

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 06-12857
Non-Argument Calendar

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT NOV 29, 2006 THOMAS K. KAHN CLERK

D. C. Docket No. 05-00633-CV-2-SLB

WILLIAM ERIC CLARK,

Plaintiff-Appellant,

versus

MGA, INC.,
and all Holding Companies and affiliated entities,
d.b.a. Movie Gallery,
UNITED PARCEL SERVICE, INC., et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Alabama

(November 29, 2006)

Before ANDERSON, BIRCH and DUBINA, Circuit Judges.

PER CURIAM:

This is an appeal by appellant William Eric Clark (“Clark”) from a judgment of dismissal entered by the district court in favor of the defendants.

This court reviews *de novo* the dismissal of a complaint for failure to state a claim upon which relief may be granted. *Roberts v. Fla. Power & Light Co.*, 146 F.3d 1305, 1307 (11th Cir. 1998). This court also reviews *de novo* the decision of a district court to bar a claim on the basis of res judicata. *Israel Disc. Bank Ltd. v. Entin*, 951 F.2d 311, 314 (11th Cir. 1992).

After reviewing the record and reading the parties’ briefs, we conclude, as did the district court, that the instant complaint was due to be dismissed on grounds of res judicata. In comparing the dispositive order in the present case entered by Judge Blackburn with an earlier dispositive order entered by Judge Acker, we conclude that the instant case undeniably involves the identical parties, identical subject matter, and identical facts as in the first *Clark* case. The district court’s dismissal with prejudice of the first *Clark* case asserting the very same civil RICO claim presented here barred Clark from refiling an identical claim before the district court. Accordingly, we affirm the district court’s judgment of dismissal.¹

AFFIRMED.

¹We also grant appellees’ motions for damages and costs filed pursuant to Rule 38 of the Fed. R. App. P. and remand this case to the district court to determine the amount of fees and costs to be awarded.