BNYM's counsel did not file a motion within that time, the Court then issued a scheduling order, See Order, ECF No. 48. BNYM filed its motion the day the scheduling order was issued. The Mazzas accuse the Court and BNYM's counsel of partaking in "ex parte communications" because the timing of the filing was "suspicious." This accusation is unsupported, and it cannot be supported because it is f also. BNYM's motion was timely filed and will be considered on the merits. The Mazzas have filed a response to the motion.

[3] BNYM has responded in opposition to the Mazzas' Motion for an Extension of Time. See pl.'s Resp. to Defs.' Mot. for Ext., ECF No. 58. However, because the Mazzas filed a timely

(ECF No. 54), and a Motion to Vacate the Cour t's October 28, 2022 Order (ECE No. 55). Additionally, the Mazzas have filed a Third Amended Answer with no briefing or explanation. See Amended Answer ("Third Answer"), ECF No. 53.

I. BACKGROUND

On June 12, 2012, BNYM filed an action against the Mazzas in the Court of Common Pleas of Chester County, Pennsylvania to foreclose on a mortgage running in its f aver and encumbering the property then-owned by the Mazzas 1271 Farm Road, Berwyn, PA 19312 (the "Property") . After two and a half years of litigation and a one-day bench trial, BNYM secured a judgment in its f aver on January 23, 2015. Following several post-trial motions filed by the Mazzas, the court entered judgment in foreclosure in the amount of $1,085,000.00. The Mazzas then filed an unsuccessful appeal, and BNYM's judgment was reassessed at $1,501,572.00 after the case was returned to the trial court. The Mazzas then filed additional post-trial motions and initiated another appeal, including an unsuccessful petition to the Pennsylvania Supreme Court. A writ of execution in favor of BNYM was issued in November 2016.

The Mazzas opposed BNYM'S attempts to schedule a Sheriff's sale. However, on June 15, 2017, a sheriff's sale was conducted, and BNYM acquired title to the Property via its own writ at the sale. The sheriff's deed was delivered to BNYM on August 8, 2017 and recorded on August 11, 2017. The Mazzas filed more motions challenging the sale along with an appeal. Ultimately, the Mazzas' challenges were

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response to the motion for summary judgment, this motion is moot.

unsuccessful and the case was returned to the Court of Common Pleas two years later in 2019.[4]

While the Mazzas continued to challenge the Sheriff's sale, BNYM filed its complaint in ejectment in the Court of Common Pleas of Chester County on August 25, 2017, Before BNYM had served the Mazzas with the complaint (Bn:/M avers this was due to the Mazzas intentionally avoiding service) , the Mazzas removed the ejectment action to the United States District Court for the Eastern District of Pennsylvania. The ease was originally assigned to Judge Petrese B. Tucker.[5] After Judge 5 Tucker granted BNYM's motion for additional time to serve Defendants by special service, the ejectment complaint was served on the Mazzas on June 29, 2020. The Mazzas filed a motion to dismiss, and Judge Tucker denied that motion in an Order dated April 8, 2021. See Defs.' Mot. to Dismiss, ECU no. 21; see Order Denying Defs..* Mot. to Dismiss, ECP No. 22. On April 29, 2021, the Mazzas filed an answer with counterclaims to the e ejectment complaint. See Def s. Answer ("First Answer"), ECP No. 23.

BNYM filed a motion to dismiss the Mazzas' counterclaims, which was granted by Judge Tucker, who noted that the counterclaims were a collateral attack on a state foreclosure judgment over which the Court had no jurisdiction. See Pls . Mot. to

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[4] The Court of Common Pleas entered an order in September 2017 denying the Mazzas substantive relief and forbidding them from filing fur they pleadings without prior leave of court. The Superior Court of Pennsylvania rejected the Mazzas' appeal of the sheriff's sale in August 2018, and the Pennsylvania Supreme Court denied the Mazzas' petition for further review.

[5] Judge Tucker went on inactive status, and all of her cases were reassigned to other judges of the Court, including this one on July 22, 2022. See Reassignment Order, ECF No. 34 .

Dismiss, ECF No. 25; Order Granting Pls. Mot . to Dismiss, ECF No. 30 ("Defendants' six counterclaims must be dismissed for lack of subject matter jurisdiction under the Rooker-Feldman doctrine because the crux of the counterclaims are [sic] an attack on the prior state court judgment entered in the foreclosure action.") . The Mazzas unsuccessfully appealed Judge Tucker's order dismissing their counterclaims.[6]

After the denial of their appeal, the Mazzas filed two additional amended answers with counterclaims--one on September 19, 2022 ("Second Answer") (ECF No. 40), and one on November 18, 2022 (ECF No. 53)-~in addition to a Motion for Extension of Time to Respond to Plaintiff's Motion for Summary Judgment (ECF No. 52), a Motion for Discovery (ECF No. 54), and a Motion to Vacate the Court's October 28, 2022 Order (ECF No. 55) . BNYM has responded in opposition to the Mazzas' Motion for an Extension of Time. See Pls.' Resp. to Def's Mot. for Ext., ECF No. 57.

II. LEGAL STANDARD

The Court has diversity jurisdiction over the case as Plaintiff is a citizen of Delaware and New York and Defendants are citizens of Pennsylvania, and the amount in controversy exceeds $75,000. See 28 U.S.C. § 1332. The parties agree Pennsylvania substantive law applies.

