

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

JESSE BROADNAX,)
)
Plaintiff,)
)
v.) 1:17cv42
)
BSI FINANCIAL SERVICES INC.)
d/b/a VENTURE TRUST 2013 IHR,)
MICHAEL NICCOLINI, MCM CAPTIAL)
PARTNERS, LLC and NATIONAL)
TITLE CLEARANCE, INC.,)
)
Defendants.)

MEMORANDUM ORDER

THOMAS D. SCHROEDER, District Judge.

This is an action arising out of the foreclosure of a home by a lender in the North Carolina courts. Before the court are motions to dismiss by Defendants Nationwide Title Clearing, Inc. ("NTC") (Doc. 12) and BSI Financial Services, Inc. ("BSI"), Ventures Trust 2013-I-H-R, MCM Capital Partners, LLLP (formerly MCM Capital Partners, LLC) through its Trustee (collectively "MCM") and Michael Niccolini.¹ (Doc. 16.) Plaintiff Jesse Broadnax also has pending a motion for leave to file an amended

¹ NTC notes it is improperly named in the complaint as "National Title Clearance, Inc." (Doc. 12 at 1.) Defendants also note that no legal entity exists by the name "BSI Financial Services, Inc. d/b/a Venture Trust 2013 IHR," as named in the complaint. Rather, "BSI Financial Services, Inc." exists and responds on behalf of "BSI Financial Services, Inc. d/b/a Venture Trust 2013 IHR." Additionally, MCM Capital Partners, LLC is now known as MCM Capital Partners, LLLP and serves as the trustee of the Ventures Trust 2013-I-H-R. In its capacity as Trustee, MCM Capital Partners, LLLP FKA MCM Capital Partners responds on behalf of the Ventures Trust 2013-I-H-R. (Doc. 16 at 1, n.1.)

complaint. (Doc. 24.) For the reasons set forth below, the motions to dismiss will be granted and Broadnax's motion for leave to file an amended complaint will be denied as futile.

I. BACKGROUND

On October 27, 2005, Broadnax and then-Plaintiff Katina Jefferies obtained a \$208,000 loan to purchase property in Greensboro. (Doc. 17, Ex. A at 1.) The lender was First Greensboro Home Equity, Inc., which was the initial holder of the promissory note (id.) and the deed of trust. (Doc. 17, Ex. B.) The note was then assigned to CitiMortgage, Inc. (Doc. 17, Ex. C at 1), which subsequently assigned it to MCM. (Doc. 17, Ex. D.) As a result of these changes, the loan servicer changed from CitiMortgage to BSI. (Doc. 3, Ex. B at 2.)

On December 16, 2016, Broadnax and Jefferies commenced this action in the Superior Court of Guilford County. (Doc. 1.) The complaint alleges in substance that they defaulted on the note because Defendants' fraudulent transfer of it left them unsure of who should receive the payments, and that MCM is not entitled to any payments because it is not the proper holder of the note. (Id.) More specifically, Count One alleges common law fraud, claiming that MCM is not the valid holder of the note. (Doc. 3 at 10.) Count Two alleges that BSI violated the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1, by providing false notices regarding the ownership and servicing of

the note. (Id. at 12.) Count Three alleges that NTC violated § 75-1.1 by using false documents to assign the deed of trust to MCM. (Id. at 13.) Count Four alleges breach of fiduciary duty and constructive fraud as to MCM and Niccolini for creating an allegedly sham sale of the note. (Id. at 14.) Count Five alleges negligent infliction of emotional distress as to all Defendants. (Id. at 15.) Central to each of these counts is the conclusion that MCM is not the holder of the note in question and that the transfers of it were fraudulent.

Shortly after the filing of the action, MCM initiated foreclosure proceedings as to Plaintiffs' property. (Doc. 17, Ex. E.) On January 4, 2017, the Guilford County Clerk of Court entered an order that (1) declared MCM to be the holder of the note; (2) found that the note was in default; (3) found that Broadnax and Jefferies had failed to show a valid legal reason why foreclosure should not commence; and (4) allowed MCM to foreclose on their property. (Id.)

