PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 21-1280

DIANA LOUISE HOUCK,

Plaintiff - Appellant,

v.

LIFESTORE BANK; GRID FINANCIAL SERVICES, INC.,

Defendants - Appellees.

Appeal from the United States District Court for the Western District of North Carolina, at Statesville. David Shepardson Cayer, Magistrate Judge. (5:13-cv-00066-DSC)

Argued: May 4, 2022 Decided: July 19, 2022

Before NIEMEYER and DIAZ, Circuit Judges, and FLOYD, Senior Circuit Judge.

Appeal dismissed by published opinion. Judge Niemeyer wrote the opinion, in which Judge Diaz and Senior Judge Floyd joined.

ARGUED: M. Shane Perry, COLLUM & PERRY, Mooresville, North Carolina, for Appellant. Ryan M. Gaylord, BELL, DAVIS & PITT, PA, Winston-Salem, North Carolina, for Appellees. **ON BRIEF:** Alan M. Ruley, BELL, DAVIS & PITT, PA, Winston-Salem, North Carolina, for Appellee LifeStore Bank. Robert A. Mays, MAYS JOHNSON LAW FIRM, Asheville, North Carolina, for Appellee Grid Financial Services, Inc.

NIEMEYER, Circuit Judge:

Diana Houck sued three defendants under 11 U.S.C. § 362 for violating a bankruptcy stay by their participation in the foreclosure and sale of her home while her bankruptcy petition was pending. The district court dismissed the claims against the first defendant but not the other two, and Houck appealed the dismissal order, even though it was interlocutory. While her appeal was pending before us, however, the district court dismissed the claims against the other two defendants and entered a final judgment in the case. That final judgment saved her appeal from dismissal in our court under the doctrine of "cumulative finality," as the district court had at that point adjudicated all claims as to all parties in the case.

We reviewed the order dismissing the first defendant and remanded the case for further proceedings against that defendant. Because Houck never appealed the dismissal of the other two defendants, however, we never had those defendants before us.

After a successful trial against the first defendant — resulting in a judgment of over $260,000 — Houck appealed the final judgment that she obtained against that defendant in order to challenge the earlier dismissals of the other two defendants.

We conclude that we lack jurisdiction over Houck's appeal of the final judgment in favor of the other two defendants, as it was untimely. *See* 28 U.S.C. § 2107; Fed. R. App. P. 4(a); *Bowles v. Russell*, 551 U.S. 205, 206 (2007). And in reaching this conclusion, we reject Houck's argument that we vacated that judgment in our decision reviewing the order dismissing the first defendant. Accordingly, we dismiss Houck's appeal.

I

After Diana Houck received homestead property in Ashe County, North Carolina, from her father, she obtained financing from LifeStore Bank, F.S.A., to remodel the farmhouse on the property. But shortly thereafter, she lost her job and asked LifeStore for a loan modification. LifeStore referred her to Grid Financial Services, Inc., a debt collection agency, which, after close to two years, denied her request because she remained unemployed. As a consequence, Houck defaulted on her loan, and Substitute Trustee Services, Inc., the "Substitute Trustee" on the loan documents, initiated foreclosure proceedings. To obtain a stay of those proceedings, Houck filed two separate Chapter 13 bankruptcy petitions, and while the second petition was pending, the Substitute Trustee sold her farm, forcing her to vacate the homestead.

Houck commenced this action against LifeStore, Grid Financial, and the Substitute Trustee under 11 U.S.C. § 362(k) for violation of the automatic stay, as well as related state law.

The Substitute Trustee filed a motion to dismiss the claims against it, which the district court granted by order dated October 1, 2013. Houck filed an appeal from that order, which was interlocutory, as the district court still had before it Houck's claims against LifeStore and Grid Financial. While that appeal was pending, however, the district court dismissed all the remaining claims against LifeStore and Grid Financial, resulting in all three defendants having been dismissed from the action. On February 20, 2014, the court accordingly entered a final judgment in the case. Houck, however, never filed an

appeal from the court's orders dismissing her claims against LifeStore and Grid Financial nor from the February 20, 2014 final judgment that followed.

While we recognized that Houck's appeal of the October 1, 2013 order dismissing the Substitute Trustee was interlocutory when filed, we concluded that it became one from a final judgment under the doctrine of cumulative finality when the remaining defendants were dismissed from the case by the district court. *See Houck v. Substitute Tr. Servs., Inc.*, 791 F.3d 473, 478–79 (4th Cir. 2015). Accordingly, we concluded that we had jurisdiction to review the district court's order dismissing Houck's claims against the Substitute Trustee. *Id.* at 479. And on the merits, we held that "Houck stated a plausible claim for relief [against the Substitute Trustee] under § 362(k)." *Id.* at 486. Our mandate read accordingly:

> The judgment of the district court is vacated; the court's October 1, 2013 order dismissing Houck's § 362(k) claim against the Substitute Trustee is reversed; and the case is remanded for further proceedings.

