


ORDERED.

Dated: July 19, 2018



Karen S. Jennemann  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

In re	)	
	)	
ELLEN ALBERSHARDT DOANE,	)	Case No. 6:17-bk-04105-KSJ
	)	
Debtor.	)	Chapter 13
_____	)	
	)	
ELLEN ALBERSHARDT DOANE,	)	
	)	
Plaintiff,	)	Adversary Case No. 6:18-ap-00011-KSJ
	)	
vs.	)	
	)	
WELLS FARGO BANK, N.A., et al,	)	
	)	
Defendants.	)	
_____	)	

**ORDER GRANTING DEFENDANTS’ MOTIONS TO DISMISS WITH PREJUDICE**

Defendants, Albertelli Law, P.A., and Wells Fargo Bank, N.A., (together, the “Defendants”), seek dismissal of this adversary proceeding.<sup>1</sup> Debtor in her Complaint is trying to

<sup>1</sup> Doc. No. 14, 22. A hearing was held on the Motion to Dismiss on April 10, 2018. Multiple defendants were named in this adversary proceeding (Wells Fargo Bank, N.A.; Wells Fargo Home Mortgage; Access National Mortgage Corporation; Ginnie Mae, Mortgage Electronic Registration Systems (MERS); Wachovia Bank, NA; Golden West Savings; World Savings Bank; Marshall C Watson, a Florida Corporation; Alertelli Law, P.A.; Cavo & Litchfield; Sweetwater Springs Homeowner’s Assn., Does 1-100; and Albertelli Law P.A., a Florida Corporation). The Court identified that the key defendant is Wells Fargo Bank, who has responded to the complaint and filed the above-referenced motion to dismiss. Doc. No. 14. Albertelli Law filed also a Motion to Dismiss. Doc. No. 22.

relitigate issues already finally resolved by the Florida Courts (the “State Court”) and rescind a final judgment of foreclosure (the “Final Judgment”) in a last ditch effort to delay the inevitable.<sup>2</sup> The principle of *res judicata* requires the dismissal of this adversary proceeding **with prejudice**.

Debtor and Lauren Williams (the “Borrowers”) executed a mortgage for Access National Mortgage Corporation (“Access National”) encumbering real property at 3691 Watercrest Drive, Longwood, FL 32779 (the “Property”).<sup>3</sup> The mortgage and debt later was transferred to Wells Fargo.<sup>4</sup> The Borrowers then signed a loan modification agreement with Wells Fargo on May 20, 2011.<sup>5</sup>

On August 2, 2012, Wells Fargo filed a foreclosure action involving the Property in State Court.<sup>6</sup> Debtor actively participated in the State Court litigation by filing pleadings and asserting that the Creditor did not have standing to foreclose on the Property because it was not the original party on the loan documents, that the mortgage was void under the doctrine of unclean hands, and that the original lender had violated the Truth in Lending Act (“TILA”) by failing to provide proper disclosures.<sup>7</sup> After a trial, the State Court found that Wells Fargo had standing and issued the Final Judgment in its favor on January 5, 2015.<sup>8</sup> Debtor did not appeal.

On June 21, 2017, Debtor sought relief under Chapter 13 of the Bankruptcy Code.<sup>9</sup> On February 12, 2018, Debtor filed this adversary proceeding<sup>10</sup> seeking to determine the validity of the Creditor’s lien, rescind the Final Judgment, and receive an award for damages.<sup>11</sup> She also

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<sup>2</sup> Doc. No. 1.

<sup>3</sup> Doc. No. 14, Exh. 1.

<sup>4</sup> Doc. No. 1, Exh. 3.

<sup>5</sup> Doc. No. 14, Exh. 1.

<sup>6</sup> *Id.* at Exh. 2.

<sup>7</sup> *Id.* at Exh. 4.

<sup>8</sup> *Id.* at Exh. 6.

<sup>9</sup> All references to the Bankruptcy Code refer to 11 U.S.C. § 101, *et seq.*

<sup>10</sup> Doc. No. 1.

<sup>11</sup> *Id.*

claimed Albertelli Law orchestrated and assisted in a fraudulent assignment of the mortgage.<sup>12</sup> Defendants filed Motions to Dismiss the Complaint<sup>13</sup> arguing *res judicata* and Federal Rule of Civil Procedure 12(b)(6)<sup>14</sup> mandate dismissal.<sup>15</sup> As an initial matter, the Complaint attaches documents from the State Court litigation and the Motion to Dismiss filed by Wells Fargo likewise attaches State Court documents. The Court may take judicial notice of publicly filed documents, such as those filed in the State Court litigation, at the Motion to Dismiss phase.<sup>16</sup>

**Res Judicata Requires Dismissal of Adversary Proceeding with Prejudice**

Debtor's claims are barred by the doctrine of *res judicata*. Debtor argues *res judicata* is not applicable to the Final Judgment because Wells Fargo did not have standing to sue. This Court disagrees. It cannot relitigate the foreclosure proceeding or "override" the State Court's ruling simply because the Debtor desires a different outcome.<sup>17</sup>

*Res judicata* prohibits the relitigation of issues and claims already decided by a competent court.<sup>18</sup> "Once a party has fought out a matter in litigation with the other party, he cannot later renew that duel."<sup>19</sup> "*Res judicata* comes in two forms: claim preclusion (traditional '*res judicata*') and issue preclusion (also known as 'collateral estoppel')."<sup>20</sup> In deciding whether *res judicata*

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<sup>12</sup> *Id.* at 3-4.

