[Dkt. Nos. 96, 112, and 114]

## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY CAMDEN VICINAGE

PATRICIA SMALLS,

Plaintiff,

v.

RIVIERA TOWERS CORP., et al.

Defendants.

Civil No. 16-847(RMB/KMW)

MEMORANDUM OPINION

This matter comes before the Court on three motions: (1) Plaintiff Patricia Smalls' Motion to Reconsider under Rule 60 [Docket No. 96]; (2) Defendants First Service Residential's ("First Service") and Anthony Iacono's Motion to Dismiss [Docket No. 112]; and (3) Plaintiff's Motion to Strike [Docket No. 114]. For the reasons set forth herein, Plaintiff's Motion to Reconsider is DENIED; Defendants First Service Residential and Anthony Iacono's Motion to Dismiss will be converted to a Motion for Summary Judgment; and Plaintiff's Motion to Strike is dismissed as moot.

The case before this Court has been a protracted one involving numerous claims, parties, and accusations. This Court has labored countless days and attempted to do its best in sorting through the years of litigation and the various cases that Plaintiff has brought.

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In that regard, a chart may be helpful to all concerned.

Action	Cause(s) of	Disposition
	Action	
1		
1. <u>Riviera Towers</u> <u>Corp. v. Smalls</u> , HUD-L-438-11 Case filed in the Superior Court of New Jersey, Hudson County	Failure to pay monthly fees	<ul> <li>December 11, 2011, Final Judgment entered in favor of Riviera Towers against Smalls in amount of \$10,056.15; terminating lease agreement and any right to Apartment #27H, 6040 Boulevard East, West New York, New Jersey (the "Property"). Immediate possession to Riviera Towers [<u>See</u> Docket No. 24-7 in Civil Action No. 16-847] June 13, 2012.</li> <li>Final Judgment amended to \$8,133.50 [Id., Docket No. 24-8].</li> </ul>
Superior Court of New Jersey, Hudson County	See Docket No. 24-7 in Civil Action No. ???????June 13, 2012	• Order entered granting PHH Mortgage to withdraw all funds, totaling \$105,037.21 [PHH had obtained judgment against Smalls in the amount of \$106,112.13 [See Docket No. 24-10 in Civil Action No. 16-847].
3. [First Fed. Action] Action No. 12-6312 <u>Smalls v. Riviera Towers</u> <u>Corp. ("TRC") filed</u> October 5, 2012; Amended November 2, 2012. <u>Kenneth Blane</u> (RTC	18 U.S.C. § 241, 242 U.S.C. § 3601, 15 U.S.C. § 689; 18 U.S.C. § 876, "race, sex and age	• August 9, 2013 Hon. Stanley R. Chesler granted Motions to Dismiss by Wentworth Property Management and Signature Property Group

John Negri (RTC Board Member); Signature Property Groups, Inc.; Nember);common law and contract claims arising out of the eviction of Plaintiff from and subsequent sale of her West New York apartmentNo. 501. Smalls failed to tile an anended Complaint by September 13, 2013. Therefore, a final yudgment issued. See Hoffman v. Nordic Naturals, Inc., 837 F.3d 272, 279 (3d Cir. 2016)("The District Court dismissed [the Complaint] without prejudice for failure to state a claim without prejudice for failure to state a claim on the merits - and provided [Plaintiff leave to amend By opting not to amend his Complaint within the time the District Court's dismissed [was converted] into a final order.")No. 13-4637 Smalls v. Buckalew Prizzell Crevina, LLP;18 U.S.C. §§ 241, 242, 3601, 15 U.S.C. § 679, 18 U.S.C. § 676, 18 U.S.C. § 371,• On November 19, 2013, Judge Chesler dismissed complaint assust. Defendants Buckalew Frizzell & Crevina, LLP,	President);	discrimination	without prejudice [Docket
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Smalls v. Buckalew Frizzell Crevina, LLP;242, 3601, 15 U.S.C. § 689, 18 U.S.C. § 876, 18 U.S.C. § 371,Judge Chesler dismissed Complaint against Defendants Buckalew Frizzell & Crevina, LLP,	Action No. 13-4637	18 U.S.C. §§ 241.	• On November 19, 2013.
Frizzell Crevina, LLP;U.S.C. § 689, 18Complaint againstFein Such Kahn & ShepardU.S.C. § 876, 18Defendants BuckalewPC;U.S.C. § 371,Frizzell & Crevina, LLP,			
Fein Such Kahn & Shepard PC;U.S.C. § 876, 18 U.S.C. § 371,Defendants Buckalew Frizzell & Crevina, LLP,			_
PC; U.S.C. § 371, Frizzell & Crevina, LLP,			
Jonn Middleton, Jr., Various state law Robert Buckalew, David	John Middleton, Jr.,	various state law	Robert Buckalew, David

