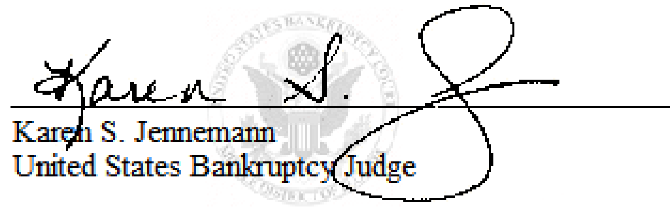
ORDERED.

Dated: August 20, 2018



UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re CHARLES EDWARD WOIDE, Debtor.	Case No. 6:17-bk-02005-KSJ Chapter 13
CHARLES EDWARD WOIDE, Plaintiff, vs. FEDERAL NATIONAL MORTGAGE ASSOCIATION et al., Defendants.	Adversary No. 6:17-ap-00083-KSJ

ORDER GRANTING MOTIONS TO DISMISS WITH PREJUDICE

This adversary proceeding came before the Court on July 17, 2018, to consider the Motion to Dismiss by Choice Legal Group[1] and the Motion to Dismiss by Federal National Mortgage Association ("Fannie Mae"), Seterus, Inc. ("Seterus"), and Burr & Forman, LLC ("Burr").[2] Debtor

[1] Doc. No. 8.
[2] Doc. No. 9.

responded to both Motions.[3] Mr. Woide is trying to do affirmatively what he cannot do defensively. The Eleventh Circuit Court of Appeals has stated that he cannot interfere with Fannie Mae's right to foreclose on his home. Yet, by filing this adversary proceeding that is exactly what Mr. Woide is trying to do—interfere with Fannie Mae's right to obtain possession of the house. The Motions are granted, and this adversary proceeding is dismissed with prejudice.

Procedural History

Debtor and his wife filed a previous Chapter 13 bankruptcy case in which they indicated they would surrender their home (the "Property").[4] The case then was converted to Chapter 7,[5] but the Debtors filed no Statement of Intention after conversion. Debtors received their Chapter 7 discharge, and the case was closed.[6] Creditor Fannie Mae initiated a foreclosure action, and the Debtors defended the foreclosure for years.[7] Fannie Mae filed a Motion to Reopen to Compel Surrender of the Property in the Bankruptcy Court, and Judge Briskman[8] granted the Motion directing the Debtors to stop fighting the foreclosure (the "Surrender Order").[9]

Debtors appealed the Surrender Order and sought a stay, which the Court denied.[10] The District Court affirmed the Surrender Order;[11] the Debtors sought further appellate review at the Eleventh Circuit Court of Appeals.[12] The Eleventh Circuit affirmed the District Court and

---

[3] Doc. Nos. 14, 15.

[4] Case No. 6:10-bk-22841-KSJ. *See* Doc. No. 1, p. 10 in Case No. 6:10-bk-22841-KSJ (stating Property was to be surrendered). Debtors listed their address as 1251 Pressley Circle, Deland, Florida, but the property listed in Schedule A was 1251 Pressly Drive, Deland, Florida.

[5] Doc. No. 21 in Case No. 6:10-bk-22841-KSJ.

[6] Doc. No. 27 in Case No. 6:10-bk-22841-KSJ.

[7] Doc. No. 46, p. 2 in Case No. 6:10-bk-22841-KSJ.

[8] The case was later reassigned to me. Doc. No. 63 in Case No. 6:10-bk-22841-KSJ.

[9] Doc. No. 39 in Case No. 6:10-bk-22841-KSJ is the Motion to Reopen. Doc. No. 46 in Case. No. 6:10-bk-22841-KSJ is Judge Briskman's Order Granting Motion to Reopen.

[10] Doc. Nos. 70, 84 in Case No. 6:10-bk-22841-KSJ. The United States District Court case number is 6:16-cv-1484-Orl-37. A separate appeal relating to other bankruptcy court orders was pursued by the Debtors (6:16-cv-1524-Orl-37).

[11] Doc. No. 124 in Case No. 6:10-bk-22841-KSJ, entered by the District Court on January 9, 2017.

[12] The Eleventh Circuit Court of Appeals case numbers are 17-10776 and 17-10777.

