

1 UNITED STATES COURT OF APPEALS
2
3 FOR THE SECOND CIRCUIT
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7 August Term 2008
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9 Argued: December 8, 2008 Decided: July 15, 2009

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11 Docket No. 07-3405-cv
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15 CLOVERLEAF REALTY OF NEW YORK, INC. and SUNRISE PARK REALTY,
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18 Plaintiffs-Appellants,
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20 - against -
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22 TOWN OF WAWAYANDA and COUNTY OF ORANGE,
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24 Defendants-Appellees.
25

26 -----X
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28 Before: FEINBERG, LEVAL, and CABRANES Circuit Judges.
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30 Appeal from an order of the United States District Court for
31 the Southern District of New York (Charles L. Brieant, Judge)
32 dismissing a procedural due process claim as precluded by an
33 earlier dismissal of a similar claim by a New York state court
34 for lack of timeliness. The Court holds that a dismissal on
35 statute of limitations grounds by a New York court does not
36 preclude the bringing of the same claim in another jurisdiction
37 with a longer statute of limitations, including a federal court
38 exercising its federal question jurisdiction.

1 The order of the district court is vacated, and the matter
2 remanded for further proceedings.

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4 JAMES G. SWEENEY, Goshen, N.Y., for Appellants.

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6 RICHARD J. GUERTIN, Middletown, N.Y., for
7 Defendant-Appellee Town of Wawayanda.

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9 MARIA CONDOLUCI, Goshen, N.Y., for Defendant-
10 Appellee County of Orange (David L. Darwin,
11 Orange County Attorney, on the brief).

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14 FEINBERG, Circuit Judge:

15 Plaintiffs Cloverleaf Realty of New York, Inc. and Sunrise
16 Park Realty (collectively "Cloverleaf") appeal from an order of
17 the United States District Court for the Southern District of
18 New York (Charles L. Brieant, Judge) dismissing their complaint
19 against defendants the Town of Wawayanda (the "Town") and the
20 County of Orange (the "County"). We conclude that the District
21 Court erred in dismissing the complaint as precluded by an
22 earlier state court dismissal, and we vacate the order and
23 remand the case to the district court for further proceedings.

24
25 **I. Background**

26 Cloverleaf owns two parcels of land in Wawayanda, New
27 York. In 2005, the Town prepared a tentative special assessment
28 roll to fund improvements to the water and sewer district that
29 included the parcels. Following a public hearing, the Town
30 approved the tentative assessment roll. The Town then

1 transmitted the assessment roll to the County, which levied the
2 taxes against the property owners within the district. As a
3 result, Cloverleaf received tax bills from the County totaling
4 \$38,642.01.¹ On January 31, 2006, the last day the taxes could
5 be paid without penalty, Cloverleaf paid the full amount under
6 protest.

7 In 2006, Cloverleaf brought a declaratory judgment action
8 against the Town and the County in a New York state court. The
9 complaint sought to invalidate the assessments on two grounds.
10 First, Cloverleaf argued that New York law required the
11 assessments to be made on a "benefit basis," where taxes would
12 be based on the proportional share of the benefit each property
13 in the district would receive from the improvements. Instead,
14 the assessment roll was enacted on an ad valorem basis, so that
15 taxes were based purely on the assessed value of the
16 properties. Second, Cloverleaf argued that procedural due
17 process required providing actual notice of the objectors
18 hearing by mail, and that the City's posting of a newspaper
19 advertisement was insufficient. The state trial court found
20 that the four-month statute of limitations contained in N.Y.
21 C.P.L.R. 217 applied to Cloverleaf's claims, and it dismissed
22 the complaint as untimely.

¹ Cloverleaf Realty of New York, Inc. was billed \$28,574.39, and Sunrise Park Realty was billed \$10,067.62.

1 Cloverleaf subsequently brought this action in the
2 Southern District pursuant to 42 U.S.C. § 1983, again alleging
3 that the failure to provide notice of the objectors hearing by
4 mail violated its Fourteenth Amendment right to due process.
5 Although this claim was essentially identical to the state
6 court procedural due process claim, Cloverleaf sought to take
7 advantage of the longer statute of limitations applied by
8 federal courts to § 1983 actions against New York state
9 officials. See Owens v. Okure, 488 U.S. 235, 251 (1989)
10 (holding that New York's three-year statute of limitations for
11 general personal injury actions is applicable to § 1983 actions
12 filed in federal courts in New York). See also Jaghory v. New
13 York State Dep't of Educ., 131 F.3d 326, 331 (2d Cir. 1997)
14 (observing that "the statute of limitations for a claim under §
15 1983 that accrued in New York is three years"); Meyer v. Frank,
16 550 F.2d 726, 728 (2d Cir. 1977) ("[T]he three year New York
17 statute of limitations governs [plaintiff's] instant § 1983
18 claim."); Romer v. Leary, 425 F.2d 186, 187 (2d Cir. 1970) ("It
19 is now settled...that in a suit seeking declaratory and
20 injunctive relief which is based on [§ 1983], the applicable
21 limitation in a case arising in New York is the three year
22 limitation...").

