FILED
United States Court of Appeals
Tenth Circuit

November 1, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

SYLVIA MCRAE,

Plaintiff - Appellant,

v.

JPMORGAN CHASE & CO., a/k/a JPMorgan Chase Bank, N.A., a/k/a Chase Manhattan Mortgage Corporation,

Defendant - Appellee.

No. 23-1111
(D.C. No. 1:21-CV-01706-DDD-MDB)
(D. Colo.)

ORDER AND JUDGMENT*

Before **BACHARACH**, **KELLY**, and **MORITZ**, Circuit Judges.**

Plaintiff-Appellant Sylvia McRae appeals from the district court's judgment dismissing her complaint and action against Defendant-Appellee JP Morgan Chase Bank ("Chase") for lack of subject matter jurisdiction. Specifically, the district court held that her claims were barred by the Rooker-Feldman doctrine. In the alternative, the district court held that the claims were barred on limitations grounds. For the

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

** After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

first time on appeal, Ms. McRae claims that the district court judge should have recused due to a financial interest in a party, or an entity that holds a 10% interest in a party. Our jurisdiction arises under 28 U.S.C. § 1291 and we affirm.

Background

The parties are familiar with the facts and we need not restate them here. Briefly, Ms. McRae claims that the underlying state court proceedings, which involved foreclosure of real property in Colorado Springs, were a product of fraud on the court and that Chase violated regulations of the Consumer Financial Protection Bureau (CFPB), the Colorado Fair Debt Collection Practices Act (FDCPA), and the Department of Housing and Urban Development (HUD). She seeks Federal Rule of Civil Procedure 60(b) relief from state court judgments and damages of $3 million. Complaint at 7.

Discussion

A. Rooker-Feldman

We construe Ms. McRae's pro se submissions liberally, but we will not act as an advocate. Garrett v. Selby Connor Maddux & Janer, 425 F.3d 836, 840 (10th Cir. 2005). Our review of the dismissal of a complaint under the Rooker-Feldman doctrine is de novo. See Bruce v. City & Cnty. of Denver, 57 F.4th 738, 746 (10th Cir. 2023). The doctrine precludes "cases 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). Federal appellate review of a final state court judgment is confined to the United States Supreme Court. Lance v. Dennis, 546 U.S. 459, 463 (2006).

Though narrowed in recent years, the Rooker-Feldman doctrine still applies "where (1) the plaintiff lost in state court, (2) the state court judgment caused the plaintiff's injuries, (3) the state court rendered judgment before the plaintiff filed the federal claim, and (4) the plaintiff is asking the district court to review and reject the state court judgment." Bruce, 57 F.4th at 746. The application of Rooker-Feldman is claim-specific. Graff v. Aberdeen Enterprizes, II, Inc., 65 F.4th 500, 515 (10th Cir. 2023).

We agree with the district court that the gravamen of all Ms. McRae's claims relate to her unsuccessful efforts in state court to prevent or modify foreclosure, that the state court judgments caused her injuries, that the state court judgments were rendered before these federal claims, and that Ms. McRae plainly sought relief that would require the district court to review and reject those judgments. Ms. McRae argues that Rooker-Feldman does not bar her extrinsic fraud claim against Chase. Aplt. Br. at 4. However, we note that the Rooker-Feldman doctrine has been applied several times in the context of property foreclosures notwithstanding later claims of extrinsic fraud by the lender, or a violation of constitutional, statutory, or regulatory provisions. See MacIntyre v. JP Morgan Chase Bank, N.A., 827 F. App'x. 812, 818 (10th Cir. 2020); Myers v. Wells Fargo Bank, N.A., 685 F. App'x 679, 680–81 (10th Cir. 2017).

Because we find that Ms. McRae's claims are barred by the Rooker-Feldman doctrine, we do not reach whether her claims were otherwise time barred.

B. Recusal

Ms. McRae claims for the first time on appeal that the trial judge should have recused himself based upon a financial interest in a party. 28 U.S.C. § 455(b)(4). She also claims that the trial judge's financial interest resulted in her motions being denied and Chase's motions being granted, and affected the timing of the trial judge's decisions. Aplt. Br. at 8; Aplt. Reply Br. at 13–14. She contends that her motion for sanctions was not addressed.[1] Aplt. Reply Br. at 14. Finally, she argues in her reply brief that the trial judge violated various provisions of the Colorado Code of Judicial Conduct.[2] Id. at 13. Chase argues that the judge's recusal should not be considered because it is being raised for the first time on appeal. Aplee. Br. at 15–16.

In reviewing a recusal claim raised for the first time on appeal under § 455(a), we have varied from considering it waived to considering it for plain error. See United States v. Lang, 364 F.3d 1210, 1216–17 (10th Cir. 2004), vacated on other grounds, 543 U.S. 1108 (2005). We note that any grounds for recusal under § 455(b) cannot be waived by the parties, § 455(e), even after disclosure. Regardless of the standard of review, there is no error, plain or otherwise, given Ms. McRae's specific

[1] After concluding that discovery should be stayed given Chase's pending motion to dismiss, a magistrate judge denied her motion to compel and for sanctions without expressly discussing the motion for sanctions.