Bankruptcy Court orders finally concluding that the Surrender Order is valid and enforceable, and the Debtors can no longer fight the pending foreclosure (the "Eleventh Circuit Order").[13]

While the Surrender Order appellate issues were moving through the appellate courts, one of the Debtors, Charles Woide, filed this new Chapter 13 bankruptcy case.[14] He filed this adversary proceeding against the Defendants, primarily Fannie Mae.[15] Debtor's Complaint includes five counts that, in one way or another, seek to challenge Fannie Mae's interest in the Property, including claims to void the lien on the Property and conspiracy or fraud type claims.[16] Defendants seek dismissal under various rules and doctrines.[17]

Dismissal with prejudice is appropriate for three reasons: (1) the Court finds the filing of the Complaint contravenes the Surrender Order affirmed by the appellate courts, and this alone is sufficient grounds to dismiss the adversary proceeding with prejudice; (2) the Court finds the Complaint is barred by the doctrines of res judicata and collateral estoppel at least as to Fannie Mae, the primary defendant; and (3) even if this adversary proceeding raises "new issues," the Court finds the Complaint fails to state a claim upon which relief can be granted.

The Complaint Violates the Surrender Order

The Court first finds the mere filing of the Complaint contravenes the Surrender Order, which was affirmed by the appellate courts.[18] The Surrender Order provides:

[13] Doc. No. 128 in Case No. 6:10-bk-22841-KSJ is a copy of the Eleventh Circuit Order. The Eleventh Circuit Order is also at Doc. No. 22 in this adversary proceeding.
[14] Case No. 6:17-bk-02005-KSJ, filed March 29, 2017.
[15] Doc. No. 1.
[16] Doc. No. 1.
[17] Doc. Nos. 8, 9.
[18] Rule 41 of the Federal Rules of Civil Procedure is incorporated into this proceeding by Fed. R. Bankr. P. 7041. Rule 41(b) provides: "If the plaintiff fails … to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it." *See also Goforth v. Owens*, 766 F.2d 1533, 1535 (11th Cir. 1985) (Courts are authorized, on motion, to dismiss an action for failure to obey a court order or federal rule) (A court's "power to dismiss is an inherent aspect of its authority to enforce its orders and insure prompt disposition of lawsuits.").

> Debtors may not take any action to impede, contest[,] or dispute any claims Fannie Mae may have to the Property, including but not limited to, opposing or defending the Foreclosure Action. … Debtors may not take any action to impede, contest or dispute the validity or enforceability of the note and mortgage held by Fannie Mae, including but not limited to, any action to rescind the note and mortgage pursuant to the Truth in Lending Act … or prosecute any claim, action or lawsuit seeking to rescind, invalidate or deem unenforceable the note and mortgage held by Fannie Mae.[19]

After carefully combing through the Complaint, the Court concludes the Debtor is attempting to once again challenge Fannie Mae's interest in the Property.

Here are some illustrative examples of how Mr. Woide is contesting Fannie Mae's interest in the newly filed adversary proceeding:

- Mr. Woide alleges Fannie Mae and other Defendants intended to defraud the Debtor and the Court by "using surrogate signed evidence of standing and materially false mortgage assignments," in other words, he challenges the validity of the mortgage;[20]
- Mr. Woide alleges Fannie Mae and the other Defendants devised a scheme to defraud the Debtor and the Court "to obtain" the Property, in other words, he challenges the foreclosure;[21]
- Mr. Woide seeks to avoid the lien on the Property, another dispute to the enforceability of the note and mortgage held by Fannie Mae;[22]
- Mr. Woide requests damages under § 105 of the Bankruptcy Code for the Defendants' conduct in "using false documents, forged note indorsements[,] and false assignments of mortgage," in other words, he again attacks the validity of Fannie Mae's note and mortgage;[23] and

---

[19] Doc. No. 46, p. 4 in Case No. 6:10-bk-22841-KSJ.
[20] Doc. No. 1, p. 20.
[21] *Id.* at p. 22.
[22] *Id.* at p. 23.
[23] *Id.* at p. 24.

