

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0806

September Term, 2014

EDWIN COLEMAN

v.

RESIDENTIAL CREDIT SOLUTIONS

Woodward,
Hotten,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: May 13, 2015

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On December 23, 2013, Edwin C. Coleman (hereinafter “Coleman”), *pro se*, filed a suit in the Circuit Court for Baltimore City against Residential Credit Solutions (hereinafter “RCS”). RCS filed a motion to dismiss or, in the alternative, motion for summary judgment. RCS’s motion for summary judgment was granted based on the court’s conclusion that the complaint was barred by the doctrine of *res judicata*. Coleman filed a motion to alter or amend judgment, which was denied. In this timely appeal, Coleman contends that the doctrine of *res judicata* did not bar him from filing the complaint here at issue. We disagree with Coleman’s contention and shall affirm the judgment of the circuit court.

I.

A. Coleman’s First Complaint

About five and one-half months before Coleman filed the complaint here at issue, he filed, *pro se*, in the Circuit Court for Baltimore City, a complaint that is almost identical to his most recent complaint here at issue. That case, however, was transferred to the United States District Court for the District of Maryland, Baltimore Division, after RCS filed a motion alleging that there was diversity of citizenship between the parties inasmuch as RCS was domiciled in Delaware and Coleman resided in Maryland and, in addition, Coleman’s complaint alleged that RCS had violated four federal statutes over which the federal court had original jurisdiction. Coleman’s complaint, when read in conjunction with the exhibit that he attached to the complaint, showed that: 1) Coleman was the owner of property located at 4522 Umatilla Avenue, Baltimore, Maryland 21215 (hereinafter “the Property”);

2) on November 17, 2003, Coleman encumbered the Property when he signed a note and a deed of trust securing the payee of that note, First Franklin Financial Corp., a subsidiary of National City Bank of Indiana. The amount of the loan that was secured was \$37,100. According to the complaint, RCS “holds itself out as the nominal Deed of Trust/[M]ortgagee of record in the [c]ounty [sic] Baltimore, Maryland, identifying the property described supra, as the surety for ma [sic] loan which another alleged entity made to plaintiff with the property described supra as collateral.”^[1]

Paragraphs 12 through 18 of the complaint sets forth Coleman’s allegations of what RCS did wrong and what Coleman wanted the court to do about that wrong, *viz.*:

12. Plaintiff executed a Deed of Trust dated November 17, 2003 which is recorded in the land records of this county.

13. The Deed of Trust, included herein as exhibit A. states that there is a debt evidenced by a note dated the same date as the security instrument.

14. The plaintiff has made request for the defendant to produce proof of the debt by providing or making available for inspection, the original Note, and not a copy.

15. The defendant has failed to honor the requests.

¹ Although both of the complaints that are relevant to this appeal were initially filed in the Circuit Court for Baltimore City, Coleman alleges, in both complaints, under the heading “Venue,” that “[v]enue in the Circuit Court for Baltimore County is appropriate as the Circuit Court for Baltimore County has jurisdiction of actions to try title and the property legally described supra, is located within the geographic boundaries of Baltimore County, Maryland.”

16. For the aforementioned reasons, plaintiff believes that the original Note has been lost or stolen, and that no person or entity has the rights of holder in due course as defined by UCC 3-302.

17. The plaintiff has sent defendant several Qualified Written Request regarding the disbursement of payments made to their organization, yet they continue to disburse funds to fraudulent accounts.

18. Without obligation to the instrument, the plaintiff seeks the court to make a determination that this debt no longer represents a Mortgage on the property.

Earlier in this complaint, Coleman asserted that RCS had committed “fraud” and had violated provisions of the Uniform Commercial Code (UCC), as well as four federal statutes. The specific allegations in this regard were set forth in paragraphs four through eight, which read:

4. The plaintiff alleges that the defendant violated TILA (Truth in Lending Act) requirements in its dealing with plaintiff. (Disclosure requirements and Disclosure requirements for ARM loans).

5. Defendant violated and continues to violate RESPA code 12 U.S.C. 2607(b); 24 C.F.R. 3500 14(c) which prohibits charges for services than those actually performed or for which duplicative fees are charged in an unearned fee and violates that section.

6. The plaintiff alleges that defendant has violated HOEPA (Home Ownership and Equity Protection Act) in its servicing the loan of plaintiff.

7. That the defendant has violated the Equal Credit Opportunity Act (E[CO]A).

8. That defendant has committed fraud and a breach of fiduciary duty toward the plaintiff.

The complaint concludes by asking for the following relief:

Conclusion and remedy sought

27. The plaintiff is seeking relief through this [c]ourt: (A) Estoppel of further claims by the defendant(s); (B) actual damages in an amount to be determined at trial; and (C) cost and disbursements. Furthermore, after certifying that the alleged mortgage lender is in receipt of notice and have had opportunity, have failed or refused to produce the original, unaltered promissory note vis a vis Plaintiff, maker, Mortgage Lender, [E]ndorser, such as would provide a lawful basis for maintaining a Deed of Trust/mortgage lien on said note with the foregoing identified property as the surety, this [c]ourt should order the removal of the prior recording of the Deed of Trust/mortgagee as a false cloud to title.

RCS filed, pursuant to Federal Rule 12(b)(6), a motion to dismiss the complaint.

That motion was supported by a memorandum of law as well as a declaration signed, under oath, by Peter Grasis, Esquire, counsel for RCS. The memorandum of law asserted that Coleman had failed to allege any factual basis for his contention that he was “without obligation” to pay the note. Moreover, RCS pointed out, correctly, that Coleman had not even alleged that RCS had a duty to produce the original note on demand nor was there any allegation that RCS, or anyone else, had brought an action to enforce the promissory note or the deed of trust that secured that note. In addition, RCS asserted that even assuming the promissory note was lost or stolen, the note was still enforceable against Coleman. Also, in the declaration attached to the memorandum of law, Mr. Grasis swore that “[a] true, accurate, and complete copy of the original Note in my possession is attached hereto as Exhibit 1.”

On October 25, 2013, United States District Court Judge F. Frederick Motz, filed an order dismissing Coleman's complaint. On the same date, the judge filed a memorandum opinion explaining why he was doing so. In his written opinion, Judge Motz states:

Plaintiff makes conclusory claims under HOEPA, RESPA, TILA, and ECOA. Plaintiff's allegations to support his conclusory claims clearly are inadequate under *Bell Atl. Corp. v. Twombly*, 550 U. S. 544 (2007) and *Ashcroft v. Iqbal*, 129 S. Ct. 1937 (2009). If that were the only fallacy in these claims, however, I would - [in] light of plaintiff's *pro se* status - give him an opportunity for leave to amend. However, in the opposition papers that he has filed, plaintiff has given no indication that he has a viable claim under any of these statutes. Moreover, to the extent that he had any such claims, they would be time-barred under the applicable statutes of limitation.

Plaintiff's underlying complaint seems to be that defendant is not in possession of the original note that he signed. It appears from an affidavit and attachment filed by defendant in its reply that in fact, defendant is in possession of the note. In any event, even if the note were lost, it would still be enforceable. *See* Md. Code Ann. Comm. Law, §3-309 (2013).

Coleman filed an appeal of Judge Motz's order of dismissal. The United States Circuit Court of Appeals for the Fourth Circuit, in a *per curiam* unreported opinion, affirmed the dismissal.

B. The Second Complaint

Not long after Judge Motz dismissed Coleman's first complaint, Coleman filed, *pro se*, the complaint here at issue. The present complaint is *verbatim* the same as the complaint that was dismissed, except that in the complaint here at issue, Coleman deleted paragraphs

four, five, six and seven, which were in the original complaint. Those four paragraphs were the ones in which Coleman alleged that RCS had violated four separate federal statutes. Nevertheless, the alleged acts of “wrongdoing” on the part of RCS, are exactly the same as the ones alleged in the original complaint and the relief sought is also exactly the same.

As mentioned earlier, in response to the second complaint, RCS filed a motion for summary judgment, which the Circuit Court for Baltimore City granted on the grounds of *res judicata*. In the circuit court, RCS argued, and the argument was accepted by the motions judge, as follows:

In the case at bar, as was in [*Anne Arundel County Board of Education v. Norville*, [390 Md. 93 (2005)], all of the elements of *res judicata* are satisfied. First, the parties in the present litigation are the same parties to the earlier suit. Second, the [Current Complaint] is virtually identical to the [Prior Complaint]; indeed, the only difference is that the Plaintiff *removed* references to federal statutes from [the Prior Complaint]. Finally, the U.S. District Court rendered a final judgment on the merits by dismissing the Prior Action under Fed. R. Civ. P. 12(b)(6); the Court of Appeals has held that such a dismissal is a final judgment on the merits. 390 Md. at 112, 887 A.2d at 1040. *See also* Fed. R. Civ. P. 41(b).

(Footnote omitted).

II. ANALYSIS

A. Standard of Review

A trial court may grant summary judgment where the motion for summary judgment, and any opposition thereto, establish that there is no dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law. Md. Rule 2-501(f). A trial court’s

disposition of summary judgment motions is subject to *de novo* review on appeal. *Property & Casualty Ins. Guar. Corp. v. Yanni*, 397 Md. 474, 480, 919 A.2d 1 (2007); *Standard Fire Ins. Co. v. Berrett*, 395 Md. 439, 450-51, 910 A.2d 1072 (2006). “The standard of appellate review, therefore, is whether the trial court was legally correct.” *Remsburg v. Montgomery*, 376 Md. 568, 579, 831 A.2d 18 (2003) (quoting *Williams v. Mayor & City Council of Baltimore*, 359 Md. 101, 114, 753 A.2d 41 (2000) (citations omitted)). Where there are no material facts in dispute, we must determine if summary judgment was properly entered as a matter of law. *Property & Casualty Ins. Guar. Corp.*, 397 Md. at 480-81, 919 A.2d 1; *Standard Fire Ins. Co.*, 395 Md. at 451, 910 A.2d 1072.

Washington Mut. Bank v. Homan, 186 Md. App. 372, 387-88 (2009).

B. Res Judicata

In this case, there is no dispute of fact. Moreover, the parties are in agreement that the elements of the doctrine of *res judicata* are accurately set forth in *Anne Arundel County Board of Education v. Norville*, 390 Md. 93, 107 (2005), *viz.*:

Under Maryland law, the elements of *res judicata*, or claim preclusion, are: (1) that the parties in the present litigation are the same or in privity with the parties to the earlier dispute; (2) that the claim presented in the current action is identical to the one determined in the prior adjudication; and, (3) that there has been a final judgment on the merits.

(Citations omitted).

The parties to the present case, as well as the parties in the case dismissed by Judge Motz, are the same. And, because the only difference between the first and second complaint is that the second complaint deleted claims but did not add any new ones, the claims asserted in the case *sub judice* are the same as the one dismissed by the federal court.

Lastly, a dismissal by a federal court pursuant to Federal Rule 12(b)(6) constitutes a final judgment on the merits for *res judicata* purposes. *Norville*, 390 Md. at 112. (The dismissal by the District Court pursuant to the Board’s motion to dismiss against *Norville*, which relied explicitly on Fed. R. Civ. P. 12(b)(6), constituted a final judgment because it “necessarily decided that the Board was a State Agency entitled to . . . assert Eleventh Amendment immunity.”). *See also* Federal Rule of Civil Procedure 41(b), which provides that “any dismissal not under this rule - except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19 - operates as an adjudication on the merits.”

The main argument that Coleman sets forth in his brief as to why this case is not barred by *res judicata* is that [purportedly] the federal court did not have jurisdiction to render a judgment that resolved his request to quiet title on the Property. Coleman words his argument as follows:

Here and on the face of a Complaint to Quiet Title. Real Property Article § 14-108 governs an action to quiet title in real estate. The section provides as follows:

(a) Conditions - Any person in actual peaceable possession of property, or . . . may obtain a suit in equity in the county where the property lies to quiet or remove any cloud from the title . . .” Wathen v. Brown, 48 Md. App. 655 (1981).

There is no such federal law/statute or common law principle which so deals with the right to petition a federal court to quiet title to a Maryland property owned by a Maryland resident such as 4522 Umatilla Avenue, Baltimore, MD 21215 and Edwin Coleman respectively. See 2, U.S. Constitution Art. IV Sec. 2, Amend X (The powers not delegated to the United States by the Constitution, nor prohibited by it to the states respectively, or to the people.

A land patent is a grant of privilege, property, or authority made by means of a deed by which one conveys and receives land. Since George Calvert, Lord of Baltimore was given his charter by Charles I in 1632 the Maryland Charter has given the right to quiet title. It has not been seriously challenged that such a right is uniquely and exclusively a state process from which the federal government is barred. Cunningham v. Browning, 1 Bland 299 (1827).^[2] It is this principle which Coleman brought before Judge Brown [the motions judge who dismissed appellant's complaint based on principles of *res judicata*] by proper and legal Complaint. How then could Judge Brown find that a federal case barred the appellant from litigating a purely State right? The answer is simple. He could not do so using the unannounced doctrine of *res judicata*.

For the reasons set forth, *infra*, we reject the above argument and hold that under the facts of this case, the federal court was not barred from fully deciding all claims where a plaintiff asks, *inter alia*, to quiet title.

28 U.S.C. § 1331 provides:

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

(Emphasis added).

The original complaint alleged that RCS had violated four federal statutes, i.e., the Truth and Lending Act, 15 U.S.C. § 1691, *et seq.*, the Real Estate Procedure Act, 12 U.S.C. § 2607(b), *et seq.*, the Home Ownership and Equity Protection Act, 15 U.S.C. § 1639, and

² The *Cunningham* case deals with the principle that the State and not the federal government has the power to issue land patents for Maryland land. This has nothing whatsoever to do with whether a federal court has supplemental jurisdiction to resolve a dispute involving title to land when one party asks the court to quiet title to Maryland property.

the Equal Credit Opportunity Act.,¹⁵ U.S.C. § 1691, *et seq.* Therefore, pursuant to 28 U.S.C. § 1331, the federal court had original jurisdiction over Coleman’s complaint because it alleged that at least part of his claim was based on violations of the laws of the United States.

28 U.S.C. § 1367 provides that when a federal court has original jurisdiction over at least one claim, the court has ancillary jurisdiction over State claims – under certain circumstances. 28 U.S.C. § 1367(a) - (c) provides as follows:³

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title [dealing with diversity of citizenship] the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against . . . persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if - -

³ None of the exceptions mentioned in 28 U.S.C. § 1367(a) are here applicable.

- (1) the claim raises a novel or complex issue of State law,
- (2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,
- (3) the district court has dismissed all claims over which it has original jurisdiction, or
- (4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(Emphasis added).

To exercise supplemental jurisdiction over state claims, such as a request to quiet title, the supplemental claim must be “so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.” *See* 28 U.S.C. § 1367(a). Here, there can be no question but that the claim to quiet title was so closely related to the claims under the four federal statutes as to form part of that federal case inasmuch as all state and federal claims considered by the federal court involved identical facts.⁴

In this brief, appellant makes a second argument that he phrases as follows:

The federal issues were not the same and irrespective of the basis for dismissal by Judge Motz in that court. The issue of Quiet Title was not finally litigated, such that it barred appellant to seek relief under RP § 14-108. Judge Brown [in granting summary judgment] had no facts before him that were litigated

⁴ At oral argument, Coleman’s lawyer, despite what was argued in his client’s brief, admitted that Judge Motz had supplemental jurisdiction to decide whether the request to quiet title should be granted.

by Judge Motz, in the federal court. Ordinarily, the failure to state a claim upon which relief may be granted is not fatal to amendment. Rule 15 FRCP; Rule 54 FRCP; Rule 7 FRCP; Rule 12 FRCP. (Rule 12 (b)(6)) Here the moving party failed to seek a judgment on the papers thereby allowing a federal dismissal without prejudice. (RE 44-45)

To allow a trial judge the power to arbitrarily deny a State citizen his access to the courts to retain his property is clearly illegal and contrary to law.

It is impossible to decipher the exact meaning of parts of the above argument.⁵ But, in oral argument, appellant's counsel clarified his argument by explaining that his client's sole contention was that the only decision Judge Motz made was that the federal claims set forth in the complaint were barred by the statute of limitations; therefore, according to appellant, there was no final judgment as to appellant's state claim (i.e., the claim that plaintiff had a right to quiet title to the Property without the encumbrance represented by the deed of trust) because Judge Motz did not decide that claim. We disagree.

It must be remembered that RCS made a motion in federal court, pursuant to Rule 12 (b)(6) of the Federal Rules of Civil Procedure, for failure of Coleman to state a claim upon which relief could be granted. That motion encompassed all federal and state claims that Coleman attempted to assert in his complaint. When Judge Motz granted that motion,

⁵ The allegation that the "moving party (i.e., RCS) failed to seek a judgment on the papers thereby allowing a federal dismissal without prejudice" is particularly puzzling. RCS did seek a judgment "on the papers" because RCS contended in federal court, and Judge Motz agreed with the contention, that the complaint failed to state a claim upon which relief could be granted.

without leave to amend, he necessarily found that Coleman had not stated a cause of action of any sort; if there were no such finding, “there would not have been a basis to dismiss the suit at the 12 (b)(6) stage[.]” *Norville, supra*, 390 Md. at 112. Additionally, it should be recalled that Judge Motz did not simply rule that the case should be dismissed because the federal claims were barred by the statute of limitations. Judge Motz also analyzed the validity of Coleman’s core legal argument, which applied to all causes of action. Coleman’s core argument was that if the original note was lost, then the note wasn’t enforceable. In his memorandum opinion, Judge Motz ruled that this core contention simply had no merit because, even if the note was lost, it was still enforceable under Md. Code Ann. (2013) Commercial Law Article section 3-309.

For all of the above reasons, we hold that the circuit court acted appropriately when it granted RCS’s motion for summary judgment.

**JUDGMENT AFFIRMED; COSTS TO
BE PAID BY APPELLANT.**