23 The District Court dismissed the action on the pleadings,
24 concluding that the federal court claim was precluded by the

1 earlier state court dismissal. The district court then granted
2 a motion by Cloverleaf to reconsider the dismissal, but
3 ultimately adhered to its initial order. This appeal followed.
4

5 **II. Discussion**

6 The difficulty in this case arises from the circumstance
7 that Cloverleaf's procedural due process claim was untimely
8 under the law applied by the New York courts, but timely under
9 the law applied by the federal courts. Federal courts "must
10 give to a state-court judgment the same preclusive effect as
11 would be given that judgment under the law of the State in
12 which the judgment was rendered." Migra v. Warren City School
13 Dist. Bd. of Educ., 465 U.S. 75, 81 (1983). The district court
14 concluded that under New York preclusion law, a dismissal for
15 lack of timeliness is treated as a judgment "on the merits,"
16 and that the claim therefore could not be litigated in another
17 forum. Cloverleaf argues that the district court erred in
18 failing to apply an exception to claim preclusion where the
19 first claim was dismissed solely for lack of timeliness and the
20 second claim is brought in another state or jurisdiction. We
21 agree.

22 As the Supreme Court has recognized, "the traditional rule
23 is that expiration of the applicable statute of limitations
24 merely bars the remedy and does not extinguish the substantive

1 right, so that dismissal on that ground does not have claim-
2 preclusive effect in other jurisdictions with longer, unexpired
3 limitations periods." Semtek Int'l Inc. v. Lockheed Martin
4 Corp., 531 U.S. 497, 504. (2001); see also 18A Charles Alan
5 Wright & Arthur R. Miller, Federal Practice and Procedure §
6 4441, at 224 (2d. ed. 2002) (noting "the general conclusion
7 that dismissal on limitations grounds merely bars the remedy in
8 the first system of courts, and leaves a second system of
9 courts free to grant a remedy that is not barred by its own
10 limitations rules"). Stated differently, unless a state's
11 claim-preclusion law departs from the traditional rule and
12 treats a dismissal for timeliness as a ruling on the merits of
13 the claim, courts in another jurisdiction need not give claim-
14 preclusive effect to a dismissal on timeliness grounds. A
15 federal court, exercising its federal question jurisdiction, is
16 plainly a jurisdiction separate from that of the State of New
17 York. The remaining question, then, is whether New York's
18 claim-preclusion law departs from the traditional rule, and
19 instead treats a dismissal for lack of timeliness as
20 extinguishing both the right and the remedy.

21 We conclude that New York law does not depart from the
22 traditional rule. As the New York Court of Appeals explained in
23 Tanges v. Heidelberg N. Am., Inc., 93 N.Y.2d 48 (1999), "The
24 expiration of the time period prescribed in a Statute of

1 Limitations does not extinguish the underlying right, but
2 merely bars the remedy." Id. at 55. The dismissal of
3 Cloverleaf's procedural due process claim for lack of
4 timeliness thus merely barred its ability to obtain relief in
5 the courts of New York. The underlying right remains intact,
6 and a remedy remains available in the federal courts.

7 Some confusion has arisen from an earlier decision of the
8 New York Court of Appeals in Smith v. Russell Sage College, 54
9 N.Y.2d 185 (1981). That case affirmed the dismissal of an
10 employment discrimination claim on claim-preclusion grounds,
11 observing that a prior dismissal of the same claim on both
12 statute of limitations and statute of frauds grounds was
13 "sufficiently close to the merits for claim preclusion purposes
14 to bar a second action." Id. at 194. We have in the past read
15 Russell Sage as establishing that under New York law, a
16 dismissal for lack of timeliness is a judgment "on the merits"
17 that destroys both the right and the remedy. See EFCO Corp. v.
18 U.W. Marx, Inc., 124 F.3d 394, 397 (2d Cir. 1997); Bray v. N.Y.
19 Life Ins., 851 F.2d 60, 64 (2d Cir. 1988).²

20 In light of the more recent statement of its own law by
21 the New York Court of Appeals in Tanges, such a reading of
22 Russell Sage is no longer appropriate given the earlier case's

² Neither Bray nor EFCO binds our decision in this case, as both were decided before the New York Court of Appeals clarified the effect of a dismissal for lack of timeliness in Tanges.

1 ambiguity. First, the initial dismissal in Russell Sage was not
2 merely on statute of limitations grounds, but also on statute
3 of frauds grounds. Russell Sage, 54 N.Y.2d at 194. The Court of
4 Appeals appears to have concluded that the two grounds *taken*
5 *together* lead to a conclusion that the prior dismissal was
6 “sufficiently close to the merits” to give it claim-preclusive
7 effect. Id. We do not read this as a statement that a dismissal
8 for lack of timeliness is, standing alone, a judgment “on the
9 merits.”

10 Second, in Russell Sage, “the motion to dismiss the first
11 action was treated as one for summary judgment on which the
12 court considered submissions of the parties” outside the
13 pleadings, making claim preclusion “especially” appropriate in
14 the eyes of the New York Court of Appeals. Id. That is not true
15 of the matter before us.

16 Third, the court in Russell Sage was not confronted by the
17 situation we face: a dismissal for lack of timeliness by a
18 court in another jurisdiction with a shorter statute of
19 limitations. Since that decision did not confront the question
20 of whether a claim originally dismissed as time-barred should
21 be precluded when later reasserted in another jurisdiction with
22 a longer statute of limitations, it should not be understood as
23 having settled that question.

24

1 **III. Conclusion**

2 We hold that dismissal of a claim solely for lack of
3 timeliness in a New York state court does not preclude the same
4 claim from being brought in another jurisdiction with a longer
5 statute of limitations, including a federal court exercising
6 its federal question jurisdiction. Accordingly, the order of
7 the district court dismissing Cloverleaf's suit is VACATED, and
8 the matter REMANDED for further proceedings consistent with
9 this opinion. We express no opinion as to the County's argument
10 that Cloverleaf's complaint failed to state a claim upon which
11 relief may be granted, as the district court did not address
12 this argument in its order.