- Mr. Woide objects to Fannie Mae's Motion for Relief from Stay, including an objection to Fannie Mae's standing to bring the Motion, in other words, he asserts another attack on Fannie Mae's claim or interest in the Property.[24]

These allegations and claims directly violate the Court's Surrender Order that was affirmed by the Eleventh Circuit. The Eleventh Circuit Order specifically addressed many of the Debtor's claims raised in the Complaint. For example, the Eleventh Circuit concluded Fannie Mae had statutory and constitutional standing to reopen the previous bankruptcy case.[25] The Eleventh Circuit Order discussed the merits of the Surrender Order, noting that the Debtors did not reaffirm the debt owed to Fannie Mae or redeem the Property, but they continued to live in the Property for free for years in violation of § 521 of the Bankruptcy Code.[26] It continued: "Because the [Debtors] filed a schedule stating the intent to surrender [the Property] and did not modify it in the amended schedules filed after conversion, the [B]ankruptcy [C]ourt was within its discretion to hold the [Debtors] had a duty to surrender the [P]roperty."[27] The Eleventh Circuit flatly rejected the Debtors' contention that Fannie Mae committed fraud or misrepresentation to obtain the Surrender Order.[28]

This Court agrees with the Eleventh Circuit that the Debtor's accusations relating to fraud and conspiracy "boil down to the [Debtor's] disagreement with the arguments presented" by Fannie Mae.[29] Mr. Woide now seeks to reargue these very same allegations in this adversary proceeding.

---

[24] *Id.* at pp. 24-36. The Court granted Fannie Mae's Motion for Relief from Stay in the main case. Doc. Nos. 28, 59 in Case No. 6:17-bk-02005. Debtor appealed the Court's Order Granting Relief from Stay to the United States District Court. Doc. No. 62 in Case No. 6:17-bk-02005-KSJ. Any further action on the Motion for Relief from Stay in this proceeding is improper, including addressing the Debtor's argument that Fannie Mae lacks standing to seek relief from the automatic stay.
[25] Doc. No. 22, p. 5.
[26] *Id.*
[27] *Id.* at p. 6.
[28] *Id*
[29] *Id.*

These repeated challenges to Fannie Mae's interest in the Property and over-the-top accusations about the Defendants must stop. Mr. Woide has failed to comply with the Surrender Order, and the Complaint is dismissed with prejudice.

The Doctrines of Res Judicata and Collateral Estoppel Bar the Complaint

"Res judicata precludes claims which a plaintiff actually raised or could have raised in a prior suit when (1) there is a final judgment in a prior suit on the merits; (2) the decision in the prior suit is rendered by a court of competent jurisdiction; (3) the parties in both suits are identical; and (4) both suits involve the same cause of action."[30] The Eleventh Circuit explained if a case "arises out of the same nucleus of operative fact as a former action, then the two cases are really the same 'claim' or 'cause of action' for purposes of res judicata."[31]

The Surrender Order is final and affirmed by the Eleventh Circuit. The Bankruptcy Court, the District Court, and the Eleventh Circuit are courts of competent jurisdiction. The parties involved in the Surrender Order include Mr. Woide and Fannie Mae. The Surrender Order and this adversary proceeding involve the same cause of action because they arise out of the same nucleus of operative fact, i.e., the note and mortgage of Fannie Mae and the foreclosure proceeding in state court. Res Judicata bars the Complaint as to Fannie Mae.

"Collateral estoppel, or issue preclusion, bars relitigation of an issue previously decided in judicial or administrative proceedings if the party against whom the prior decision is asserted had a 'full and fair opportunity' to litigate that issue in an earlier case."[32] "The doctrine of collateral estoppel applies under federal law if the following four factors are met: (1) the issue at stake must be identical to the one involved in the prior litigation; (2) the issue must have been actually litigated

---

[30] *Russell v. Redstone Fed. Credit Union*, 710 F. App'x 830, 832 (11th Cir. 2017).
[31] *Id.*
[32] *In re Narcisi*, 691 F. App'x 606, 609 (11th Cir. 2017) (internal citations and quotations omitted).

in the prior suit; (3) the determination of the issue in the prior litigation must have been a critical and necessary part of the judgment in that action; and (4) the party against whom the earlier decision is asserted must have had a full and fair opportunity to litigate the issue in the earlier proceeding."[33]

The Surrender Order finally resolves the same issues at stake in the Complaint filed in this adversary proceeding, i.e., the validity and enforceability of the note and mortgage of Fannie Mae and the ability of Fannie Mae to foreclose on the Property. Mr. Woide had a full and fair opportunity to litigate the issues raised in the Surrender Order. The four factors are met, and collateral estoppel bars the Complaint. "[R]es judicata and collateral estoppel relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and, by preventing inconsistent decisions, encourage reliance on adjudication."[34] The Court finds both of these doctrines and the reasoning behind them apply to bar the Complaint. For this additional reason, this adversary proceeding is dismissed with prejudice.

The Complaint Fails to State a Claim under 12(b)(6)

Even if this adversary proceeding raises "new issues," the Court finds the Complaint fails to state a claim upon which relief can be granted under 12(b)(6). Rule 12(b)(6) provides that before an answer is filed a defendant may seek dismissal of a complaint that fails to state a claim.[35] Disposition of a motion to dismiss under Rule 12(b)(6) focuses only upon the allegations in the complaint and whether those allegations are sufficient to state a claim for relief. In reviewing a motion to dismiss, courts must accept the allegations in the complaint as true and construe them in the light most favorable to the plaintiff.[36]

---

[33] *In re Bush*, 232 F. App'x 852, 854 (11th Cir. 2007).
[34] *Borrero v. United Healthcare of New York, Inc.*, 610 F.3d 1296, 1307–08 (11th Cir. 2010).
[35] Fed. R. Civ. P. 12(b)(6), made applicable to this proceeding by Fed. R. Bankr. P. 7012.
[36] *Fin. Sec. Assur., Inc. v. Stephens, Inc.*, 500 F.3d 1276, 1282 (11th Cir. 2007).

Rule 8(a)(2) requires a complaint to contain a "short and plain statement of the claim showing that the pleader is entitled to relief."[37] Rule 8(a)(3) requires a "demand for judgment for the relief the pleader seeks."[38] Rule 8(a) is premised on the notion that a defendant must be given fair notice of what "the claim is and the grounds upon which it rests."[39] "[T]he pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusations."[40]

"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."[41] 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."[42] 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."[43] 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.[44] The Court is mindful that the Debtor is *pro se* and afforded him every leniency and benefit of the doubt. But the typical leniency afforded

---

[37] Fed. R. Civ. P. 8(a)(2), made applicable by Fed. R. Bankr. P. 7008(a).
[38] Fed. R. Civ. P. 8(a)(3).
[39] *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) (internal citations omitted).
[40] *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949 173 L. Ed. 2d 868 (2009).
[41] *Bell Atl. Corp. v. Twombly*, 550 U.S. at 555 (internal citations omitted).
[42] *Ashcroft v. Iqbal*, 556 U.S. at 677-78 (citing *Twombly*, 550 U.S. at 570) (internal quotation marks omitted).
[43] *Id.*
[44] *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. 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").

to *pro se* parties "does not give a court license to serve as *de facto* counsel for a party … or to rewrite an otherwise deficient pleading in order to sustain an action."[45]

The Court found it very difficult to follow the Debtor's fractured allegations, but after reading through the Complaint numerous times, the Court simply cannot infer on the face of the Complaint any actionable claim against the Defendants. The Complaint contains a litany of conclusory statements, many of which are unrelated to the Defendants. The Complaint falls far short of enabling the Court to infer a legal basis on which relief can be granted because it fails to properly plead any cause of action. The Federal Rule of Civil Procedure requires the Defendants receive "'fair notice of the plaintiff's claim is and the grounds upon which it rests.'"[46] The Complaint deprives the Defendants of satisfactory notice or really any clue as to the claims against the Defendants. Any amendment would be futile in light of the Eleventh Circuit Order and the Surrender Order.

Accordingly, it is

ORDERED:

1. The Motions to Dismiss (Doc. Nos. 8, 9) are **GRANTED.**
2. This adversary proceeding is dismissed with prejudice.
3. Mr. Woide is cautioned that continuing to file frivolous pleadings in violation of the Eleventh Circuit Order and the Surrender Order could result in the imposition of sanctions against him.

###

---

[45] *GJR Investments, Inc. v. Cnty. of Escambia, Fla.*, 132 F.3d 1359, 1369 (11th Cir. 1998), *overruled on other grounds by Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009); *Kabbaj v. Obama*, 13-14748, 2014 WL 2619677, at *4 (11th Cir. June 13, 2014).

[46] *Bell Atl. Corp. v. Twombly*, 550 U.S. at 545 (quoting *Conley v. Gibson*, 355 U.S. 41, 78 S. Ct. 99, 2 L.Ed.2d 80 (1957)).

Attorney, Christopher Thompson, is directed to serve a copy of this order on interested parties who do not receive service by CM/ECF and file a proof of service within three days of entry of this order.