Id. at 487.

On remand, the case was tried against the Substitute Trustee in the bankruptcy court, and following a bench trial, the court awarded Houck $260,175.27 in damages and attorneys fees for the violation of the automatic stay required by the Bankruptcy Code. It entered a final judgment on October 6, 2020. Though the Substitute Trustee appealed the bankruptcy court's judgment to the district court on October 20, 2020, shortly thereafter it filed a "Motion for Voluntary Dismissal of Notice of Appeal" upon reaching a settlement with Houck for satisfaction of the judgment. The bankruptcy court approved the voluntary

dismissal by order dated December 3, 2020, and on the same date, the clerk of the court entered a final judgment.

Three months later, on March 5, 2021, Houck filed a "Motion to Reopen Case" in the district court in order to seek review of that court's 2014 orders dismissing her claims against LifeStore and Grid Financial, and the district court granted the motion. But in its order dated March 8, 2021, the court simply adopted in full the bankruptcy court's findings of fact and legal reasoning — which pertained only to the Substitute Trustee — and entered a judgment for Houck in the amount of $260,175.27 in damages and attorneys fees, identical to the bankruptcy court's earlier judgment of October 6, 2020.

From the district court's judgment *in favor of Houck* against the Substitute Trustee, Houck nonetheless filed this appeal to seek review of the 2014 orders — entered over seven years before — that dismissed all of her claims against LifeStore and Grid Financial. LifeStore and Grid Financial contend, among other things, that the time for appealing the 2014 orders and the February 20, 2014 judgment that followed has long passed and that we do not now have jurisdiction to review them.

II

Stated broadly, Houck sued three defendants — the Substitute Trustee, LifeStore, and Grid Financial — and all three defendants were dismissed by the district court's various orders culminating in the February 20, 2014 final judgment. Houck appealed the first order dismissing the Substitute Trustee, but she never appealed the orders dismissing LifeStore and Grid Financial nor the final judgment of February 20, 2014.

Now, more than seven years later, Houck asks us to review the February 20, 2014 final judgment in favor of LifeStore and Grid Financial through her appeal of the final judgment *entered against the Substitute Trustee* in 2021, even though she had never appealed the former.

The most obvious obstacle to Houck's appeal of the February 2014 judgment is its timing. Specifically, we lack jurisdiction because Houck failed to appeal the February 2014 judgment within 30 days of its entry. Section 2107(a) of Title 28 provides that a party seeking appellate review of a judgment must file its notice of appeal within 30 days of the judgment's entry, subject to certain exceptions not relevant here. *See also* Fed. R. App. P. 4(a)(1)(A) (same). And the Supreme Court has held that this time requirement is "jurisdictional in nature." *Bowles v. Russell*, 551 U.S. 205, 206 (2007). While Houck did file an appeal within 30 days of the October 1, 2013 order dismissing the Substitute Trustee, which later became an appealable judgment under the cumulative finality doctrine, she did not similarly file a timely appeal from the February 20, 2014 judgment dismissing LifeStore and Grid Financial. Thus, for that reason, we lack jurisdiction to review Houck's claims against LifeStore and Grid Financial.

Houck attempts to evade her appeal's lack of timeliness by arguing that, in ruling on her prior appeal, we vacated the 2014 final judgment when we said, "The judgment of the district court is vacated." *Houck*, 791 F.3d at 487. She argues therefore that "there was no final judgment entered in this case as to all claims for all parties" until the district court again entered judgment on March 8, 2021. Accordingly, she reasons, she can, with this

appeal, assert arguments challenging the 2014 orders dismissing LifeStore and Grid Financial. This argument, however, fails for at least two reasons.

First, we need to point out that while our mandate in the prior appeal did indeed vacate "[t]he judgment of the district court," it was referring to the only judgment appealed and before us — the October 1, 2013 order that was rendered a judgment under the cumulative finality doctrine. *See* Fed. R. Civ. P. 54(a) (defining the term "judgment" as including "any order from which an appeal lies"). The mandate made this clear, stating in full:

> The judgment of the district court is vacated; the court's October 1, 2013 order dismissing Houck's § 362(k) claim against the Substitute Trustee is reversed; and the case is remanded for further proceedings.

Houck, 791 F.3d at 487. And consistent with this limitation, only the claim against the Substitute Trustee was tried on remand, and the final judgment entered on March 8, 2021, was only against the Substitute Trustee.