Esq.;	claims; "fourth and	
Daniel Ortiz, Signature	Fourteenth	Karpowicz and John
Property Corp.;	Amendment	Middleton, Jr. without
American Movers, Inc.;	Constitutional	prejudice, to Plaintiff's
<u>Lazara Carvajal, Esq.</u> ;	Rights Violations,"	moving to seek leave of
Barbara Karpowicz, Esq.;	"civil rights	Court to file Amended
Anthony Iacono,	Violations", "Race	Complaint which Plaintiff
Wentworth Property	and Sex	never sought.
Management Corp.;	Discrimination"	
American Express Bank,	arising out of the	• On June 25, 2014, Judge
FSB;	eviction of	Chesler dismissed
Robert J. Buckalew,	Plaintiff from and	Complaint against
Esq.;	subsequent sale of	Defendants American
Nicholas Canova, Esq.;	her West New York	Express Bank, Fein, Such,
PHH Mortgage Corp.;	apartment	Kahn & Shepard, Nicholas
David Frizzell, Esq.		Canova, Esq., PHH
		Mortgage, Lazaro
		Carvajal, American
		Movers, Inc. and Daniel
		Ortiz without prejudice
		to Plaintiff's moving to
		seek leave of Court to
		file amended complaint
		which Plaintiff never
		sought.
		bought.
		• On October 8, 2014,
		Judge Chesler dismissed
		the case pursuant to
		Federal Rule of Civil
		Procedure 4(m).
5. [Third Fed. Action]		
Action No. 13-4698	Same causes of	• On December 13, 2013,
Smalls v. Hon. Barry	action as earlier	Judge Chesler dismissed
	federal cases	-
Sarkisian, Hon. Hector		the Complaint against
Velazquez, Hon. Peter	arising out of the	seven state judges, John
Bariso, Jr., Hon.	eviction of	Tonelli, and Lt. Robert
Mitchel Ostrer, Hon.	Plaintiff from and	McGrath with prejudice
Marie P. Simonelli, Hon.	subsequent sale of	[Docket No. 18].
Stuart Rabner, Hon.	her West New York	
John A. Tonelli, Jr.,	apartment.	• On June 2, 2014, Judge
Michael Zitt, Captain		Chesler dismissed the
West New York Police,		Complaint against all
Felix Rogue, Mayor of		remaining Defendants with
West New York, Susan		prejudice [Docket No.
MCBC MEW TOLK, BUBAII		Prejudice [DOCKEC NO.

Handler-Menahem, Robert		345].
E. McCrath, lt. N.J.		545].
Attorney General.		
6. [Fourth Fed. Action]		
6. [Fourth Fed. Action] Action No. 16-847 <u>Smalls</u> v. Riviera Towers Corp., Buckalew Frizzell Crevina LLP First Service Residential, American Express Bank FSB., PHH Mortgage Corp., Fannie Mae, Coldwell Banker, American Movers, Inc., West New York Police, Hudson County Prosecutor's Office, Hon. Chris Christie, Hon. Robert Menendez, Hon. Stanley Chesler, Hon. Stanley Chesler, Hon. Glenn Grant, Carlo Abad, Amariliz A. Diaz, Paul Blaine, Michael E. Camprion,	Same causes of action as earlier federal cases arising out of the eviction of Plaintiff from and subsequent sale of her West New York apartment. (Plaintiff also alleged § 1983 Violations for "certain protections guaranteed to her by the Fourth, Fifth, Seventh, Eighth, Ninth, and Fourteenth Amendments")	<ul> <li>By Opinion and Order dated 21, 2017, this Court dismissed claims against Riviera Towers and Blane, PHH, AmEX, Buckalew Frizzell, and Fein Such, under doctrine of <u>res judicata</u>, as well as failure to state a claim. Court dismissed those claims under principles of immunity and failure to state a claim.<sup>1</sup></li> <li>As to Defendants Senator Menendez, Governor Christie, Judges McKee, Chesler, Diaz, Grant, AUSA Blaine, and the Hudson County Prosecutor's Office, the Court dismissed those claims under principles</li> </ul>
Michael Signorile,		of immunity and failure
Kenneth Blaine,		to state a claim.
Robert Buckalew,		
Anthony Iacono,		As to West New York, the
Lourdes Mercado		claims were dismissed on
		several grounds, failure
		to state a claim, statute
		of limitations, and

