

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

CHARLES GABRIEL,)
)
Plaintiff,)
)
v.) 1:18-cv-354
)
FORSYTH COUNTY CLERK OF COURT)
MS. SUSAN FRYE OFFICE OF THE)
21ST JUDICIAL DISTRICT COURT;)
and her deputy assistant)
HOLLEY ROBINSON; HOLLEY)
ROBRINSON, INDIVIDUALLY;)
STATEBRIDGE COMPANY, LLC;)
BROUGHAM REO OWNER, LP; JOHN)
A. MANDULAK, HUTCHENS LAW)
FIRM; JOHN A. MANDULAK,)
INDIVIDUALLY; JOHN A.)
MANDULAK, TRUSTEE; and)
SUBSTITUTE TRUSTEE SERVICES,)
INC.,)
)
Defendants.)

MEMORANDUM ORDER

THOMAS D. SCHROEDER, Chief District Judge.

Before the court is a motion to dismiss filed by the only remaining Defendants, Forsyth County Clerk of Court Susan Frye and Assistant Clerk of Court Holley Robinson (together, the "State Defendants"). (Doc. 38.) For the reasons set forth below, the motion will be granted.

The allegations of the complaint, taken as true for purposes of the State Defendants' motion to dismiss, are fully laid out in the court's prior Memorandum Opinion and Order entered January 8, 2019 (Doc. 35 at 2-6), and will only be summarized here. Charles

Gabriel filed this action on April 30, 2018, and the court has liberally construed his pleading as claiming deprivation of procedural due process, violation of N.C. Gen. Stat. § 45-21.16, fraud, conspiracy, unfair and deceptive trade practices, defamation, mental anguish, embarrassment, and intentional infliction of emotional distress on the part of the State Defendants. (Doc. 1.) Gabriel also brought many of these claims, as well as a few additional ones, against two other sets of Defendants: Statebridge Company, LLC and Broughham REO Owner, LP (together, the "Lender Defendants"); and attorney John A. Mandulak, the Hutchens Law Firm, and Substitute Trustee Services, Inc. (together, the "Trustee Defendants"). The claims all stem from a foreclosure proceeding to which Robinson allegedly denied Gabriel entry, and which resulted in the sale of the property on which Gabriel allegedly resided.

On January 8, 2019, proceeding on motions to dismiss from all Defendants, the court dismissed Gabriel's claims against the Lender and Trustee Defendants. (Doc. 35 at 28.) The court denied the State Defendants' motion to dismiss without prejudice to its consideration or refiling after Gabriel was given additional time to effect service of process. (Id.) Nothing further was filed regarding service; however, on February 12, 2019, the State Defendants refiled their motion to dismiss, omitting any arguments as to improper service. (Doc. 38.) The court sent Gabriel a

Roseboro letter¹ notifying him of his right to respond and the possibility that a failure to respond would result in dismissal of his case (Doc. 40), but he did not respond. The motion is now ready for decision.

As to Gabriel's claims against the State Defendants for fraud, conspiracy, unfair and deceptive trade practices, defamation, mental anguish, embarrassment, and intentional infliction of emotional distress, the court finds that they all fail to state a claim for the same reasons they failed as against the Lender and Trustee Defendants. The court explained those reasons in its prior Memorandum Opinion and Order (Doc. 35 at 11-12, 14-20), and directed Gabriel – should he attempt to continue litigating the case – to explain why his claims against the State Defendants should not also be dismissed (id. at 24 n.17). Gabriel did not do so, nor has he taken any further action in this case other than an attempt to appeal. (Doc. 41.)

This leaves the two claims Gabriel brought only against Robinson: deprivation of procedural due process and violation of the North Carolina statute governing foreclosure sale proceedings, N.C. Gen. Stat. § 45-21.16. To the extent Gabriel means these claims to serve as a basis for the court to “[s]et [a]side” the state foreclosure order or provide him with “immediate return to

¹ See Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975).

the premises” (Doc. 1 at 9-10) these claims are barred by the Rooker-Feldman doctrine,² which bars federal district courts from considering claims “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).

To the extent any official-capacity claim for damages survives Rooker-Feldman, it is barred by the Eleventh Amendment to the United States Constitution, which makes “an unconsenting State . . . immune from suits brought in federal courts by her own citizens as well as by citizens of another State,” Nivens v. Gilchrist, 444 F.3d 237, 249 (4th Cir. 2006) (quoting Edelman v. Jordan, 415 U.S. 651, 662-63 (1974)). This is because an official-capacity claim brought against a state officer is “in effect . . . against the governmental entity employing [the officer]” – the State itself. Id.

Finally, Gabriel’s individual-capacity claims against Robinson are barred by judicial immunity. Pursuant to North Carolina statute, assistant Superior Court Clerks of Court are judicial officers for purposes of foreclosure proceedings, see N.C. Gen. Stat. §§ 7A-40, 7A-102, and therefore can only be sued

² The doctrine derives its name from Rooker v. Fid. Trust. Co., 263 U.S. 413 (1923) and D.C. Court of Appeals v. Feldman, 460 U.S. 462 (1983).

for “nonjudicial actions” or actions “taken in the complete absence of all jurisdiction.” Mireles v. Waco, 502 U.S. 9, 11-12 (1991). There is no plausible allegation that Robinson acted outside her jurisdiction in the foreclosure proceedings at issue here. See N.C. Gen. Stat. §§ 45-21.16, 7A-40, 7A-102.

Because Gabriel has not alleged any viable claims against the State Defendants, the motion to dismiss will be granted. This resolves all of Gabriel’s claims. Consequently, the action will be dismissed, and the court will enter judgment.

For the reasons stated,

IT IS THEREFORE ORDERED that the State Defendants’ motion to dismiss (Doc. 38) is GRANTED and the claims against these Defendants are DISMISSED WITH PREJUDICE, except as to those claims over which the court lacks subject matter jurisdiction pursuant to the Rooker-Feldman doctrine, which are DISMISSED WITHOUT PREJUDICE.

/s/ Thomas D. Schroeder
United States District Judge

May 20, 2019