[2] We do not consider this line of argument as it was first raised in her reply brief. United States v. Leffler, 942 F.3d 1192, 1197–98 (10th Cir. 2019).

claims that the trial judge should have recused himself based upon ownership of various JP Morgan mutual funds[3] and a Vanguard exchange traded fund[4] listed in his financial disclosure report.[5]

Section 455(b)(4) requires recusal when a judge "has a financial interest . . . in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding." The term "financial interest" encompasses "ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party[.]" § 455(d)(4). Thus, "an equity financial interest [in a party] of any size is disqualifying." Chase Manhattan Bank v. Affiliated FM Ins. Co., 343 F.3d 120, 127 (2d Cir. 2003). But a financial interest does not include "[o]wnership in a mutual or common investment fund that holds securities . . . unless the judge participates in the management of the fund[.]" § 455(d)(4)(i). Nor does it include a "proprietary interest . . . of a depositor in a mutual savings association, or a similar proprietary interest . . . [unless] the outcome of the proceeding could substantially affect the value of the interest[.]" § 455(d)(4)(iii).

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[3] JP Morgan Midcap Value Fund, JP Morgan Core Bond Cl I Fund, and JP Morgan Fed Money Mkt Fund.

[4] Vanguard Int'l Eq ETF Fund.

[5] Ms. McRae included a copy of the trial judge's financial disclosure as an attachment to her appellate brief. The court declined to file the attachment because it was not before the district court, leaving the matter to the merits panel. Order, McRae v. JPMorgan Chase & Co., No. 23-1111 (10th Cir. June 20, 2023). We have reviewed the attachment but decline to file it; access to financial disclosure reports may be had using the U.S. Courts website.

Regardless of whether the Vanguard Group has aggregate ownership of 10% or more of JP Morgan Chase & Co., that fact alone would not require recusal even if a Vanguard fund actually held shares of such stock. See Harris v. Corr. Corp. of Am., No. 3:00-cv-1297-TJC-MCR, 2022 WL 19039609, at *1 (M.D. Fla. Feb. 24, 2022). No evidence suggests that the trial judge participates in the management of the Vanguard fund, or that the outcome of this proceeding could substantially affect the judge's interest in it.

As to the JP Morgan funds, we assume they are affiliated with JP Morgan Chase & Co. But the JP Morgan interests at issue are mutual funds — § 455(d)(4)(i) specifically exempts ownership of the underlying securities from the definition of a "financial interest" absent evidence that the judge participates in management of the fund. It would be strange indeed if the underlying securities which comprise the fund assets were not considered financial interests but, without more, the fund was. Furthermore, merely because an investor purchases a product, here a mutual fund, from a vendor does not mean that the investor has a financial interest **in the vendor** any more than a depositor has an interest in the bank that would require recusal. See Guthrie v. Wells Fargo Home Mortg. NA, 706 F. App'x 975, 977 (11th Cir. 2017) (noting that a financial interest does not include ownership of a mutual fund or common investment fund that holds underlying securities nor does it include consumer transactions in the ordinary course of business).

Indeed, the Committee on the Codes of Conduct has taken a similar view in interpreting Canon 3C of the Code of Conduct for United States Judges:

> Ownership of shares in a particular mutual fund does not give rise to an ownership interest in the company managing the fund or providing it with investment advice. Even if the management company is technically owned by the shareholders of all the mutual funds operated by the company, those shareholders do not have a financial interest in the management company. They do not receive dividends from the management company (only from the funds) or benefit from any increase in value of the shares of the management company. Instead, these situations are analogous to a savings account or a mutual insurance company policy, ownership of which does not give the account or policy holder an equity ownership interest in the bank or insurance company.
>
> The same analysis applies to ownership of a mutual fund. Because an investment in a fund does not convey an ownership interest in the fund management or investment advisory company, the fact that the management or investment advisory company for the judge's fund appears as a party does not require the judge's disqualification. Under Canon 3C(3)(c)(iii), the proprietary interest of such an account or policy holder is considered a disqualifying financial interest in the bank or insurance company only if the outcome of the proceeding could substantially affect the value of the interest.

Committee on Codes of Conduct, Advisory Op. No. 106, Mutual or Common Investment Funds (Mar. 2011).

Finally, as to the claim that the trial judge's ownership of the assets in question affected the timing and substance of his rulings, Ms. McRae's assertions are wholly speculative. Adverse rulings, or those perceived as such, generally do not constitute proper grounds for a recusal motion under § 455(a). Liteky v. United States, 510 U.S. 540, 555–56 (1994).

AFFIRMED.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge