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WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

September 12, 2018

To:

Hon. James K. Muehlbauer
Circuit Court Judge
P.O. Box 1986
West Bend, WI 53095

Theresa Russell
Clerk of Circuit Court
Washington County Courthouse
P.O. Box 1986
West Bend, WI 53095-1986

Mark A. Clauss
Gray & Associates, LLP
16345 W. Glendale Dr.
New Berlin, WI 53151

Michael Alan Gilman
Dykema Gossett PLLC
10 S. Walker Dr., Ste. 2300
Chicago, IL 60606

Lori C. Dohrmann
4340 N. 142nd St.
Brookfield, WI 53005

Wayne C. Sedlak
4340 N. 142nd St.
Brookfield, WI 53005

You are hereby notified that the Court has entered the following opinion and order:

2018AP114 Lori C. Dohrmann and Wayne C. Sedlak v. Gray & Associates, LLP, Nationstar Mortgage, LLC and Deutsche Bank National Trust Company Americas (L.C. #2017CV424)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Lori C. Dohrmann and Wayne C. Sedlak (appellants) have visited numerous courts in this state (both state and federal) over the last eight years regarding the same basic issue, and this is the second time in as many months that we have reached a decision on these

same facts. In this case, appellants appeal, pro se, from the circuit court's order entered on December 5, 2017, dismissing their seven-count complaint against Nationstar Mortgage, LLC (Nationstar), Deutsche Bank Trust Company Americas As Trustee For Residential Accredit Loans, Inc., Mortgage Asset-Backed Pass-Through Certificates, Series 2007-QH2 (Deutsche Bank), and Gray & Associates, L.L.P.[1] The complaint challenges a judgment of foreclosure entered against them by the circuit court in a separate case on February 3, 2012, and alleges misrepresentation, wrongful foreclosure, conversion, and fraud, just to name a few. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).[2] We affirm.

The facts of this case were previously detailed in ***Deutsche Bank Trust Company Americas v. Lori Christine Dohrmann***, No. 2017AP2346, unpublished op. and order (WI App Aug. 15, 2018). In that case, we affirmed the circuit court's confirmation of the judicial sale of

[1] We will refer collectively to the parties as "the Bank." Aurora Loan Services, LLC (Aurora) filed the original foreclosure complaint on December 9, 2010. On March 31, 2014, Aurora filed an assignment of judgment and rights to Nationstar and petitioned the court to substitute Nationstar for Aurora, which the court granted. On August 3, 2017, Nationstar filed an assignment of judgment and rights to Deutsche Bank and petitioned the court to substitute Deutsche Bank for Nationstar as plaintiff.

Gray & Associates, L.L.P. are the attorneys who signed the foreclosure complaint. Gray argues that the "attorney litigation privilege" insulates it from suits based on alleged improper acts for simply representing its client. *See* ***Converters Equip. Corp. v. Condes Corp.***, 80 Wis. 2d 257, 265, 258 N.W.2d 712 (1977); ***Spoehr v. Mittelstadt***, 34 Wis. 2d 653, 663, 150 N.W.2d 502 (1967). As we uphold dismissal of this case on grounds of claim and issue preclusion, we do not address Gray's claim. *See* ***State v. Blalock***, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (we decide cases on narrowest possible grounds).

[2] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

the property, which came after we previously dismissed appellants' identical challenge to the judgment of foreclosure for a failure to timely appeal. ***Id.*** at *2, *4.

Appellants also sought recourse through the bankruptcy court, first filing a Chapter 13 petition in 2012 to activate the automatic stay of the Bankruptcy Code and halt the sale of the property "the day before [the] sheriff's sale."[3] Appellants filed a second Chapter 13 petition "the day before [the next scheduled] sheriff's sale."[4] After various hearings, discovery, arguments, and motions addressing claims of fraud identical to those argued before our state courts, the bankruptcy court dismissed appellants' second Chapter 13 petition and denied a motion for reconsideration. As bankruptcy court Judge G. Michael Halfenger explained in his decision on reconsideration, "the record shows that [appellants] proceeded in bad faith" as they sought "both to use bankruptcy not only as a shield to stave off collection efforts, but also as a sword to attack collaterally a judgment entered against her by a Wisconsin trial court and made uncontestable after she failed timely to appeal."