But more fundamentally, we rely on the fact that we did not, in the prior appeal, have jurisdiction to review the judgment dismissing LifeStore and Grid Financial. That appeal was taken from only the October 1, 2013 order dismissing the Substitute Trustee, which became a judgment on February 20, 2014 under the cumulative finality doctrine when the claims against LifeStore and Grid Financial were dismissed in the district court. Houck could have brought LifeStore and Grid Financial before us by appealing the February 20, 2014 judgment within 30 days of its entry, but she did not do so. As a result, we only adjudicated the claims against the Substitute Trustee, never addressing errors that Houck might have wanted to assert as to the other dismissed defendants. Because the

February 2014 judgment as to LifeStore and Grid Financial was not before us, we had no jurisdiction to vacate it. *See Jackson v. Lightsey*, 775 F.3d 170, 176–77 (4th Cir. 2014) (holding that we had jurisdiction over an appeal of a July 2013 order dismissing prison doctors from the case but not over a July 2012 order dismissing prison medical staff because (1) the 2013 order was the express subject of plaintiff's notice of appeal and (2) the medical staff had been dismissed and were not represented in the appellate proceedings).

While not briefed by the parties, we also point out that serious additional barriers to Houck's current appeal appear to exist. First, Houck reached a settlement agreement with the Substitute Trustee in late 2020, ending her claims against that party. Yet, in seeking to reopen the case, she gave no indication that she had repudiated the settlement agreement. Thus, her effort to reopen a case that had been settled should likely have been rejected. *See Fairfax Countywide Citizens Ass'n v. Cnty. of Fairfax, Va.*, 571 F.2d 1299, 1302–03 (4th Cir. 1978) (holding that "*upon repudiation of a settlement agreement* which had terminated litigation pending before it, a district court has the authority under Rule 60(b)(6) to vacate its prior dismissal order and restore the case to its docket" (emphasis added) (cleaned up)). And second, because the March 8, 2021 judgment was *in her favor*, Houck can hardly now seek to appeal it without showing that she was somehow "aggrieved" by the judgment. *See HCA Health Servs. of Va. v. Metro. Life Ins. Co.*, 957 F.2d 120, 123 (4th Cir. 1992) (recognizing that "[a] party must be 'aggrieved' by a district court judgment or order in order to have standing to appeal" and that "[g]enerally, a prevailing party is not aggrieved

by the judgment" (citation omitted)). But we need not rely on these additional deficiencies, as we dismiss this appeal under § 2107(a) and *Lightsey*.

To be sure, a degree of complexity is added by our prior application of the doctrine of cumulative finality, which allowed us to review what was originally an interlocutory order — the October 1, 2013 order dismissing the Substitute Trustee — based on the subsequent dismissal of the remaining defendants in the district court with the February 2014 judgment.

The cumulative finality doctrine allows us to consider an otherwise premature appeal when (1) "all joint claims or all multiple parties are dismissed prior to the consideration of the appeal," *Equip. Fin. Grp., Inc. v. Traverse Comput. Brokers*, 973 F.2d 345, 347 (4th Cir. 1992); and (2) "the appellant appeals from an order that the district court could have certified for immediate appeal under Rule 54(b)," *Houck*, 791 F.3d at 479. The doctrine therefore "allows an appeal from a non-final order to be 'saved' by subsequent events that establish finality." *In re Rimsat, Ltd.*, 212 F.3d 1039, 1044 (7th Cir. 2000).

That is precisely what happened in this case. When Houck appealed the October 1, 2013 order dismissing her claims against the Substitute Trustee, her appeal was premature "because LifeStore and Grid Financial were not parties to [the Substitute Trustee's motion to dismiss] and remained defendants in the action." *Houck*, 791 F.3d at 478. But the February 20, 2014 judgment "saved" Houck's once-premature appeal because the October 1, 2013 order became a final judgment when LifeStore and Grid Financial were removed from the case and thus all claims as to all parties were resolved. *Id.* at 478–79. Thus, the

February 2014 judgment established the cumulative finality needed for Houck to appeal the court's dismissal of her claims against the Substitute Trustee.

Our application of the cumulative finality doctrine, however, did not somehow open our appellate review to consideration of the judgment dismissing LifeStore and Grid Financial. Moreover, even if it did, we still would have lacked jurisdiction because those two other defendants were not before us. *See, e.g.*, *Sessler v. Allied Towing Corp.*, 538 F.2d 630, 633 (4th Cir. 1976) (holding on due process grounds that the court was unable to decide an issue pertaining to a company that was "not a party to [the] appeal"); *Speers Sand & Clay Works v. Am. Tr. Co.*, 37 F.2d 572, 573 (4th Cir. 1930) ("[I]t is clear that we have no power to review the decision of the court below in so far as it adjudicates [the] rights" of persons not made "party to the proceedings on appeal").

Ultimately, Houck cannot have it both ways. Having benefited from our determination that the February 2014 judgment was a final judgment that triggered cumulative finality because LifeStore and Grid Financial were no longer in the case, allowing her to appeal the October 1, 2013 order, she cannot now — more than seven years later — retroactively resurrect her claims against LifeStore and Grid Financial. The fact that the February 2014 judgment was a final judgment sufficient to grant cumulative finality means that Houck's appeal of that judgment was subject to the time requirements of § 2107(a), which she failed to satisfy.

* * *

For the reasons given, we dismiss Houck's appeal for lack of jurisdiction.

DISMISSED