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[6] The appeal was dismissed for lack of appellate jurisdiction. See Order, No. 22-1056 (3d Cir. Sept. 30, 2022), ECF No. 15. The Mazzas filed a request for en banc reconsideration which was also denied. See Order, No. 22-1856 (3d Cir. Nov. 3, 2022), ECU No. 19

1. Amended Pleadings

A party may amend its pleading once as a matter of course within the time provided under the Federal Rules of Civil Procedure. Fed. R. Civ. P. 15(a) (1) . All further amendments require the other party's consent or leave of the court, which the Court "should freely give . . . when justice so requires." Fed. R. Civ. P. 15(a) (2). Of course, Rule 15's liberal standard for amendment is not boundless. "[A] district court has discretion to deny a request to amend if it is apparent from the record that (1) the moving party has demonstrated undue delay, bad faith or dilatory motives, (2) the amendment would be futile, or (3) the amendment would prejudice the other party." Hill v. City of Scranton, 411 F.3d 118, 134 (3d Cir. 2005). Rule l5(c) of the Federal Rules of Civil Procedure provides in pertinent part that "[a]n amendment to a pleading related back to the date of the original pleading when . . . the amendment ." asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out – or attempted to be set out -- in the original pleading. . ." See Fed. R. Civ. P. 15 {c) (1) (B).

2. Motion to Dismiss Counterclaims

Federal Rule of Civil Procedure 12 (b) (1) provides for the dismissal of an action for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b) (1). A Rule 12(b) (1) motion may challenge jurisdiction based on the face of the complaint or its existence in fact. See Gould Elecs. Inc. v. United States, 220 F.3d 169, 176 (3d Cir. 2000) (citation omitted) . A challenge based on the face of the complaint -- a facial attack -- contests the sufficiency of the pleadings and the court must view factual allegations in the complaint in the light most

favorable to plaintiff. Constitution Party of Pa. v. Aichele, 757 F.3d 347, 358 (3d Cir. 2014) ("[A] facial attack calls for a district court to apply the same standard of review it would use in considering a motion to dismiss under Rule 12 (b) (6), i.e., construing the alleged facts in favor of the nonmoving party."). A challenge based on the complaint's existence in fact -- a factual attack -- concerns "the actual failure of [a plaintiff's] claims to comport [factually] with the jurisdictional prerequisites." U.S. ex rel. Atkinson v. Pa. Shipbuilding Co., 473 F.3d 506, 514 (3d Cir. 2007) (quoting U.S. ex rel. Atkinson v. Pa. Shipbuilding Co., 255 F. Supp. 2d 351, 362 (E.D. Pa. 2002)). A district court may "consider evidence outside the pleadings" in a factual attack. Gould Elecs. Inc., 220 F.3d at 176.

The purpose of a Rule 12(b) (6) motion to dismiss is to test the sufficiency of the pleadings. Kost v. Kozakiewicz, 1 F.3d 176, 183 (3d Cir. 1993). "To survive a motion to dismiss, 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 (2009) (citations and quotations omitted). The standard requires more than "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements." Id.

3. Summary Judgment

Summary judgment is appropriate if no genuine dispute as to any material fact exists and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). "A motion for summary judgment will not be defeated by 'the mere existence' of some disputed facts, but will be denied when there is a genuine issue of material fact." Am. Eagle Outfitters v. Lyle & Scott Ltd., 584 F.3d 575, 581 (3d Cir. 2009) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247 (1986)). A fact is "material" if proof of its existence or nonexistence might affect the outcome of the litigation, and a dispute is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248.

While the moving party bears the initial burden of showing the absence of a genuine issue of material fact, meeting this obligation shifts the burden to the nonmoving party who must "set forth specific facts showing that there is a genuine issue for trial." Id. at 250 (quoting Fed. R. Civ. P. 56(e) (1963)). Although the Court views the facts in the light most favorable to the nonmoving party, Am. Eagle Outfitters, 584 F.3d at 581, the responsive burden cannot be satisfied by merely repeating unsupported pleading allegations. Santini v. Fuentes, 795 F.3d 410, 416 (3d Cir. 2015) ("If the moving party meets its burden, the burden shifts to the nonmoving party to go beyond the pleadings and come forward with specific facts showing that there is a genuine issue for trial.") (citations and quotations omitted) .

III. DISCUSSION

1. Amended Pleadings

BNYM requests that the Mazzas' amended pleadings be stricken pursuant to Rule 15. *See* Pl.'s Mot. 6 n.6, ECF No. 49. After Judge Tucker denied the Mazzas' motion to dismiss, the Mazzas filed their first answer on April 29, 2021. See First Answer, ECF No. 23. After further litigation, the Mazzas filed two additional amended answers with counterclaims -- one on September 19, 2022, and one on November 18, 2022. See Second Answer, ECF No. 40; Third Answer, ECF No. 53. The Mazzas did not obtain BNYM's consent nor the Court's leave to file their Second or Third Answers.

The Mazzas aver that their Second Answer was filed in the Court's after-hour filing box on May 20, 2021. However, the Mazzas have not provided any proof, such as a file-stamped party copy, nor have they explained why they waited until September 2022 to address "the original being misplaced or lost." See Second Answer 1, ECF No. 40. The Mazzas filed their Third Answer with no explanation or briefing attached, and it includes additional revisions to the Second Answer. Because the Mazzas have not shown good cause for why they failed to obtain BNYM's consent, leave of the Court, or make amendments within the time allotted under Rule 15(a) (1), their amended answers will be stricken pursuant to Rule 15.

