

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

RESIDENTIAL CAPITAL, LLC,

Debtor.

14-CV-1509 (VSB)

MEMORANDUM & ORDER

ALFREDIA PRUITT,

Appellant,

- against -

RESIDENTIAL CAPITAL, LLC, GMAC et
al.,

Appellees.

Appearances:

Alfredia Pruitt
Lilburn, Georgia
Pro Se Appellant

Jeffrey K. Rosenberg
Norman S. Rosenbaum
Morrison & Foerster LLP
New York, New York
Counsel for Appellees

VERNON S. BRODERICK, United States District Judge:

Appellant Alfredia Pruitt, proceeding *pro se*, appeals from the decision of the United States Bankruptcy Court, Judge Martin Glenn, dismissing her Complaint in Adversary Proceeding No. 13-01350, *Pruitt v. Residential Capital, LLC, et al.* (the “Adversary Proceeding” or “AP”), filed in connection with the bankruptcy of Residential Capital, LLC (“ResCap”), No.



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12-12020 (the “Bankruptcy”). (AP Doc. 37.) Because this matter was several times decided on the merits by a state court, the Complaint is barred by the doctrine of res judicata. The decision below is affirmed, and this appeal is dismissed.

I. Background

Pruitt was the owner of 2360 Hickory Station Circle, Snellville, Georgia (the “Property”). (Compl., AP Doc. 1, ¶ 4.) On September 7, 2010, the Property was sold at foreclosure, and Pruitt filed a petition for relief in the United States Bankruptcy Court for the Northern District of Georgia (the “Georgia Bankruptcy Court”). (*Id.* ¶¶ 6-7.) The September 7, 2010 petition was Pruitt’s third bankruptcy filing within one year. (*See* AP Doc. 26-4.) GMAC Mortgage, LLC (“GMAC Mortgage”) filed a motion seeking confirmation from the Georgia Bankruptcy Court that Pruitt’s September 7, 2010 bankruptcy filing did not give rise to the automatic stay. (Doc. 37 at 3.) The Georgia Bankruptcy Court issued an order stating that the “automatic stay under [Bankruptcy Code] § 362(a)” —which would have, among other things, stayed “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate,” 11 U.S.C. § 362(a)(3)—“did not go into effect upon or since [Pruitt’s September 7, 2010] filing . . . and [that] no order has been entered imposing a stay to the extent provided in 11 U.S.C. § 362(c)(3)(A).” (*Id.*) The Georgia Bankruptcy Court dismissed Pruitt’s bankruptcy petition on November 17, 2010. (AP Doc. 26-5.) Pruitt thereafter filed in the Superior Court of Gwinnet County, Georgia (the “Georgia Superior Court”) four actions challenging in various ways the foreclosure of the Property (collectively, the “Actions”).

A. *The First Georgia Superior Court Action*

The first action, captioned *Pruitt v. Federal National Mortgage Association, et al.*, No. 10-A-10972-3 (the “First Action”), was filed on December 6, 2010 and appealed a dispossessory

order obtained by GMAC Mortgage. (AP Doc. 26-6 at 3-6; *see also* Compl., ¶ 16.) “GMAC” was a named defendant in that case. (AP Doc. 26-6 at 3.) Pruitt asserted that the foreclosure of the Property was unlawful and sought a preliminary injunction preventing “GMAC” from proceeding to evict her. (*See generally id.* at 3-6.) By order dated January 28, 2011, the Georgia Superior Court denied Pruitt’s request for emergency relief, affirmed the dispossessory order, and granted final judgment in favor of the defendants, including “GMAC.” (AP Doc. 26-7.)

B. *The Second Georgia Superior Court Action*

Pruitt filed a second action, *Pruitt v. Federal National Mortgage Association, et al.*, No. 11-A-10084-3, in the Georgia Superior Court on September 21, 2011 (the “Second Action”), seeking an order to set aside the foreclosure sale. (AP Doc. 37 at 4.) In the Second Action, Pruitt asserted that the foreclosure was unlawful because the named defendant “GMAC” was not the holder of the mortgage note on the Property. (AP Doc. 26-8 at 3-4.) The Georgia Superior Court on September 22, 2011 dismissed the Second Action for failure to state a claim upon which relief could be granted. (AP Doc. 26-9.)