[3] Appellants ultimately converted the Chapter 13 to a Chapter 7 and received a discharge.

[4] Within the bankruptcy case, appellants also commenced an adversary proceeding against the Bank "with a nearly identical 129 page complaint" to the complaint in this proceeding, which was ultimately dismissed by the bankruptcy court.

Appellants continued their tour through the court system by filing a federal action in district court against the Bank and others, bringing claims under the Fair Debt Collections Act. The United States District Court for the Eastern District of Wisconsin granted the Bank's motion to dismiss, agreeing that appellants' claims were barred by the ***Rooker-Feldman*** doctrine. The ***Rooker-Feldman*** doctrine is rooted in two Supreme Court of the United States decisions: ***Rooker v. Fidelity Trust Co.***, 263 U.S. 413 (1923), and ***District of Columbia Court of Appeals v. Feldman***, 460 U.S. 462 (1983). Under the ***Rooker-Feldman*** doctrine, lower federal courts are divested of subject matter jurisdiction when, after state court proceedings are final, a losing party in state court files suit in federal court seeking review, redress, and rejection of an injury caused by the state court judgment. *See* ***Exxon Mobil Corp. v. Saudi Basic Indus. Corp.***, 544 U.S. 280, 284 (2005).

As in all previous manifestations of this case, appellants again seek review of issues and claims which have been argued ad nauseam. Appellants' seven-count complaint alleges: misrepresentation and falsified notes and supporting documents, falsified copies of originals, breach of agreement, conversion, wrongful foreclosure, extrinsic fraud upon the court, and fraud perpetrated against the appellants through abuse of due process and a void judgment.[5] The Bank filed a motion to dismiss the complaint under WIS. STAT. § 802.06(2), which authorizes a defendant in a civil action to seek dismissal due to lack of jurisdiction, failure to state a claim upon which relief can be granted, or res judicata, among other things, and appellants objected,

[5] Appellants argue that the judgment of foreclosure granted by the circuit court is a void judgment, citing predominately to ***Neylan v. Vorwald***, 124 Wis. 2d 85, 97, 368 N.W.2d 648 (1985), for the proposition that "[a] void judgment may be expunged by a court at any time."

> A void judgment is a mere nullity, and any proceedings founded upon it are equally worthless. A void judgment cannot create a right or obligation, as it is not binding on anyone. A voidable judgment, on the other hand, has the same effect and force as a valid judgment until it has been set aside. Thus, a voidable judgment protects actions taken under it before it is reversed.

Kett v. Community Credit Plan, Inc., 222 Wis. 2d 117, 127-28, 586 N.W.2d 68 (Ct. App. 1998) (citations omitted). "As a general rule, a judgment or order is … not void—when the following elements are present: (1) the court has subject matter jurisdiction; (2) the court has personal jurisdiction; and (3) adequate notice has been afforded the affected persons." ***State v. Campbell***, 2006 WI 99, ¶43, 294 Wis. 2d 100, 718 N.W.2d 649 (footnotes omitted).

Appellants do not argue that the court lacked personal jurisdiction or that they did not receive notice of the proceedings as they appeared in court and responded to all motions in the foreclosure proceeding. Instead, appellants appear to argue that the court lacked subject matter jurisdiction, claiming that the Bank committed fraud upon the court as the "alleged Notes are all drawn with unclean hands and cannot be relied upon by any Wisconsin court." As our supreme court explained in ***City of Eau Claire v. Booth***, 2016 WI 65, 370 Wis. 2d 595, 882 N.W.2d 738, "[c]ircuit courts in Wisconsin are constitutional courts with general original subject matter jurisdiction over 'all matters civil and criminal.' WIS. CONST. art. VII, § 8. Accordingly, a circuit court is never without subject matter jurisdiction." ***Booth***, 370 Wis. 2d 595, ¶12 (citation omitted). Appellants' reliance on ***Neylan*** is equally faulty as the court in ***Neylan*** found the judgment void where notice, and therefore due process, requirements were violated. As previously stated, appellants do not contest notice; they simply disagree with the judgment entered by the circuit court. The judgment of foreclosure is not void.

seeking discovery and a jury trial on their claims. The circuit court granted the Bank's motion to dismiss, concluding that the doctrines of issue and claim preclusion prevented the court from considering the merits of appellants' claims as it lacked jurisdiction. We agree.[6]

Under the doctrine of claim preclusion, "a final judgment is conclusive in all subsequent actions between the same parties [or their privies] as to all matters which were litigated or which might have been litigated in the former proceedings." ***Northern States Power Co. v. Bugher***, 189 Wis. 2d 541, 550, 525 N.W.2d 723 (1995) (alteration in original; citations omitted). "[C]laim preclusion is 'designed to draw a line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand.'" ***Id.*** (citation omitted). "To this end, the doctrine of claim preclusion seeks 'to promote judicial economy and to conserve the resources the parties would expend in repeated and needless litigation of issues that were, or that might have been resolved in a single prior action.'" ***Wisconsin Pub. Serv. Corp. v. Arby Constr., Inc.***, 2011 WI App 65, ¶14, 333 Wis. 2d 184, 798 N.W.2d 715 (citations omitted). The elements of claim preclusion are: "(1) an identity between the parties or their privies in the prior and present suits; (2) an identity between the causes of action in the two suits; and, (3) a final judgment on the merits in a court of competent jurisdiction." ***Northern States Power Co.***, 189 Wis. 2d at 551.

Issue preclusion, on the other hand, is a narrower doctrine than claim preclusion. ***Id.*** Issue preclusion prevents the relitigation of issues that have *actually* been litigated in a prior

[6] Whether to apply issue preclusion, previously referred to as collateral estoppel, or claim preclusion, previously known as res judicata, to a particular set of facts or legal claims are questions of law which we review de novo. ***Juneau County v. Sauk County***, 217 Wis. 2d 705, 709, 580 N.W.2d 694 (Ct. App. 1998).

proceeding. ***Lindas v. Cady***, 183 Wis. 2d 547, 558, 515 N.W.2d 458 (1994). Identity of the parties is not required. ***Id.*** Issue preclusion is grounded in fundamental fairness; whether to apply the doctrine depends on a number of enumerated factors. ***Michelle T. v. Crozier***, 173 Wis. 2d 681, 689, 495 N.W.2d 327 (1993) (listing the factors). "No single factor is dispositive, and the list of factors is neither exhaustive nor dispositive." ***Cirilli v. Country Ins. & Fin. Servs.***, 2013 WI App 44, ¶8, 347 Wis. 2d 481, 830 N.W.2d 234. Issue preclusion "wards off endless litigation, ensures the stability of judgments, and guards against inconsistent decisions on the same set of facts." ***Gentilli v. Board of Police & Fire Comm'rs of Madison***, 2004 WI 60, ¶40, 272 Wis. 2d 1, 680 N.W.2d 335. "[T]here is a point at which litigation involving the particular controversy must end." ***Flooring Brokers, Inc. v. Florstar Sales, Inc.***, 2010 WI App 40, ¶6, 324 Wis. 2d 196, 781 N.W.2d 248.

We conclude that we have reached the point at which this controversy must end. We agree with the circuit court that the elements of issue and claim preclusion have been met in this case. We know from prior cases before this court that these same issues were presented to the circuit court when it granted summary judgment on the foreclosure. At that time, the circuit court ruled that the appellants' arguments and submissions were "general denials" that were not sufficient to defeat the Bank's properly supported motion and did not demonstrate a genuine issue of fact. Appellants and the Bank, including its assignees, were parties in all the underlying previous cases; all of the prior cases in state and federal court involved challenges to the judgment of foreclosure; and we determined that the judgment of foreclosure was a final judgment on the merits when we dismissed appellants' appeal in the first case. Precluding appellants from relitigating this case based on repacked arguments comports with principles of

fundamental fairness: appellants had their day in court and they had ample opportunity to present their claims and seek review. The circuit court did not err in dismissing appellants' suit.

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals