

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

JOHN J. CONNORS, JR.,	:	
Plaintiff,	:	Civil Action 2:10-cv-404
v.	:	
U. S. BANK, <i>et al.</i> ,	:	Magistrate Judge Abel
Defendants.	:	

**OPINION AND ORDER**

Plaintiff John J. Connors, Jr. brings this action alleging that he was disbarred as a results of a fraud committed by Defendant Firststar Bank. This matter is before the Court on the Defendants’ motions to dismiss (Docs. 19, 26). For the reasons set forth herein, both motions are granted and this action is dismissed.

**Factual background.** Plaintiff filed this case on May 5, 2010 (Doc. 2). The following allegations are taken from his complaint. Plaintiff was formerly an attorney, licensed to practice law in Ohio. His attorney’s trust, or IOLTA, account was maintained at defendant Firststar Bank (“Firststar”), now known as U.S. Bank. On April 17, 2000, Plaintiff purchased counter checks, upon which Firststar’s teller typed an incorrect account number.<sup>1</sup> On the same day, Plaintiff made out one of these checks, in the amount of \$1,450.00, to Firststar; on April 19, 2000, he made out another, to nonparty John Wollett, in the amount of \$100.00. Firststar thereafter

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<sup>1</sup> Plaintiff characterizes this as having “altered” the check. (Doc. 2 at ¶8.)

dishonored the two checks. However, it did not timely send notice of this dishonor to Plaintiff or return the checks to him; it finally sent such notice on July 17, 2000, but without providing the checks. Plaintiff states:

The fraud regarding insufficient funds in Plaintiff's IOLTA Trust Account was not discovered until May 9, 2006; and the Fraud regarding the Notice of Dishonor was not discovered until March 8, 2007; as a result of the Responses of Defendant, Timothy C. Sullivan; and that said Fraud was not revealed to the Defendants Michael E. Murman, Thomas F. Bryant, and William R. Baird; members of the Hearing Panel; who conveyed this information to the Ohio Supreme Court in their Report and Recommendation filed with the Ohio Supreme Court.

(Doc. 2 at 6.) He alleges that, as a result of the Defendants' actions, he was disbarred from the practice of law.

The U.S. Bank defendants' motion to dismiss describes the factual background at issue thus:

In this action, Plaintiff (a disbarred Ohio attorney) complains yet again that U.S. Bank did not properly handle an overdraft in his IOLTA account. The dispute first arose in July of 2000. In April of 2000, Plaintiff had drawn two checks on his IOLTA account at Firststar Bank (which subsequently acquired U.S. Bank and changed its name to U.S. Bank). The Bank initially paid the checks by deducting the amount of the checks from another customer's account. When the Bank learned of that mistake, it tried to debit Plaintiff's IOLTA account but there were insufficient funds on deposit to cover the checks. The Bank charged the checks to Plaintiff's account and then demanded that he repay the resulting overdraft. Plaintiff refused, and that refusal was one of the grounds upon which the Ohio Supreme Court relied when it later disbarred Plaintiff from the practice of law. *Office of Disciplinary Counsel v. Connors*, 97 Ohio St.3d 479 (2002).

(Doc. 19 at 2-3.) Plaintiff, in his Complaint, referred only to U.S. Bank, to the bank teller, Scott Morrison, to Mr. Sullivan, and to members of the Hearing Panel (of the

Board of Commissioners on Grievances & Discipline of the Ohio Supreme Court). However, in addition to these he also named as defendants Catherine Mumaw, Cheryl Cipriano, Jonathan E. Coughlan, Kevin P. Williams, Jonathan Marshall, and a John Doe investigator for the Board. It appears from the Defendants' motions to dismiss that Ms. Mumaw, Ms. Cipriano, and Mr. Sullivan are employees of U.S. Bank, that Mr. Coughlan is the Ohio Disciplinary Counsel, that a Mr. Kevin L. Williams is the Assistant Disciplinary Counsel, and that Mr. Marshall is also a member of the Board.

On July 23, 2010, Plaintiff filed an amended complaint.<sup>2</sup> (Doc. 34.) In it he specified that he was bringing suit under the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §1692g, and also alleging claims for violation of O.R.C. §§1304.23 and 1304.35, which are sections of the Ohio Uniform Commercial Code, breach of contract, negligence, and fraud. The amended complaint added little factual detail, however.

**Claim preclusion.** Defendants U.S. Bank, Mumaw, Cipriano, Morrison, and Sullivan (the "bank defendants") have moved to dismiss on grounds of claim preclusion, statute of limitations, failure to plead fraud with specificity, and the

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<sup>2</sup> Defendants have filed a motion to strike this amended complaint as untimely (Doc. 26), as the first of two motions to dismiss was filed on June 16, 2010, and the proposed amended complaint was filed more than 21 days later. Fed. R. Civ. P. 15(a)(1)(B). Although Defendants' argument is well taken, because amendment would not materially affect the Court's analysis of the outcome that motion (Doc. 26) is denied as **MOOT**.

inapplicability of the FDCPA to business transactions. They explain that Plaintiff previously filed *Connors v. U.S. Bank, et al.*, Franklin County Common Pleas Court Case No. 06-CVH-04-5152, arising out the same transaction and occurrences. They attach copies of the court's July 27, 2007 decision and entry granting judgment to defendants (Doc. 19 at 13-19) and the April 17, 2008 decision of the Franklin County Court of Appeals affirming this judgment (Id. at 20-32), of which the Court will take judicial notice. Defendants urge, *inter alia*, that under Ohio law a prior final, valid decision on the merits bars a second action arising out of the same facts against the same parties. Plaintiff did not file a memorandum in opposition to the bank defendants' motion to dismiss.

It is clear that the prior *Connors v. U.S. Bank* involved substantially the same claims arising out of the same occurrence. Plaintiff named U.S. Bank, Mumaw, Cipriano, and Morrison as defendants in that action, and claimed that the bank was liable under O.R.C. §1303.50 for altering the two checks at issue and under O.R.C. §1303.62 for wrongfully dishonoring them. These theories arose under the section of the Ohio Uniform Commercial Code addressing commercial paper, rather than that addressing bank deposits and collections.<sup>3</sup>

The Ohio Supreme Court has held that “[i]t has long been the law of Ohio that ‘an existing final judgment or decree between the parties to litigation is conclusive as to all claims which were or might have been litigated in a first

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<sup>3</sup> O.R.C. §1303.01 *et seq.* is Ohio's implementation of Article 3 of the Uniform Commercial Code; §1304.01 *et seq.* is Article 4.

lawsuit”. *Nat’l Amusements, Inc. v. Springdale*, 53 Ohio St.3d 60, 62 (1990), quoting *Rogers v. Whitehall*, 25 Ohio St.3d 67, 69 (1986). “The doctrine of *res judicata* requires a plaintiff to present every ground for relief in the first action, or be forever barred from asserting it.” *Id.* “[A] valid, final judgment rendered upon the merits bars all subsequent actions based upon any claim arising out of the transaction or occurrence that was the subject matter of the previous action.” *Grava v. Parkman Twp.*, 73 Ohio St.3d 379, 382 (1995). Federal courts have frequently applied Ohio’s law of claim preclusion. *See, e.g., Apseloff v. Family Dollar Stores, Inc.*, 236 Fed.Appx. 185, 187 (6th Cir. 2007); *General Medicine, P.C. v. Morning View Care Centers*, 253 Fed.Appx. 586, 588-89 (6th Cir. 2007); *Hapgood v. City of Warren*, 127 F.3d 490, 493 (6th Cir. 1997).