C. *The Third Georgia Superior Court Action*

Pruitt filed a third action, *Pruitt v. Federal National Mortgage Association, et al.*, No. 11-A-10675-3, in the Georgia Superior Court on October 7, 2011 (the “Third Action”), seeking to prevent her eviction and to quiet title in her favor. (AP Doc. 26-10.) “GMAC” was named as a defendant. (*Id.* at 2.) On October 10, 2011, the Georgia Superior Court dismissed the Third Action for failure to state a claim upon which relief could be granted. (AP Doc. 26-11.) In addition, Pruitt had recorded two *lis pendens* against the Property, so on January 26, 2012, the Superior Court directed the clerk to cancel the two *lis pendens*. (AP Doc. 26-12.)

D. *The Fourth Georgia Superior Court Action*

Pruitt filed a fourth action, *Pruitt v. MERS/GMAC, et al.*, No. 12-A-01388-3, in the Georgia Superior Court on February 15, 2012 (the “Fourth Action”), asserting that the foreclosure was unlawful and seeking quiet title in her favor. (*See* AP Doc. 26-15.) “GMAC” was named as a defendant. (*See* AP Doc. 26-1.) The Georgia Superior Court on March 12, 2012 dismissed the Fourth Action and entered a bill of peace enjoining Pruitt from “filing or serving in any other case in any court any pleadings or suits related to the [P]roperty.”¹ (*See id.*)

II. Procedural History

On March 14 and March 15, 2013, Pruitt filed motions seeking relief from the automatic stay in the Bankruptcy, but the bankruptcy court denied that relief. (Bankruptcy Doc. 3223.) Subsequently, on May 24, 2013, Pruitt filed the Complaint initiating the underlying Adversary Proceeding. (Bankruptcy Doc. 3433.) Named as defendants are “ResCap” and “GMAC.”² The Complaint alleges that GMAC Mortgage’s foreclosure was illegal because the Property was subject to an automatic stay, (Compl., ¶ 18), and because GMAC Mortgage was not the holder in due course of Pruitt’s mortgage, (*id.* ¶ 24).

On October 4, 2013, Defendants moved to dismiss the Complaint. (AP Doc. 26.) Oral argument on the motion was held before Judge Glenn on December 27, 2013. (AP Doc. 36.) On January 23, 2014, Judge Glenn entered a memorandum opinion and order dismissing the Complaint on grounds of res judicata. (AP Doc. 37.) Pruitt timely filed a notice of appeal on February 10, 2014, (AP Doc. 40), and initiated this appeal on March 5, 2014, (Docs. 1-2). The

¹ Counsel for ResCap stated at oral argument before Judge Glenn that Pruitt filed a fifth action in the Georgia Superior Court on November 21, 2013, which was dismissed on November 26, 2013. (AP Doc. 36 at 66.)

² Although Pruitt has continuously named “GMAC” in her lawsuits, including here, the proper defendant appears to be GMAC Mortgage, (*see* AP Doc. 26-4), which Pruitt recognized in appealing the First Action, (*see* Doc. 26-7 at 1). I hereafter refer to GMAC as GMAC Mortgage.

parties gave oral argument on the appeal before me on June 6, 2014.

III. Legal Standard

This Court has jurisdiction pursuant to 28 U.S.C. § 158(a)(1) to hear appeals from final judgments, orders, and decrees of a bankruptcy court. A district court may “affirm, modify, or reverse a bankruptcy judge’s judgment, order, or decree or remand with instructions for further proceedings.” Fed. R. Bankr. P. 8013. A district court reviews a bankruptcy court’s findings of fact for clear error and reviews its legal conclusions de novo. *Overbaugh v. Household Bank N.A. (In re Overbaugh)*, 559 F.3d 125, 129 (2d Cir. 2009) (per curiam); see Fed. R. Bankr. P. 8013 (“Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous”). “Mixed questions of fact and law are subject to *de novo* review.” *Babitt v. Vebeliunas (In re Vebeliunas)*, 332 F.3d 85, 90 (2d Cir. 2003); see *Parmalat Capital Fin. Ltd. v. Bank of Am. Corp.*, 639 F.3d 572, 580 (2d Cir. 2011).

IV. Discussion

A. *Res Judicata*

“[T]he preclusive effect of a state court determination in a subsequent federal action is determined by the rules of the state where the prior action occurred” *New York v. Sokol (In re Sokol)*, 113 F.3d 303, 306 (2d Cir. 1997). Here, that state is Georgia. Under Georgia law, the doctrine of res judicata is codified and provides that “[a] judgment of a court of competent jurisdiction shall be conclusive between the same parties and their privies as to all matters put in issue or which under the rules of law might have been put in issue in the cause wherein the judgment was rendered until the judgment is reversed or set aside.” Ga. Code Ann. § 9-12-40. The doctrine “prevents the re-litigation of all claims which have already been adjudicated, or which could have been adjudicated, between identical parties or their privies in identical causes

of action.’” *Lilly v. Heard*, 761 S.E.2d 46, 48 (Ga. 2014) (quoting *Odom v. Odom*, 733 S.E.2d 741, 743 (Ga. 2012)). The following elements must be demonstrated for res judicata to apply: (1) the parties are identical or in privity; (2) the subject matter of the actions is identical; (3) the prior adjudication was made on the merits by a court of competent jurisdiction; and (4) the party against whom res judicata is raised must have had a full and fair opportunity to litigate in the first action. *See QOS Networks Ltd. v. Warburg, Pincus & Co.*, 669 S.E.2d 536, 540 (Ga. Ct. App. 2008); *Sanders v. Trinity Universal Ins. Co.*, 647 S.E.2d 388, 391 (Ga. Ct. App. 2007). Each element is met here.

First, GMAC Mortgage was a named defendant in each of the Actions and is named as a defendant here.³ Second, the subject matter of the Actions, and indeed the causes of actions themselves, are essentially identical to the claims Pruitt asserted in the Adversary Proceeding. In the Actions and in the Adversary Proceeding, Pruitt challenged the ability of GMAC Mortgage to foreclose on the Property because of alleged discrepancies in what entity held Pruitt’s mortgage note, and has sought to quiet title in her favor. Third, the Actions were decided on the merits by a court of competent jurisdiction. Superior courts in Georgia have exclusive jurisdiction over “cases respecting title to land,” Ga. Const. art. 6, § 4, para. 1; *see also* Ga. Code. Ann. § 44-2-60 (“[T]he superior court of the county in which the land is located shall have exclusive original jurisdiction of all petitions and proceedings had thereupon.”), and the Georgia Superior Court dismissed each of Pruitt’s cases for failure to state a claim upon which relief can be granted, *see Lam v. Allstate Indem. Co.*, 755 S.E.2d 544, 547 (Ga. Ct. App. 2014) (“[T]he dismissal for failure to state a claim is an adjudication on the merits implicating the doctrine of

³ I note that, although ResCap is technically named as defendant in the Adversary Proceeding, all of the allegations in Pruitt’s Complaint concern GMAC Mortgage, and none concern ResCap. (Adv. Proc. Docs. 1 & 3.) Pruitt does not argue on this appeal that she has any claim against ResCap independent from her claim against GMAC Mortgage.

res judicata.”). Finally, Pruitt had a full and fair opportunity to litigate the Actions. Specifically, Pruitt initiated those cases and was given the opportunity to present oral argument in the First Case, (AP Doc. 26-7 at 1), and again in appealing the First, Second, and Third Cases, (*see* Doc. 7 Ex. 6 (transcript of Jan. 25, 2012 hearing)). *See Kidd v. First Commerce Bank*, 591 S.E.2d 369, 374 (Ga. Ct. App. 2003) (wrongful-foreclosure plaintiffs “had an opportunity to litigate [that] claim when they sought an injunction to prevent the foreclosure, as evidenced by the portions of the transcript of the hearing in that case that have been included in the record on appeal”).

B. Pruitt’s Arguments

Pruitt advances several arguments, none of them availing. First, she insists that GMAC Mortgage defaulted in the Adversary Proceeding because it never filed an answer to her Complaint.⁴ Pruitt appears to be confused by the interplay between Federal Rule of Civil Procedure 8(c)(1), which lists res judicata as an affirmative defense that must be stated in responding to a pleading, and Rule 12(b), which allows a motion to dismiss on grounds of, among other things, res judicata, *see, e.g., Michaelesco v. Estate of Richard*, 355 F. App’x 572, 573 (2d Cir. 2009); and between Rule 12(a)(1), which requires a defendant to answer within twenty-one days of receiving a complaint, and Rule 12(a)(4), which tolls the time to answer until fourteen days after a motion to dismiss is decided.⁵ GMAC Mortgage filed a motion pursuant to Rule 12(b), so it was not required to answer the Complaint unless the motion was denied. Since the motion was granted, GMAC Mortgage did not have to file an answer. *See Stegeman v. Georgia*, 290 F. App’x 320, 324 (11th Cir. 2008) (“Because the district court granted the state

⁴ Pruitt submitted to the bankruptcy court a proposed default judgment on this ground. (*See* Docs. 12, 17.) Following the decision on the motion to dismiss, the Clerk’s Office erroneously entered defaults against the Defendants, (AP Docs. 48, 49), but Judge Glenn vacated the defaults by order dated April 8, 2014, (AP Doc. 50).