The Mazzas aver that their Second Answer was filed in the Court's after-hour filing box on May 20, 2021. However, the Mazzas have not provided any proof, such as a file-stamped party copy, nor have they explained why they waited until September 2022 to address "the original being

misplaced or lost." See Second Answer 1, ECF No. 40. The Mazzas filed their Third Answer with no explanation or briefing attached, and it includes additional revisions to the Second Answer. Because the Mazzas have not shown good cause for why they failed to obtain BNYM's consent, leave of the Court, or make amendments within the time allotted under Rule 15(a) (1), their amended answers will be stricken pursuant to Rule 15.

2. Motion to Dismiss Counterclaims

In the alternative, BNYM moves to dismiss the counterclaims contained therein. Because Judge Tucker previously dismissed the first six of eight counterclaims contained in the amended pleadings with prejudice, the Court need not readdress them. See Order Granting Pl.'s Mot. to Dismiss, ECF No. 30. Moreover, the Mazzas did not address the motion to dismiss in their response in opposition. Accordingly, the motion to dismiss will be granted as unopposed. See Local Rule 7.1(c). Even assuming the Mazzas had opposed the motion, dismissal of the counterclaims is nonetheless warranted. The additional counterclaims, like counterclaims one through six, will be dismissed with prejudice for lack of jurisdiction. The Rooker-Feldman doctrine prohibits federal courts "from adjudicating actions in which the relief requested requires determining whether the state court's decision is wrong or voiding the state court's ruling." In re Knapper, 407 F.3d 573, 580 (3d Cir. 2005) {quoting Walker v. Horn, 385 F.3d 321, 329 (3d Cir. 2004)). A valid judgment in mortgage foreclosure can bar a subsequent claim based on the validity of the foreclosed mortgage under the Rooker-Feldman doctrine. Manu v. Nat'l City Bank of Ind., 471 F. App'x 101, 105 (3d Cir. 2012) ("[Borrower's] allegations that various statutes

and rights were violated because the defendants threatened, and followed through with, foreclosure when they had no right to do so is nothing more than an attack on the state court judgment."). As Judge Tucker stated in the original dismissal order, the "counterclaims must be dismissed for lack of subject matter jurisdiction under the Rooker-Feldman doctrine because the crux of the counterclaims are [sic] an attack on the prior state court judgment entered in the foreclosure action." See Dismissal Order 6 n.i, ECF No. 30. As with the six counterclaims that were already dismissed with prejudice, the Mazzas "are clearly asking this Court to void state court decisions regarding their property interests. This Court has no jurisdiction to do so." Id. (citations omitted) .

3. Summary Judgment

In response to BNYM's motion for summary judgment, the Mazzas fail to raise any issues of fact supported by competent evidence and simply advance arguments based solely on their pleadings, See Defs.' Resp. 6, ECF No. 57 ("Defendants [sic] responsive pleading to this ejectment action sets forth a number of jurisdiction defects or defenses. . . ."); id. at 16-17 ("Defendants . .. avers [sic] they have timely raised affirmative defenses including jurisdictional one's [sic] supporting that the ... foreclosure judgment and sheriff sale are void."). The responses are insufficient to defeat summary judgment. See Wiest v. Tyco Elecs. Corp., 812 F.3d 319, 330 (3d Cir. 2016) ("While at the motion-to-dismiss stage of proceedings a district court is obligated to accept the allegations in plaintiff's complaint as true, it does not accept mere allegations as true at the summary judgment stage. To the contrary, 'summary judgment is essentially "put up

or shut up" time for the non-moving party' who 'must rebut the motion with facts in the record and cannot rest solely on assertions made in the pleadings, legal memoranda, or oral argument.'" {citing Berckeley Inv. Grp., Ltd. v. Colkitt, 455 F.3d 195, 201 (3d Cir. 2016))).

In a Pennsylvania ejectment action, the burden is on the Plaintiff to demonstrate by a preponderance of the evidence that it is entitled to immediate possession of real property and that defendant is wrongly in possession of said property. Doman v. Brogan, 592 A.2d 104, 108 (Pa. Super. Ct. 1991); Hallman v. Turns, 482 A.2d 1284, 1287 (Pa. Super. Ct. 1984) ("The plaintiff's burden in an action of ejectment is clear: he must establish a right to immediate exclusive possession. In order to recover in an ejectment action, the plaintiff must show title at the commencement of the action and can recover, if at all, only on the strength of his own title, not because of weakness or deficiency of title in the defendant." (citation omitted)].

Beyond demonstrating that a defendant has superior title to that of plaintiff, Hallman, 482 A.2d at 1287, the only other defense recognized in Pennsylvania is proof that the foreclosure is void (not voidable) as a result of a jurisdictional defect preventing the foreclosure court from entering a legal judgment. Dime Sav. Bank, FSB v. Greene, 813 A.2d 893, 895 (Pa. Super. Ct. 2002) ("Where a judgment is void, the sheriff's sale which follows is a nullity. A judgment is void when the court had no jurisdiction over the parties, or the subject matter, or the court had no power or authority to render the particular judgment."). "It is well-established that the underlying [foreclosure] judgment and sheriff's sale cannot be attacked in a collateral proceeding."

Fannie Mae v. Ferraro, 10 Pa. D. & C. 5th 260, 264-65 (Pa. Ct. Com. Pl. 2009) (citing Roberts v. Gibson, 251 A.2d 799, 800 (Pa. Super. Ct. 1969)).