<sup>13</sup> Doc. No. 14, 22.

<sup>14</sup> Fed. R. Civ. P. 12(b)(6).

<sup>15</sup> Both the Complaint and the Motion to Dismiss attaches documents from the State Court foreclosure action. The Court may take judicial notice of publicly filed documents, such as those filed in the State Court litigation, at the Motion to dismiss phase. *See U.S. ex rel. Osheroff v. Humana Inc.*, 776 F.3d 805, 812 n. 4 (11th Cir. 2015). No dispute exists as to their authenticity. Indeed. All parties are relying on these pleadings filed in State Court.

<sup>16</sup> *U.S. ex rel. Osheroff v. Humana Inc.*, 776 F.3d 805, 812 n. 4 (11th Cir. 2015).

<sup>17</sup> *Cnty. State Bank v. Strong*, 651 F.3d 1241, 1263 (11th Cir. 2011) (discussing *res judicata* under Georgia law); *MacQuarrie v. HSBC Bank USA (In re MacQuarrie)*, No. 6:14-BK-13112-KSJ, 2017 WL 4158337, at \*3 (Bankr. M.D. Fla. Sept. 18, 2017); *Collado v. OneWest Bank (In re Collado)*, Nos. 09-32049-BKC-AJC, 10-3019-BKC-AJC-A, 2010 WL 3282595, at \*2 (Bankr. S.D. Fla. Aug. 13, 2010).

<sup>18</sup> *Cnty. State Bank*, 651 F.3d at 1263.

<sup>19</sup> *Id.*

<sup>20</sup> *In re MacQuarrie*, 2017 WL 4158337, at \*3 (internal quotation marks and citations omitted).

applies, the state law on preclusion controls.<sup>21</sup> Here, I will apply Florida preclusion law because the Final Judgment was rendered by a Florida State Court.

Under Florida law, “collateral estoppel applies if (1) an identical issue, (2) has been fully litigated, (3) by the same parties or their privies, and (4) a final decision has been rendered by a court of competent jurisdiction.”<sup>22</sup> “The doctrine of collateral estoppel ... ‘bars relitigation of the same issues between the same parties in connection with a different cause of action.’ The doctrine comes into play in a case when the ‘same parties’ attempt to litigate the ‘same issues’ that were already addressed. The doctrine bars ‘the parties from litigating in the second suit issues—that is to say points and questions—common to both causes of action and which were actually adjudicated in the prior litigation.’”<sup>23</sup>

*Res judicata* prevents parties to an action from relitigating matters that were or could have been litigated in a previous lawsuit.<sup>24</sup> “*Res judicata* prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding.”<sup>25</sup> “Thus matters that arise from the same facts, occurrences or transactions that were the basis of a prior action may be within the scope of claim preclusion by that action.”<sup>26</sup> “Under Florida law, *res judicata* applies where there is a judgment on the merits in a prior suit and bars subsequent litigation where there is: ‘(1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of the persons and parties to the action;

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<sup>21</sup> *Cnty. State Bank*, 651 F.3d at 1263.

<sup>22</sup> *Winn-Dixie Stores, Inc. v. Dolgencorp, LLC*, 746 F.3d 1008, 1036-37 (11th Cir. 2014) (internal quotation marks and citations omitted).

<sup>23</sup> *Criner v. State*, 138 So. 3d 557, 558 (Fla. 5th Dist. Ct. App. 2014) (internal quotation marks and citations omitted).

<sup>24</sup> *Shurick v. Boeing Co.*, 623 F.3d 1114, 1116 (11th Cir. 2010).

<sup>25</sup> *Brown v. Felsen*, 442 U.S. 127, 131; 99 S. Ct. 2205, 2209; 60 L.Ed.2d 767 (1979).

<sup>26</sup> *Cummings v. Nichols (In re Nichols)*, Adv. No. 3:10-ap-260 (Bankr. M.D. Fla. 2011) (quoting 18 J. Moore, et al., *Moore’s Federal Practice* § 131.10[3][c], p. 131-19 (3d ed. 2011)).

and (4) identity of the quality [or capacity] of the persons for or against whom the claim is made.”<sup>27</sup>

Here, Debtor is simply trying to relitigate issues finally decided by the State Court hoping this Court will reach a different conclusion.<sup>28</sup> Both the Debtor and Wells Fargo were parties to the foreclosure lawsuit. A final decision on the merits was rendered on January 5, 2015. Debtor seeks to challenge Wells Fargo’s interest in the Property. But the State Court already has decided identical issues that the Debtor raises for a second time in the Complaint initiating this adversary proceeding, including standing and alleged TILA violations.