⁵ (*See* Appellant’s Br. 5 (“Res judicata is an Affirmative defense not properly decided in a motion to dismiss”) (citing an Ohio state-court decision); *id.* at 7 (Pursuant to FRCP 8(c) “a party must first raise its affirmative defense in a responsive pleading before it can raise them in a [dispositive] motion.”).)

defendants' motion to dismiss, they were not required to file an answer and were not in default.").

Second, Pruitt argues that her claims were dismissed summarily and that she has been denied her day in court and her entitlement to present her case to a jury. However, Pruitt had the opportunity to argue her claims to the Georgia Superior Court, and those claims were dismissed on the merits. "[A] proper dismissal for failure to state a claim establishes that there were no facts to be tried, thus the Seventh Amendment right to a jury trial is not implicated." *Graham v. Bank of Am.*, 432 F. App'x 41, 41 (2d Cir. 2011) (summary order). Therefore, Pruitt was entitled to nothing more.

Third, Pruitt asserts that her claims were not dismissed on the merits, contending that they were instead dismissed for failure to pay court fees. She is mistaken. It is true that certain of her emergency motions seeking to stay eviction proceedings pending appeal were denied because she failed to pay the requisite security to maintain possession of the Property. (*See* Appellant's Br. Exs. 5, 9.) However, the Actions were denied on the merits not for failure to pay fees. (*See* AP Doc. 26-7 at 2-3 ("[T]he Court finds that [Pruitt] has failed to proffer any evidence or authority to suggest that the [dispossessory order] is in error in any respect, nor has she presented any law or facts that would support entry of a restraining order or injunction against any Defendant.") (dismissing First Action); AP Doc. 26-9 at 2 ("[T]he Court, having read and considered [Pruitt's] Motion[s], as well as the entire record, . . . DISMISSES . . . the [Second Action] for failure to state a claim upon which relief may be granted."); AP Doc. 26-11 at 2-3 ("[T]he Court, having read and considered [Pruitt's] Motion[s], as well as the entire record, . . . DISMISSES the [Third Action] for failure to state a claim upon which relief may be granted."); AP Doc. 26-1 at 3 ("[T]he Court, having read and considered the Complaint in [the Fourth

Action], as well as the entire record, hereby DISMISSES the above-styled action for failure to state a claim upon which relief may be granted, as the same has been previously adjudicated by Final Orders [in the First, Second, and Third Actions].”).)

Fourth, Pruitt claims that her constitutional due-process rights under the Fifth and Fourteenth Amendments were violated, first when the Georgia Superior Court did not allow her leave to amend her complaints, instead dismissing them despite the fact that she was proceeding *pro se*, and second when her appeals were disallowed for failure to pay costs. Pruitt does not point to any authority suggesting there is a constitutional dimension to a court’s denial of leave to amend, nor that a state’s duty to waive fees to allow for the meaningful opportunity to be heard is implicated when a litigant seeks to maintain possession while appealing an eviction order, *cf. Tennessee v. Lane*, 541 U.S. 509, 532-33 (2004) (“Our cases have recognized a number of affirmative obligations that flow from this principle: the duty to waive filing fees in certain family-law and criminal cases, the duty to provide transcripts to criminal defendants seeking review of their convictions, and the duty to provide counsel to certain criminal defendants.” (footnotes omitted)). She therefore lacks a cognizable due-process claim.

Finally, Pruitt continues to argue that the automatic stay applicable to bankruptcy proceedings invalidated all foreclosure proceedings against her. However, she does not, either in this appeal or anywhere else in the record, offer any explanation of how the Georgia Bankruptcy Court erred in ordering that the automatic stay did not apply to her petition. The Bankruptcy Code is clear that a stay does not go into effect for a filing where “2 or more single or joint cases of the debtor were pending within the previous year but were dismissed.” 11 U.S.C. § 362(c)(4)(A)(i). Pruitt has presented no reason why this provision did not apply to her.

V. Conclusion

For the reasons stated above, the bankruptcy court's judgment is AFFIRMED, this appeal is DISMISSED, and the Clerk's Office is respectfully directed to terminate this appeal.

SO ORDERED.

Dated: January 14, 2015
New York, New York

A handwritten signature in black ink, reading "Vernon Broderick". The signature is written in a cursive, flowing style. The first name "Vernon" is written with a large, prominent "V". The last name "Broderick" is written with a large, prominent "B". The signature is written over a horizontal line.

Vernon S. Broderick
United States District Judge