

NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 10-14134)
)
GEORGE KOTSOPOULOS)
CHRISTINE M. KOTSOPOULOS)
)
Debtors)
)
)
GEORGE KOTSOPOULOS)
CHRISTINE M. KOTSOPOULOS)
)
Plaintiffs)
)
vs.) PROC. NO. 14-1068
)
)
FIFTH THIRD MORTGAGE)
COMPANY)
)
Defendant)

DECISION ON MOTION FOR SUMMARY JUDGMENT

At Fort Wayne, Indiana, on October 10, 2014

Prior to the petition, the defendant initiated a foreclosure action against the debtors' home and obtained a judgment in its favor. In this court, it successfully filed a motion for relief from stay so that it could proceed with the sale authorized by that judgment. Plaintiffs claim the defendant knew the mortgage was invalid and that its representations to both courts that it held a valid mortgage constituted fraud and an abuse of process. By this action they seek to recover damages for that misconduct. The matter is before the court on the defendant's motion for summary judgment, together with the plaintiff's response thereto.

Summary judgment is appropriate where there is "no genuine issue as to any material fact"

and “the moving party is entitled to a judgment as a matter of law.” See, Fed. R. Civ. P. Rule 56(c); Fed. R. Bankr. P. Rule 7056. The moving party must initially identify “those portions of ‘the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,’ which it believes demonstrate the absence of a genuine issue of material fact.” Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 2553 (1986). Once it does so, the non-moving party must affirmatively demonstrate, by specific factual allegations, that there is a genuine issue of material fact requiring trial. Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S.Ct 1348, 1356 (1986). In ruling on the motion, the court accepts the non-moving party’s evidence as true, draws all inferences in favor of the non-moving party, and does not weigh the evidence and credibility of the witnesses. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2511 (1986).

The defendant argues that the Rooker-Feldman doctrine precludes this litigation over the state court foreclosure action. The doctrine is based upon the principle that lower federal courts do not have jurisdiction to review state court decisions. Only the Supreme Court may do so. Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 125 S. Ct. 1517, 1526 (2005); Long v. Shorebank Development Corp., 182 F.3d 548, 554 (7th Cir. 1999); GASH Associates v. Village of Rosemont, Ill., 995 F.2d 726, 728 (7th Cir. 1993). “The doctrine applies not only to claims that were actually raised before the state court, but also to claims that are inextricably intertwined with state court determinations.” Long, 182 F.3d at 554. It is related to, and easily confused with, the doctrine of res judicata or claim preclusion because both use the results of prior litigation to preclude subsequent litigation brought by the loser.

A plaintiff who loses and tries again encounters the law of preclusion. The second

complaint shows that the plaintiff wants to ignore rather than upset the judgment of the state tribunal. A defendant who has lost in state court and sues in federal court does not assert injury at the hands of his adversary; he asserts injury at the hands of the court, and the second suit therefore is an effort to obtain collateral review. It must be dismissed not on the basis of preclusion but for lack of jurisdiction. This is the effect of the Rooker-Feldman doctrine, which is based on the principle that inferior federal courts cannot reexamine the decisions of state tribunals in civil litigation. Homola v. McNamara, 59 F.3d 647, 650 (7th Cir. 1995) (emphasis original).

To the extent the plaintiffs' complaint asks the court to conclude that the bank did not – for whatever reason – hold an enforceable mortgage upon their home, it is barred by Rooker-Feldman. The state court has already determined otherwise and any claim to the contrary is an effort to overturn the consequences of that decision.

The plaintiffs' argument regarding abuse of process fares no better. To succeed on a claim of abuse of process, the party must prove an ulterior purpose and a willful act in the use of process not proper in the regular conduct of the proceeding. Reichhart v. City of New Haven, 674 N.E.2d 27, 30 (Ind. Ct. App. 1996); Broadhurst v. Moenning, 633 N.E.2d 326 (Ind. Ct. App. 1994). “[O]therwise stated, ‘abuse of process requires a finding of misuse or misapplication of process, for an end other than that which it was designed to accomplish.’ ” Broadhurst v. Moenning, 633 N.E.2d 326, 333 (quoting Tancos v. A.W., Inc., 502 N.E.2d 109, 116 (Ind. Ct. App. 1986)). Plaintiffs argue that the defendant's

ulterior purpose was to complete a foreclosure upon property which it did not have a legitimate mortgage [upon] and for which it filed a false affidavit in support thereof. Additionally, in furtherance of its wrongful purpose, Fifth Third Mortgage Company willfully filed a motion to lift stay and request for abandonment setting forth representations that were not true. Plaintiffs' Brief, filed Sept. 19, 2014, p. 9.

But the entire purpose of the proceedings in state court was to foreclose upon a mortgage Fifth Third claimed was valid and enforceable, and the motion for relief from stay in this court simply sought

permission to continue with the state court action. Those goals are the legitimate ends the proceedings were designed to accomplish: plaintiffs have identified no other. The filings, statements and allegations made in connection with those proceedings are part of the regular conduct of such proceedings, and their accuracy is a matter to be determined in those proceedings; not in a separate action. Defendant's actions do not constitute an abuse of process.

There are no genuine issues of material fact. Defendant's motion for summary judgment will be granted and a judgment of dismissal will be entered.

/s/ Robert E. Grant
Chief Judge, United States Bankruptcy Court