The State Court action resolved identical issues to those asserted in this adversary proceeding, were litigated by the same parties through trial, and were finally decided by the State Court. The Debtor could have appealed the ruling but she chose not to appeal, and the appeal time has long ago expired. The Final Judgment is just that—**FINAL**. The Final Judgment is entitled to *res judicata* effect; this Court will not revisit or revise the ruling.

#### **Failure to State a Claim**

The title of Debtor’s Complaint apparently seeks damage awards for libel and RICO violations against numerous parties.<sup>29</sup> No further facts, however, were presented in the Complaint to corroborate these allegations. Debtor also brought this adversary proceeding against Albertelli Law even though the law firm begun its representation *after* the alleged facts took place. The firm is mentioned exactly once in the Complaint.<sup>30</sup>

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<sup>27</sup> *Certex USA, Inc. v. Vidal*, 706 F. Supp. 2d 1291, 1293 (S.D. Fla. 2010) (internal citations omitted).

<sup>28</sup> Doc. No. 1, p. 9.

<sup>29</sup> Doc. No. 1 (Title of Complaint states, “Complaint to Determine Nature, Extend and Validity of Lien, Determine Standing of Alleged Lender, TILA Violations, Fraud, Libel, Quiet Title, Sanctions, RICO Violations, and Punitive Damages.”).

<sup>30</sup> *See id.*

Federal Rule of Civil Procedure 12(b)(6) provides that before an answer is filed a defendant may seek dismissal of a complaint if the complaint fails to state a claim.<sup>31</sup> Disposition of a motion to dismiss under Rule 12(b)(6) focuses only upon the allegations in the complaint and whether those allegations state a claim for relief. In reviewing a motion to dismiss, courts must accept the allegations as true and construe them in the light most favorable to the plaintiff.<sup>32</sup> Under Rule 8(a)(2), a complaint must contain a “short and plain statement of the claim showing that the pleader is entitled to relief.”<sup>33</sup>

Rule 8(a)(3) requires a “demand for the relief sought.”<sup>34</sup> “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.”<sup>35</sup>

For a complaint to survive a motion to dismiss, it must contain enough factual matter to “state a claim to relief that is plausible on its face.”<sup>36</sup> Facial plausibility is present “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.”<sup>37</sup> Courts routinely allow amendments to complaints dismissed for failure to state a claim, particularly for *pro se* parties; however, when amendment is futile, dismissal with prejudice is merited.<sup>38</sup>

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<sup>31</sup> Fed. R. Civ. P. 12(b)(6).

<sup>32</sup> *Brophy v. Jiangbo Pharm., Inc.*, 781 F.3d 1296, 1301 (11th Cir. 2015) (quoting *Piedmont Office Realty Trust, Inc. v. XL Specialty Ins. Co.*, 769 F.3d 1291, 1293 (11th Cir. 2014) (quoting *Hill v. White*, 321 F.3d 1334, 1335 (11th Cir. 2003))).

<sup>33</sup> Rule (8)(a) is made applicable in adversary proceedings by virtue of Bankruptcy Rule 7008(a).

<sup>34</sup> Fed. R. Civ. P. 8(a)(3).

<sup>35</sup> *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1964-65, 167 L. Ed. 2d 929 (2007) (internal citations omitted).

<sup>36</sup> *Ashcroft v. Iqbal*, 556 U.S. 662, 677-78, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009) (citing *Twombly*, 550 U.S. at 570) (internal quotation marks omitted).

<sup>37</sup> *Id.*

<sup>38</sup> *Dragash v. Fed. Nat’l Mortg. Ass’n*, No. 16-12123, 2017 WL 2859508, at \*6 (11th Cir. July 5, 2017) (“Nor do we find error in the denial of leave to amend based on futility. While leave to amend ordinarily should be freely given, a district court need not grant even a *pro se* plaintiff leave to amend where amendment would be futile.”); *LaCroix v.*

Taking the minimal and deficient allegations about libel, RICO, and the actions of Albertelli Law and the other named defendants as true, the Debtor has utterly failed to state a claim upon which relief could be granted. She *provided no* facts to substantiate the libel and RICO claims and made only a brief allegation against Albertelli Law. Dismissal of these allegations with prejudice is warranted. Further, to the extent Debtor made allegations against other defendants,<sup>39</sup> she failed to state a claim and provide enough factual matter to survive a motion to dismiss.

Accordingly, it is

**ORDERED:**

1. Creditor's Motion to Dismiss (Doc. No. 14) is **GRANTED**.
2. Albertelli Law's Amended Motion to Dismiss (Doc. No. 22) is **GRANTED**.
3. Debtor's Complaint (Doc. No. 1) is dismissed **with prejudice**.

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The Clerk is directed to serve a copy of this order on all interested parties.

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*W. Dist. of Kentucky*, 627 F. App'x 816, 819 (11th Cir. 2015), *cert. dismissed sub nom. LaCroix v. U.S. Dist. Court for W. Dist. of Kentucky*, 136 S. Ct. 996, 194 L. Ed. 2d 2 (2016) (the court "need not allow amendment where a more carefully drafted complaint could not state a claim and is, therefore, futile").

<sup>39</sup> See Doc. No. 1 (Debtor makes broad allegations against other named defendants without providing factual matter to support it).