A majority of the Mazzas' answers and defenses concern the foreclosure action and the sheriff's sale. However, raising issues concerning the foreclosure action and the sheriff's sale in defense of BNYM's ejectment complaint does not aid the Mazzas because this ejectment action is a collateral proceeding, not one where a party can relitigate adverse decisions in the foreclosure action. See 1 Source Prop. Serv. LLC v. Snook, 284 A.3d 890 (table), 890 (Pa. Super. Ct. Aug. 3, 2022) (affirming trial court ruling that defendant's ejectment defense failed because "[Appellant] again sought to collaterally attack the judgment and sale in the mortgage foreclosure action"); Taylor v. Robinson, No. 1970 EDA 2012, 2012 WL 4108760, at *1 (Pa. Ct. Com. Pl. Aug. 20, 2012), appeal dismissed, No. 1970 EDA 2012, 2013 WL 11283785 (Pa. Super. Ct. Jan. 18, 2013) ("This court's decision to grant Judgment on the Pleadings should be affirmed because there were no actual disputes of fact bearing on [Defendant's] demonstrated right to immediate possession of the property.") ; Fed. Nat'l Mortg. Ass'n v. Citiano, 834 A.2d 645, 647 {Pa. Super, Ct. 2003), appeal denied, 847 A.2d 1286 (Table) {Pa. 2004) ("Appellant's argument against summary judgment hinges on whether the sheriff's sale complied with the notice requirements of Pa.R.C.P. 3129.3 when the sale was postponed .. . . This argument invokes a collateral matter to the underlying ejectment action.").

The Mazzas, without support or detail, allege in the First, Second, and Third Answer that the foreclosure judgment was void and that BNYM does hold superior title to the property. However, the

Mazzas will not be able to challenge the state court's decisions in the foreclosure action nor can they claim that the recorded sheriff's deed does not result in BNYM possessing superior title.

As the Pennsylvania Superior Court recently explained while examining the defense of void foreclosure judgment in a case with similar facts:

> Instantly, the trial court denied Appellant's request for a stay of execution, stating: ". . . [Appellant] is again focused on the merits of the foreclosure action in which she had been represented by counsel, in which jurisdiction over [Appellant] had never been contested, and wherein [Appellant] did not pursue the complaints which (Appellant] has sought to raise collaterally in this ejectment action." (Trial Court Opinion at 4). The record supports the trial court's analysis.
> Unlike in Meritor Mortg. Corp .- E, Appellant does not advance a defective service argument or otherwise explain why the mortgagee's alleged failure to comply with certain federal regulations renders the sheriff's sale void, such that Appellant can collaterally attack the mortgage foreclosure at this juncture. Consequently, the trial court properly declined to grant Appellant's request for a stay of execution.

1 Source Prop. Serv. LLC, 284 A.3d at 890 (footnote and citation omitted); see also Tolerico v. Munley, 242 A, 3d 402 (table), 402 (Pa. Super. Ct. 2020).

On point is the decision of the Court of Common Pleas of Philadelphia County, in a case such as this, where one party holds the sheriff's sale deed while the other party is in actual possession. As the court explained:

> Here, the Sherriff's [sic] Deed establishes [plaintiff] purchased and now owns the property . . . Although [Defendant] claims that the Property was not properly posted, she failed to plead this allegation with specificity and further failed to timely challenge the Sale. [Defendant] does not dispute that she is in possession of the property. Thus, there is no doubt whatsoever that [plaintiff], being out of possession yet having an immediate right to possession, is entitled to judgment in Ejectment, and a trial would be a futile exercise.

Taylor, 2012 WL 4108760, see also FMMB Big Lakes, LLC v. Croce, No. 1047 WDA 2019, 2020 WL 974413, at *2 (Pa. Super. Ct. Feb. 28, 2020), rearg. denied, 227 A.3d 451 (Pa. Super. Ct. May 7, 2020) ("An ejectment action is collateral to the mortgage foreclosure proceedings and the ensuing sheriff's sale. The only relevant issue in this ejectment action is whether [plaintiff] is the record owner of the property with the right to possession. It is beyond argument that [defendant] does not have title to the real estate in question, and . . . [n]one of her grievances is [sic] relevant to this ejectment action, which merely involves whether [plaintiff) owns the property and is out of possession."); Fed. Nat'l Mortg. Ass'n, 834 A.2d at 646 (adopting the trial court's finding that "[plaintiff] has title by virtue of the

Sheriff's Deed Poll, and has therefore established its superior title to the property currently occupied by [defendant]"); Fannie Mae v. Scarborough, No. 02669, 2012 WL 6051098, at *4 (Pa. Ct. Com. Pl. May 23, 2012) ("A party may obtain the right to possess a property via sheriff's sale. When a party asserts a possessory interest in real property based on a successful bid and purchase at a sheriff's sale, the right to immediate possession accrues when the sheriff's deed is acknowledged and recorded.").

Here, the Mazzas have not and cannot establish any of the few defenses to ejectment under Pennsylvania law. The foreclosure judgment rendered in favor of BNYM is not void. The Property is located in Pennsylvania, Pennsylvania's state courts have primary jurisdiction over foreclosures of Pennsylvania property, Pa. R. Civ. P. 1141-1150, the Mazzas were served with and participated in the foreclosure, and the Mazzas' appeal of the foreclosure was unsuccessful.

Nonetheless, the Mazzas argue that BNYM's foreclosure judgment is void because the mortgage assignment to BNYM was an assignment into a trust after the trust was closed, and therefore, not valid. See Defs.' Resp. 7, ECF No. 57. Even if the Mazzas had offered any factual support for this allegation, which they have not, courts have concluded that a breach of a pooling and servicing agreement (PSA) does not affect negotiation or transfer of loan notes and mortgages into trust, and that a borrow of a loan included in a trust has no standing to raise an

alleged violation of the PSA because they are not parties to the trust contract.[7] Courts in this district have found the same:

> In the past two (2) years, numerous courts have held that a borrower lacks standing to challenge a securitized trust's authority to enforce a loan note and mortgage based on purported violations of the underlying PSA. Most of the reported decisions arise in cases in which the borrower initiated a lawsuit against the mortgagee seeking a determination that it lacked authority to enforce the subject note and mortgage or wrongfully foreclosed on the

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[7] See, e.g., Correia v. Deutsche Bank Nat'l Trust Co., 452 B.R. 319, 324 (B.A.P. 1st Cir. 2011) (borrower lacked standing to challenge the mortgage's assignment claim under the PSA); Nachar v. PNC Bank, N.A., 901 F. Supp. 2d 1012, 1019 (N.D. Ohio 2012) ("[C]ourts that have considered the argument that a borrower can claim third-party beneficiary status to [a PSA], and premise a breach of contract or promissory estoppel claim on [a PSA], have rejected that argument. "); Kelly v. Deutsche Bank Nat'l Trust Co., 789 F. Supp. 2d 262, 267-68 {D. Mass. 2011) (borrower failed to show that he was either a party or a third party beneficiary to the PSA and therefore could not raise an alleged breach of the PSA as a defense to foreclosure); Citibank, N.A. v. Wilbern, No. 12 C 755, 2013 WL 1283802, at *4-6 (N.D. Ill. Mar. 26, 2013) ("[Defendants' concern regarding) the propriety of the assignment of [their] loan under the terms of the [PSA] . . if valid, does not affect Citibank's right to proceed with the foreclosure; a trust's own violations of the Internal Revenue Code might be a matter of concern for the trust's investors, but they do not serve as a basis for opposing another party's foreclosure attempts. ") ; Serra v. Quantum Serv. Corp., No. 11-11843, 2012 WL 3548037, at *12-13 (D. Mass. Aug. 5, 2012) , aff'd, 747 F.3d 37 (1st Cir. 2014) ("(Borrower] has presented no argument in support of the contention that if the assignment did violate the governing trust's documents, this would render the assignment invalid.").

> mortgage. Other decisions emanate from bankruptcy proceedings in which the debtor either initiated affirmative adversary proceedings against the mortgagee raising similar claims, objected to the mortgagee's proof of claim, or challenged the mortgagee's right to seek relief from the automatic stay. Whatever the context, it appears that a judicial consensus has developed holding that a borrower lacks standing to (1) challenge the validity of a mortgage securitization or (2) request a judicial determination that a loan assignment is invalid due to noncompliance with a pooling and servicing agreement, when the borrower is neither a party nor a third party beneficiary of the securitization agreement, i.e., the PSA.
>
> In this case, based on the facts before me, I come to the same conclusion. Because the Note is a negotiable instrument and that BNYM is the holder of the instrument, the Debtor lacks standing to assert that BNYM cannot enforce the Note due to an alleged failure to comply with the PSA.

In re Walker, 466 B.R. 271, 284-85 (Bankr. E.D. Pa. 2012) (citations omitted) . Similarly,

> Courts have consistently rejected attempts by third parties to enforce the terms of securitization agreements to which they are not a party. Wittenberg v. First Independent Mortgage Company, Civ. No. 10-58, 2011 WL 1357483 (N.D. W. Va. Apr. 11, 2011) (finding that mortgagor may not invoke pooling and

> servicing agreement because she was not an intended beneficiary of the agreement); Anderson v. Countrywide Home Loans, Civ. No. 10-2685, 2011 WL 1627945, at *4-5 (D. Minn. Apr. 8, 2011) (recognizing that compliance with a pooling and servicing agreement is not relevant to whether the chain of assignment was effective); Densmore v. Litton Loan Servicing, L.P. (In re Densmore), 445 B.R. 307, 310 (Bankr. D. Vt. 2011) ("the question of whether the loan in this case is listed in the PSA is immaterial to the question of whether Litton may enforce the note.").

In re D'Angelo, No. 11-14926, 2012 WL 27541, at *2 n.2 (Bankr. E.D. Pa. Jan. 5, 2012), aff'd, 479 B.R. 649 (E.D. Pa. 2012). Accordingly, the foreclosure judgment is not void.[a] [8]

Nor do the Mazzas have superior title to the Property. The Mazzas argue that "[i]n the instant action there was a sheriff sale that was rescheduled and defendants contend not receiving proper notice if [sic] the new sheriff sale date." See Defs.' Resp. 13. Rule 3129.3(b) (1) of the Pennsylvania Rules of Civil Procedure provides:

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[8] Relatedly, the Mazzas argue that the mortgage assignment to BNYM "was ineffective or invalid since the assignment was not executed by a [sic) individual as a nominee for MERS. MERS per the mortgage/note was solely in a nominee role regarding transfer or assignment and since assignment was not effectuated there was no transfer of the mortgage/note upon which the foreclosure complaint was based." See Defs.' Resp. 7, ECF No. 57. The Mazzas attached only a copy of the assignment, not the mortgage, which is not of the ordinary and dated before the filing of foreclosure.

> If the sale is stayed, continued, postponed or adjourned to a date certain within one hundred thirty days of the scheduled sale, notice of which sale was given as provided by Rule 3129.2, and public announcement thereof, including the new date, is made to the bidders assembled at the time and place fixed for the sale, no new notice as provided by Rule 3129.2 shall be required, but there may be only two such stays, continuances, postponements or adjournments within the one hundred thirty day period without new notice.

The Mazzas do not assert that a public announcement was not made the day of the originally scheduled sheriff's sale. Nor do they assert that more than two sale postponements occurred within 130 days from the original sale date. Given that the Mazzas cannot point to a genuine issue of material fact and that BNYM has shown it is entitled to judgment as a matter of law, summary judgment will be granted in favor of BNYM and against the Mazzas.[9]

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[9] The two remaining motions are the Mazzas' motion to vacate and motion for discovery. The Mazzas request that the Court vacate its October 28, 2022 Order requiring BNYM to file a motion for summary judgment and strike BNYM's motion for summary judgment pursuant to "Rule 60a (b)" (sic). See Mot. to Vacate, ECF No. 55; Order for Summ. J., ECF No. 48. The motion lacks support and merit. At the September 21, 2022 hearing, the Court asked BNYM if it was ready to move for summary judgment and orally requested that BNYM file the motion within fifteen days. However, the court did not provide for such a deadline in the written order that it entered following the hearing. Thereafter, on October 28, the Court entered an order fixing the deadline for the filing of summary judgment.

IV. CONCLUSION

For the reasons outlined herein, BNYM's motion to dismiss counterclaims and motion for summary judgment. Further, the Mazzas' additional motions to vacate, for discovery, and for an extension of time will be denied.

An appropriate order follows.

Fixing a new deadline for the filing of summary judgment was not a "mistake" and does not warrant that the order be vacated pursuant to Rule 60(b) (1). In any event, the Mazzas responded in opposition to the summary judgment motion and therefore suffer no prejudice.

The Mazzas also request additional discovery. After ten years of litigation, the Mazzas now seek the original mortgage and note, production of the underwriting files and transfers by and between banks, servicers, and MERS, depositions and written proof the alleged assignments were executed by individuals without capacity to sign assignments as assistant secretaries of MERS. However, none of the information the Mazzas request is relevant to this ejectment action -- instead, the Mazzas appear to be seeking this information to make collateral attacks or for purposes of delay. As noted above, the defenses to an ejectment action are limited, and the Mazzas have not and cannot establish those defenses. Because the discovery sought is irrelevant to the ejectment action, and the Mazzas have had years in different courts to discover said information yet waited until around a week until their response to summary judgment was due to request this discovery, the motion will be denied.

APPENDIX D

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

THE BANK OF NEW YORK MELLON,
Plaintiff
v.
MARK MAZZA, et al.,
Defendants

CIVIL ACTION NO. 17-5453

JUDGMENT

AND NOW, this **24th** day of **May, 2023**, in accordance with the Court's Order of this same date, it is hereby **ORDERED** that **JUDGMENT** in ejectment is **ENTERED** in favor of Plaintiff Bank of New York Mellon and against the Defendants.

AND IT IS SO ORDERED.

s/Eduardo C. Robreno
EDUARDO C. ROBRENO, J.

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 23-2168

BANK OF NEW YORK MELLON, FKA THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE CWALT, INC., ALTERNATIVE LOAN TRUST 2006-0A10 MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-0A10

v.

MARK MAZZA; LISSA MAZZA,
Apellants

On Appeal from the United States District Court
For the Eastern District of Pennsylvania
(D.C. Civil No. 2-17-cv-05453)

PETITION FOR REHEARING

Present: JORDAN, SHWARTZ, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, and CHUNG, *Circuit Judges*

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

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

By the court,

s/ Arianna J. Freeman
Circuit Judge

Dated: December 3, 2024

PDB/cc: Lisa Mazza
Mark Mazza
All Counsel of Record

APPENDIX F

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 23-2168

BANK OF NEW YORK MELLON, FKA THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF THE CWALT, INC., ALTERNATIVE LOAN TRUST 2006-0A10 MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-0A10
v.

MARK MAZZA; LISA MAZZA,
Appellants

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2-17-cv-05453)
District Judge: Honorable Eduardo C. Robreno (Ret.)

Submitted Pursuant to Third Circuit LAR 34.1(a)
September 3, 2024
Before: SHWARTZ, RESTREPO, and FREEMAN,
Circuit Judges

(Opinion filed: September 12, 2024)

OPINION*

PER CURIAM

* This disposition is not a opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

Mark and Lisa Mazza appeal pro se from the District Court's orders entering judgment in ejectment against them and in favor of Appellee Bank of New York Mellon (BNYM), and denying their counterclaims. For the following reasons, we will affirm the District Court's judgment.

In August 2015, BNYM obtained a foreclosure judgment against the Mazzas in the Chester County Court of Common Pleas for over $1.5 million, after they failed to make the mortgage payments on their Berwyn, Pennsylvania property. BNYM subsequently obtained a writ of execution. In June 2017, it bought the property at a sheriff's sale, and the deed was recorded.

The Mazzas unsuccessfully sought to set aside the sheriff's sale in state court. See Bank of N.Y. Mellon v. Mazza, Nos. 3265 EDA 2017, 99 EDA 2018, 2018 WL 3827268 (Pa. Super. Ct. Aug. 13, 2018).

The Mazzas have refused to vacate the property. Thus, in 2017, BNYM initiated an ejectment action in the Court of Common Pleas. Prior to service, the Mazzas removed the action to the District Court. The matter was assigned to Honorable Petrese B. Tucker. The Mazzas filed an answer to the complaint which included six counterclaims. Judge Tucker granted BNYM's motion to dismiss the counterclaims, finding that they were in essence an attack on the foreclosure judgment, and therefore barred by the Rooker-Feldman doctrine.[1] After the matter was reassigned to the Honorable Eduardo C. Robreno, the Mazzas

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[1] See D.C. Ct. of Appeals v. Feldman, 460 U.S. 462, 482 (1983); Rooker v. Fid. Tr. Co., 263 U.S. 413, 416 (1923).

filed two amended answers which also included counterclaims. BNYM filed a motion for summary judgment pursuant to Federal Rule of Civil Procedure 56, and a motion to dismiss the counterclaims pursuant to Federal Rule of Civil Procedure 12(b)(1) & (6). On May 24, 2023, the District Court entered an order granting summary judgment to BNYM, and dismissing all counterclaims with prejudice; a separate judgment in ejectment was entered in favor of BNYM. The Mazzas appealed.

We have jurisdiction over the appeal pursuant to 28 U.S.C. § 1291. We exercise plenary review over the district court's application of the Rooker-Feldman doctrine, see Parkview Assocs. P'ship v. City of Lebanon, 225 F.3d 321, 323-24 (3d Cir. 2000), and its grant of summary judgment, see Groman v. Twp. of Manalapan, 47 F.3d 628, 633 (3d Cir. 1995). A grant of summary judgment will be affirmed if our review reveals 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).

We can quickly dispense with several of the Mazzas' challenges on appeal.[2] First, it was well

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[2] Appellants' motion to summarily reverse the District Court's judgment is denied, See 3d Cir. L.A.R. 27.4; 3d Cir. I.O.P. 10.6. The motion, which was filed after their brief, does not rely on changed circumstances or a change in law. See 3d Cir. L.A.R. 27.4(b). Moreover, the motion lacks merit. Contrary to Appellants' arguments, the foreclosure judgment here was in rem only; it was not an in personam money judgment subject to revival under 42 Pa. C.S.A. § 5526(1). See 42 Pa. C.S.A. § 4303; 42 Pa. C.S.A. § 5526(1); cf. Insilvco Corp. v. Rayburn, 543 A.2d 120, 123 (Pa. Super. Ct. 1988) (recognizing the limited

within the District Court's discretion to strike their amended answers, which also included counterclaims. See Singletary v. Pa. Dep't of Corr., 266 F.3d 186, 193 (3d Cir. 2001). The Mazzas did not properly file an amended answer within the time allotted, nor did they obtain BNYM's consent or the Court's permission to file an amended answer. See Fed. R. Civ. P. 15(a)(1) & (2). Second, the District Court did not abuse its discretion in determining that BNYM's summary judgment motion was timely filed. See ECF No. 74 at 2 n.2.

Third, there is no basis in the record to support the Mazza's claims of judicial bias. See Securacomm Consulting, Inc. v. Securacom Inc., 224 F.3d 273, 278 (3d Cir. 2000) (noting that mere disagreement with adverse rulings is insufficient evidence of judicial bias). There was good cause to reassign the matter from Judge Tucker, who had assumed inactive status, to Judge Robreno, who was presiding over a case which, we agree, was "related to" the ejectment action.[3] See E.D. Pa. Loc. R. 40.1(IV) & (V) (governing the assignment and reassignment of related cases). None of the Mazzas' allegations demonstrate that Judge Robreno was unable to render fair judgment or that his impartiality might be reasonably be questioned, and, therefore, recusal was not required. See Liteky v. United States, 510 U.S. 540, 555 (1994) ("opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current

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circumstances (not present here) where a judgment in mortgage foreclosure can be both in rem and in personam).

[3] The "related" matter is a June 2020 complaint filed by the Mazzas against BNYM and others, alleging, inter alia, that BNYM acquired title to the Berwyn property through fraudulent means. See E.D. Pa. Civ No. 2:20-ev-03253.

proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible").

Turning to the merits of the ejectment complaint, we agree that BNYM was entitled to summary judgment. Under Pennsylvania law, which governs here, BNYM had the burden to establish the right to immediate exclusive possession of the property. See Doman v. Brogan, 592 A.2d 104, 108 (Pa. Super. Ct. 1996). To do so, it had to demonstrate paramount title to the property. Id. The recorded sheriff's deed, attached to the motion for summary judgment, established its claim to title. See Wells Fargo Bank N.A v. Long, 934 A.2d 76, 80 (Pa. Super. Ct. 2007). As noted by the District Court, the Mazzas wholly failed to raise any genuine issues of material fact as to BNYM's title. They did not contest BNYM's Statement of Undisputed Facts, nor did they marshal any evidence to support their affirmative defenses, relying instead on a mere memorandum of law. Accordingly, BNYM was entitled to judgment as a matter of law. See Williams v Borough of West Chester, 891 F.2d 458, 460 (3d Cir. 1989) (noting that the nonmoving party cannot simply assert factually unsupported allegations to meet burden at summary judgment).