Plaintiff’s claims against the bank defendants here are nearly a pure application of this doctrine. Although he has altered his claims in this action to arise under different sections of the Uniform Commercial Code, they manifestly are claims against the same defendants “arising out of the transaction or occurrence that was the subject matter of the previous action.” There is no indication, and Plaintiff has made no argument, that the decision of the Court of Common Pleas was not a valid, final judgment. The state court judgment was conclusive as to all claims brought by Plaintiff concerning the two counter checks and U.S. Bank’s alleged alteration of or failure to properly handle them, including those claims he has alleged here. Under the doctrine of claim preclusion, therefore, Plaintiff’s action against the bank defendants is barred as a matter of law, and dismissal is

proper.

**State of Ohio Defendants.** Defendants Jonathan Marshall, Thomas P. Bryant, Michael E. Murman, William R. Baird, Jonathan Coughlan, and Kevin P. Williams (the “state defendants”) have moved to dismiss on grounds of subject matter jurisdiction under the Eleventh Amendment, failure to file suit in the Ohio Court of Claims, qualified immunity, and failure to state a claim upon which relief can be granted. The Court observes, in the first place, that neither the original complaint nor the amended complaint even refers to most of these defendants. Further, neither contains any allegations that would give these defendants fair notice of the claim(s) pleaded against them. Rule 8(a), Fed. R. Civ. P.; *Bell Atlantic Corp. v. Twombly*, 127 S.Ct. 1955, 1964 (2007). Although Rule 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief,” it is not true that notice pleading means that a complaint need plead no facts. The form complaints appended to the Federal Rules of Civil Procedure all include basic facts, such as the date the actionable event(s) took place and a brief description of them. *E.g.*, Forms 9-14 and 17. Here neither the original complaint nor the amended complaint alleges the date(s) on which any actionable event took place. Further, it does not plead any facts that would give the State of Ohio defendant notice of the claims and the grounds on which they rest.

Furthermore, to the extent that Plaintiff seeks relief from all defendants, the sole relief sought is monetary. He seeks \$50,000,000.00 in compensatory and

punitive damages, but no injunctive relief. (Doc. 2 at ¶12.) However, the Eleventh Amendment to the United States Constitution provides that states cannot be sued in federal court without their consent. *Wilson-Jones v. Caviness*, 107 F.3d 358, 358 (6th Cir. 1997). The law is well settled that a plaintiff cannot sue state employees in their official capacities in federal court for monetary damages, as a suit against a state employee in his official capacity amounts to a suit against the state itself.<sup>4</sup> *Turker v. Ohio Dep't of Rehabilitation and Corrections*, 157 F.3d 453, 456-57 (6th Cir. 1998). *See also Thiokol Corp. v. Dep't of Treasury, State of Mich., Revenue Div.*, 987 F.2d 376, 381 (6th Cir. 1993); *Bond v. Wilkinson*, 889 F.2d 1086 at \*1 (6th Cir. 1989); *Will v. Michigan Department of State Police*, 491 U.S. 58, 71 (1989). Even if he had stated a claim against the state defendants under the Uniform Commercial Code or one of his other theories, Plaintiff could not sue the state defendants here, in their official capacities, for monetary damages.<sup>5</sup> His claim is therefore barred.

**Conclusion.** Because Plaintiff's claims against the bank defendants are barred under the doctrine of claim preclusion, and his complaint and amended complaint fail to contain any actionable allegations against the remaining

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<sup>4</sup> Plaintiff has made no indication at all of an intention to sue the state defendants in their individual capacities, or to bring suit under 42 U.S.C. §1983.

<sup>5</sup> Plaintiff, in opposition to the state defendants' motion to dismiss, cites several cases relating to the statute of limitations applicable to fraud actions in Ohio. He does not, however, offer any rebuttal to the state defendants' arguments on Eleventh Amendment immunity.

defendants, the Court need not address the defendants' remaining arguments for dismissal. Both motions to dismiss (Docs. 19, 26) are **GRANTED**. This case is **DISMISSED**. The Clerk of Court is **ORDERED** to enter judgment in favor of the defendants and to close this case.

s/Mark R. Abel  
United States Magistrate Judge