On January 18, 2017, NTC removed this case to this court based on diversity jurisdiction. (Doc. 1.) Thereafter, Defendants filed the instant motions to dismiss. Broadnax and Jefferies sought and obtained extensions of time to respond to the pending motions but instead filed their motion for leave to amend the complaint. (Doc. 24.) To date, neither responded to any argument raised in the motions to dismiss, and the time to do so has expired. (Doc. 23.)

On April 5, 2017, the Guilford County Superior Court heard Plaintiffs' appeal of the Guilford County Clerk of Court's order allowing foreclosure. (Doc. 27, Ex. B at 1.) During the hearing, Plaintiffs argued, for the first time, that the signatures on MCM's copy of the note do not match those presented on the copy provided by Plaintiffs. (Id. at 2-4; Doc. 24, Ex. K at 23-30.) The State court rejected Plaintiffs' arguments and on April 7, 2017, issued an order that affirmed all the findings in the Clerk of Court's order allowing foreclosure and dismissed the appeal. (Id.)

In this court, on April 7, 2017, Plaintiffs filed their motion for leave to file an amended complaint. (Doc. 24.) The proposed amended complaint removes NTC as a Defendant and adds a claim for a violation of § 75-1.1 against Hutchens Law Firm ("Hutchens"), the North Carolina law firm that represented MCM during the foreclosure and now represents BSI, MCM, and Niccolini in the present case. (Doc. 24 at 1.) Plaintiffs allege that Hutchens violated § 75-1.1 by committing perjury and submitting perjured documents during the April 5, 2017, State superior court appeal hearing. (Doc. 24, Attach. 1 at 9-15.) The counts against BSI, MCM, and Niccolini are virtually unchanged from the initial complaint and do not include any attempt to respond to any argument raised by either motion to dismiss. (Doc. 24, Attach 1.)

On April 17, 2017, NTC consented to the motion for leave to file an amended complaint, insofar as the amended pleading seeks

to remove it as a Defendant. (Doc. 25, at 1.) On April 27, MCM, BSI, and Niccolini filed a response opposing the motion. (Doc. 27.) Defendants contend that the motion should be denied as futile because Plaintiffs' claims are barred by the Rooker-Feldman doctrine, are barred by collateral estoppel, and continue to fail to state a claim upon which relief can be granted. (Id. at 6-15.)

In apparent response to Defendants' opposition to their motion to amend, Plaintiffs moved on May 15 to voluntarily dismiss their action. (Doc. 28.) Because the motion was signed only by Jefferies, the court granted the motion as to her and issued an order giving Broadnax an opportunity to file a signed notice of intent to join in the motion for voluntary dismissal within ten days. (Doc. 29 at 2-3.) Having received no response from Broadnax, the court now proceeds to resolve all pending motions. (Id. at 3.)

II. ANALYSIS

While Defendants have made several arguments in support of their motions to dismiss and in opposition to the motion for leave to file an amended complaint, this court addresses only the Rooker-Feldman doctrine, as it is dispositive.²

The Rooker-Feldman doctrine is a jurisdictional bar that

² Had the Rooker-Feldman doctrine not been dispositive, the court observes that the addition of Hutchens as a North Carolina-based Defendant would destroy the court's subject matter jurisdiction based on diversity of citizenship of the parties. (Doc. 1.)

"prohibits the United States District Courts, with the exception of habeas corpus actions, from 'sit[ting] in direct review of state court decisions.'" See Jordahl v. Democratic Party of Va., 122 F.3d 192, 199 (4th Cir. 1997) (quoting D.C Court of Appeals v. Feldman, 460 U.S. 462, 483 n.16 (1983)). "The doctrine extends not only to . . . claims presented or adjudicated by the state courts but also to claims that are 'inextricably intertwined' with a state court judgment." Id. (quoting Feldman, 460 U.S. at 486-87). A federal claim is "inextricably intertwined" with a State court ruling where "in order to grant the federal plaintiff the relief sought, the federal court must determine that the [State] court judgment was erroneously entered or must take action that would render the judgment ineffectual." Id. at 202.

The Supreme Court has clarified that the Rooker-Feldman doctrine applies to "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). The purpose of the doctrine is to promote respect between the federal and state courts in our system of dual sovereignty. See Vulcan Chem. Tech., Inc. v. Barker, 297 F.3d 332, 343 (4th Cir. 2002). The effect of the Rooker-Feldman doctrine is to divest a federal district court of subject matter jurisdiction to review

state court judgments. See Jordahl, 122 F.3d at 200. Only the Supreme Court of the United States has jurisdiction to review State court judgments. See Brown & Root, Inc. v. Breckenridge, 211 F.3d 194, 198-99 (4th Cir. 2000).

Rooker-Feldman applies to foreclosure proceedings before the Clerk of Superior Court and appeals of those proceedings in State court. See, e.g., Brumby v. Deutsche Bank Nat'l Trust Co., No. 1:09CV144, 2010 WL 617368, at *1, 3 (M.D.N.C. Feb. 17, 2010) (applying Rooker-Feldman to foreclosure proceedings before the Clerk of Superior Court of Guilford County pursuant to N.C. Gen. Stat. § 45-21.16, which characterizes such a decision by the Clerk as a "judicial act"). "In the context of a state court foreclosure proceeding, Rooker-Feldman prohibits claims brought in federal court that may 'succeed only to the extent that the state court wrongly decided the foreclosure action.'" Poindexter v. Wells Fargo Bank, N.A., No. 3:10cv257, 2010 WL 3023895, at *2 (W.D.N.C. July 29, 2010) (quoting Postma v. First Fed. Sav. & Loan of Sioux City, 74 F.3d 160, 162 (8th Cir. 1996)).

The Rooker-Feldman doctrine applies here to divest this court of subject matter jurisdiction. As in Brumby, the Guilford County Clerk of Court has issued an order that (1) declared Ventures Trust (thus MCM as trustee) to be holder of the note; (2) found the note to be in default, (3) found that Broadnax and Jefferies failed to show a valid legal reason why foreclosure should not commence,

and (4) allowed MCM (as Trustee of Ventures Trust) to foreclose on their home. (Doc. 17, Ex. E.) Further, Plaintiffs have already appealed the order allowing foreclosure in State court, and that appeal was dismissed in an order that affirmed the findings of the initial foreclosure order. (Doc. 27, Ex. B.)

Each of Plaintiffs' claims, in both the original and amended complaints, is based on the argument that Defendants committed fraudulent acts in the transfer of the note and that MCM is not the valid holder of the note entitled to collect payments. The State court rejected each of these arguments and made findings of fact and conclusions of law that contradict Plaintiffs' claims. Thus, for this court to find for Broadnax on any of the claims would require it to conclude that the State court foreclosure proceedings were wrongly decided. As a result, all of Broadnax's claims are barred by the Rooker-Feldman doctrine, and this court is divested of subject matter jurisdiction.

III. CONCLUSION

For the reasons stated, the court finds all of Broadnax's claims in the original and proposed amended complaint constitute an attempt to invalidate the State foreclosure proceedings and are barred by the Rooker-Feldman doctrine.

IT IS THEREFORE ORDERED that Broadnax's motion for leave to file an amended complaint (Doc. 24) is DENIED, that Defendants' motions to dismiss (Docs. 12 and 16) are GRANTED for lack of

subject matter jurisdiction, and that Plaintiff Broadnax's claims are DISMISSED WITHOUT PREJUDICE.

This decision disposes of all remaining claims in this action, and the Clerk of Court is directed to close this case.

/s/ Thomas D. Schroeder
United States District Judge

September 21, 2017