The Mazzas argue that they were prejudiced by the District Court's order denying their motion for discovery. We find no abuse of discretion. See Mass. Sch. of Law at Andover, Inc. v. A.B.A., 107 F.3d 1026, 1032 (3d Cir. 1997) (noting the standard of review). To succeed on appeal, the Mazzas must "show that the district court's denial of discovery 'made it impossible to obtain crucial evidence, and

implicit in such a showing is proof that more diligent discovery was impossible.""
Mass. Sch. of Law, 107 F.3d at 1032 (citation omitted). The Mazzas cannot make this requisite showing.

First, we agree with the District Court that the Mazzas did not diligently pursue discovery. They claimed to have uncovered the basis for their discovery motion in 2018,[4] but they waited to file the motion Until November 2022, a year and a half after they were served with the complaint, and a week before their summary judgment response was due.

Second, the Mazzas have not shown that they were denied the opportunity to discover evidence which would support a viable defense. They sought discovery of documents - including the original mortgage note - to demonstrate that the underlying foreclosure judgment is void, See Dime Say. Bank, FSB v. Greene, 813 A.2d 893, 895 (Pa. Super. Ct. 2002) (recognizing that "a judgment which is void can not support an ejectment action and may be asserted as a defense in the ejectment proceeding"). They contend the mortgage assignment to FNYM was invalid or ineffective for a number of reasons, including that it was an assignment into a trust after the trust was closed. They argue, therefore, that BNYM lacked standing to enforce the note and bring the foreclosure action. But under Pennsylvania's Uniform Commercial Code (PUCC), a note sccured by a mortgage is a negotiable instrument; thus, "challenges to the chain of possession by which [a foreclosing party] came to hold the [n]ote [are] immaterial to its enforceability." J.P. Morgan Chase

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[4] In their response to summary judgment, the Mazzas did not identify or present the evidence which they claim to have discovered in 2018.

Bank v. Murray, 63 A.3d 1258, 1266 (Pa. Super. Ct. 2013). Moreover, under Pennsylvania law, standing is a non-jurisdictional and waivable issue. See In re Condemnation by Urban Redev. Auth. of Pittsburgh, 913 A.2d 178, 181 n.6 (Pa. 2006). Thus, even assuming that the District Court had the authority to determine that the state foreclosure judgment was void as a defense to ejectment, the Mazzas' challenges to the assignment and BNYM's standing could not have established it. Accordingly, they were not prejudiced by the denial of the discovery motion. See Washington v. Hovensa LLC, 652 F.3d 340, 348 n.6 (3d Cir. 2011) (noting that we will not disturb the District Court's discovery order "absent a showing of actual or substantial prejudice").

The District Court was clearly barred, however, from granting relief on the Mazzas' counterclaims. The District Court determined that they were barred by the Rooker-Feldman doctrine, which precludes federal consideration of "cases brought by state-court losers complaining 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 (2005). On appeal, the Mazzas contend that the doctrine does not bar their claims because they seek relief for injuries caused by BNYM in fraudulently obtaining foreclosure, not for injuries caused by the state court's judgment. See Great W. Mining & Mineral Co. v. Fox Rothschild LLP, 615 F.3d 159, 167 (3d Cir. 2010) (indicating that the doctrine does not apply "when the source of the injury is the defendant's actions (and not the state court judgments)"). But for relief, the Mazzas

sought, inter alia, quiet title to the property; to that extent, they are precisely the type of claims which Rooker-Feldman precludes.
See Vossbrinck v. Accredited Home Lenders, Inc., 773 F.3d 423, 427 (2d Cir. 2014) (holding that Rooker-Feldman barred plaintiff's suit "ask[ing] the federal court to grant him title to his property because the foreclosure judgment was obtained fraudulently"); accord Taylor v. Fed. Nat'l Mortg. Ass'n, 374 F.3d 529, 533 (7th Cir. 2004), as amended on denial of reh'g and reh'g en banc (Aug. 3, 2004).

To the extent that the Mazzas sought damages for injuries caused by BNYM stemming from the assignment of the underlying mortgage note, their claims are barred by the doctrine of claim preclusion. See Balent v. City of Wilkes-Barre, 669 A.2d 309, 313 (Pa. 1995) (recognizing that a valid, final judgment on the merits precludes future litigation between the parties or their privies on the same cause of action, including claims that could have been litigated during the first proceeding); see also Rycoline Prods., Inc. v. C & W Unlimited, 109 F.3d 883, 887 (3d Cir, 1997) (noting that federal courts are required to give state court judgments the same preclusive effect that the issuing state courts would give them).
Accordingly, the counterclaims were properly dismissed with prejudice.

Based on the foregoing, we deny the motion for summary dismissal, and will affirm the District Court's judgment.[5]

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[5] Appellee's motion for leave to file a sur reply in opposition to summary disposition is granted. Appellants' motion for an extension of time to file a supplemental appendix, and for leave to file a supplemental appendix and expand the record is granted in part and denied in part. The motion is granted to the extent it seeks to file, in a supplemental appendix, the documents listed in Federal Rule of Appellate Procedure 30 and 3d Cir. LA.R. 30.3, that were not included in their appendix or Appellee's appendix. The motion is otherwise denied. See Acumed LLC v. Advanced Surgical Servs., Inc., 561 F.3d 199, 226 (3d Cir. 2009) (noting the "exceptional circumstances" necessary to justify supplementing the record on appeal). Appellants' motion to stay, defer, continue and/or remove this appeal from the September 3, 2024 calendar is denied.