<sup>&</sup>lt;sup>1</sup> Although the Court's Opinion states that Smalls "does not explicitly assert a claim under Section 1983," Docket No. 89-9, the Court, upon reconsideration, corrects the record that Plaintiff did, in fact, allege such claim. This claim nonetheless fails for the reasons set forth in the Court's Opinion. Similarly, such claims may not be barred under the applicable two-year statute of limitations, but nonetheless they fail for the alternate reasons set forth therein.

failure to state a claim.
The Court vacated the
default entered against
Signorile and dismissed
the claim against him for
failure to state a claim.
Although the court did
not specifically address
Defendants Coldwell
Banker and Lourdes
Mercado, the Court found
that Plaintiff failed to
state claims against them
under 18 U.S.C. §§ 241
and 242. They are not state actors and the
allegation that they
"participated in the
illegal sale" is
conclusory.
Despite the lack of merit
of any of Plaintiff's
claims, the Court
afforded Plaintiff an
opportunity to seek leave
of the Court within 20
days to amend her
Complaint, and Plaintiff
failed to do so. As a
result, all claims on the
merits were dismissed
with prejudice. Hoffman,
supra (all claims against
Riviera Towers, Blane,
PHH, AmEx, Buckalew
Frizzell, and Fein Such
were on non-merits
grounds, <u>see</u> <u>Hoffman</u> ,
supra).

## Pending Motions

Plaintiff has filed a Motion to Reconsider under Rule 60.<sup>2</sup> Rule 60 provides that the Court may reconsider its earlier decision for:

- (1) Mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

F.R.C.P. 60(h). The Court finds that Plaintiff's Motion is nothing more than a mere re-hashing of all of the arguments she has already made.<sup>3</sup> Rule 60(b) is not an appropriate vehicle to relitigate the Court's prior conclusions. The motion is therefore denied.

Turning to the Motion to Dismiss filed by First Service and

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<sup>&</sup>lt;sup>2</sup> Notably, Plaintiff did not timely file a motion to reconsider under the Court's Local Civil Rule 7.1(i).

 $<sup>^{\</sup>rm 3}$  The Court notes a few clarifications of its Opinion as set forth in the Chart above.

Iacono, the motion was untimely. The Court nonetheless will, pursuant to Rule 12(d), convert the motion to one for summary judgment under Federal Rule of Civil Procedure 56.4 As best the Court can understand the allegations against First Service and Iacono, Plaintiff alleges that they hired a locksmith to change her locks without permission, and Iacono, "knowing he was dealing in stolen property arranged for [defendant] American Movers, Inc. to store whatever items from [Plaintiff's] co-op . . . . " [Docket No. 1, at 8]. Moreover, Plaintiff alleges that Defendant Iacono lied to the West New York Police Department that Plaintiff was "legally evicted for not paying rent, but he never provided [West New York Police Department] with a warrant of removal." Id. Moreover, she alleges, Defendant Iacono had me "falsely arrested for being in the lobby of my co-op as a Defiant Trespasser." Id. Although these allegations appear to contradict the state court judgments authorizing the sale of Plaintiff's apartment, as Defendants contend, such finding would require this Court to look beyond the pleadings. Accordingly, the Court will await the completion of summary judgment. The summary judgment papers shall address these allegations pursuant

<sup>&</sup>lt;sup>4</sup> The Court notes that contrary to these Defendants' arguments, the doctrine of <u>res</u> judicata is not applicable because these Defendants were not parties in the prior actions.

to the strict mandates of Rule 56, particularly Rule 56(c).<sup>5</sup>

Accordingly, for the foregoing reasons, Defendants First Service and Iacono's Motion to Dismiss is **CONVERTED** to a Motion for Summary Judgment; Plaintiff's Motion to Strike and Motion for Reconsideration are DENIED.

An Order shall issue.

<u>s/Renee Marie Bumb</u> RENÉE MARIE BUMB United States District Judge

Dated: January 26, 2018

<sup>&</sup>lt;sup>5</sup> The only remaining Defendant in the case is American Movers, Inc. who has filed no motions to date.