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

DARRELL WHITE,

Plaintiff,

v.

Case No. 2:10-CV-1117
JUDGE MARBLEY
MAGISTRATE JUDGE KING

OHIO FAIR PLAN,

Defendant.

ORDER and
REPORT AND RECOMMENDATION

This matter is before the Court for consideration of the Plaintiff's *Motions to Supplement*, Doc. Nos. 26 and 27 and 36; Plaintiff's *Motion for Summary Judgment*, Doc. No. 29; Plaintiff's *Motion to Bifurcate*, Doc. No. 34; and Defendant's *Motion for Summary Judgment*, Doc. No. 31. For the reasons that follow, Plaintiff's *Motions to Supplement* are granted and Plaintiff's *Motion to Bifurcate* is denied. It is recommended that *Plaintiff's Motion for Summary Judgment* be denied and that *Defendant's Motion for Summary Judgment* be granted.

I.

Plaintiff Darrell White ["Plaintiff"] brings this action against Defendant Ohio Fair Plan ["Defendant"] in connection with a dispute regarding an insurance policy. Plaintiff, who is currently incarcerated, is proceeding without the assistance of counsel. Plaintiff's *Complaint* presents a number of alleged constitutional violations, pursuant to 42 U.S.C. §§ 1981 and 1983, as well as claims for relief under state law. According to Plaintiff, Defendant acted as an agency

of the State of Ohio in connection with the transaction giving rise to this case.

In his *Amended Complaint*, Doc. No. 15, Plaintiff claims that Defendant violated his rights to due process and equal protection as well as his right to a jury trial. *Amended Complaint*, at 1-2. The *Amended Complaint*, which simply alleges in conclusory fashion the various rights that Plaintiff alleges have been violated, fails to set forth the precise nature of the dispute at issue between the parties. Thus, the Court relies on the recitation of facts set forth in the *Defendant's Motion for Summary Judgment* for guidance as to the nature of the parties' dispute.

Plaintiff originally filed an action against Defendant in the Court of Common Pleas for Franklin County, Ohio in June 2009. *See* Exhibit 1 attached to *Defendant's Motion for Summary Judgment*. In that action, Plaintiff alleged that he suffered a fire loss to his property located in Lima, Ohio in 2006 and that, although Defendant paid Plaintiff under the relevant insurance policy for structural damage, Defendant improperly denied coverage for Plaintiff's contents. *Id.* In its *Answer* filed in the state court, Defendant denied that Plaintiff's policy provided for contents coverage. *See* Exhibit 2, *Id.* Defendant also pointed out that the fire loss occurred in 2005, not in 2006, and that in any event, Plaintiff's action was untimely. *Id.* In August 2009, the Franklin County Court of Common Pleas granted Defendant's motion for judgment on the pleadings and dismissed the state court action.[1] *See* Exhibit 3, *Id.* Plaintiff appealed that ruling to the Ohio Tenth District Court of Appeals, which dismissed the appeal for failure to file the required appellate brief. *See* Exhibit 5, *Id.* Plaintiff then appealed to the Ohio Supreme Court,

[1]The Franklin County Court of Common Pleas held that, irrespective of the date of the claimed fire loss, Plaintiff's claim was barred by the one year time limit for presenting a claim, as set forth in the insurance policy. Exhibit 3, at 2-3, attached to *Defendant's Motion for Summary Judgment.*

which refused jurisdiction on March 10, 2010. *See* Exhibit 7, *Id*.

In its *Answer* to the *Amended Complaint* filed in this Court, Defendant, *inter alia*, raises a *res judicata* defense. *Answer*, Doc. No. 20, at ¶ 23.

Both Plaintiff and Defendant have filed a motion for summary judgment. Before addressing the merits of these motions, the Court will address the various other motions filed by Plaintiff.

Plaintiff has filed three *Motions to Supplement*, which address issues related to either *Plaintiff's Motion for Summary Judgment* or to *Defendant's Motion for Summary Judgment*. The Court will regard these motions as supplements to *Plaintiff's Motion for Summary Judgment* or to Plaintiff's response to *Defendant's Motion for Summary Judgment.*.

Plaintiff has also filed a *Motion to Bifurcate* the issues of liability and damages. Because the Court concludes that *Defendant's Motion for Summary Judgment* is meritorious, Plaintiff's *Motion to Bifurcate* will be denied.

The Court now proceeds to consider the parties' motions for summary judgment.

II.

The standard for summary judgment is well established. This standard is found in Rule 56 of the Federal Rules of Civil Procedure, which provides in pertinent part:

> The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.

Fed. R. Civ. P. 56(a). In considering a motion for summary judgment, the court must receive the evidence "in the light most favorable" to the non-moving party. *Adickes v. S.H. Kress & Co.*,

398 U.S. 144, 157 (1970). Summary judgment will not lie if the dispute about a material fact is genuine, "that is, if the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). However, summary judgment is appropriate if the opposing party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The "mere existence of a scintilla of evidence in support of the [opposing party's] position will be insufficient; there must be evidence on which the jury could reasonably find for the [opposing party]." *Anderson*, 477 U.S. at 252.

The "party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions" of the record which demonstrate "the absence of a genuine issue of material fact." *Celotex Corp.*, 477 U.S. at 323. The burden then shifts to the nonmoving party who "must set forth specific facts showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 250 (quoting Fed. R. Civ. P. 56(e)). "Once the moving party has proved that no material facts exist, the non-moving party must do more than raise a metaphysical or conjectural doubt about issues requiring resolution at trial." *Agristor Fin. Corp. v. Van Sickle*, 967 F.2d 233, 236 (6th Cir. 1992) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)).

III.

In *Plaintiff's Motion for Summary Judgment*, Plaintiff takes issue with the denial of contents coverage under the insurance policy issued by Defendant. Plaintiff argues, in

conclusory fashion, that he has been discriminated against by Defendant and that he was deprived of the opportunity, at the state court level, to present evidence favorable to his position on the insurance coverage issue. To a great extent, Plaintiff's motion takes issue with the decision of the Franklin County Court of Common Pleas. *See Motion for Summary Judgment*, at 7-10 and 16-18. Plaintiff specifically argues that his rights to due process and various other rights were violated in connection with those proceedings. *Id.* at 20.

At the outset, this Court observes that, under the *Rooker-Feldman* doctrine,[2] it lacks jurisdiction to review the decision of the Franklin County Court of Common Pleas, which appears to be the crux of Plaintiff's claims in this Court.

Moreover, to the extent that Plaintiff intends to relitigate in this action the claims asserted and dismissed in the state courts, the doctrine of *res judicata* precludes him from doing so. That doctrine requires that federal courts accord to a final state court judgment "the same preclusive effect" to which the judgment is entitled under state law. *Abbott v. Michigan*, 474 F.3d 324, 330 (6th Cir. 2007). Under Ohio law, *res judicata* or "[c]laim preclusion prevents subsequent action, by the same parties or thier privies, based upon any claim arising out of a transaction that was the subject matter of a previous action." *O'Nesti v. DeBartolo Realty Corp*, 862 N.E. 803, 806 (Ohio 2007). The doctrine has four elements: "(1) a prior final, valid decision on the merits by a court of competent jurisdiction; (2) a second action involving the same parties, or their privies, as the first; (3) a second action raising claims that were or could have been litigated in the first

[2]The doctrine takes its name from two United States Supreme Court cases: *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). The doctrine applies to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).

action; and (4) a second action arising out of the transaction or occurrence that was the subject matter of the previous action." *Hapgood v. City of Warren*, 127 F.3d 490, 493 (6th Cir. 1997)(citation omitted).

The judgment entered by the Franklin County Court of Common Pleas is now final. Moreover, the fact that the state court action was resolved on the issue of timeliness does not mean that it was not resolved on the merits. *See LaBarera v. Batsch*, 10 Ohio St.2d 106, 114 (1967)(a judgment based on the statute of limitations is a judgment on the merits and bars a second action for the same cause of action). Furthermore, this action involves the same parties as did the state court action. Finally, to the extent that Plaintiff bases his claims in this action on Defendant's failure to compensate him for his alleged lost contents, those claims either were or could have been litigated in the state court action and arise out of the transaction or occurrence that was the subject matter of the state court action. This Court concludes that Plaintiff's claims in this action arising out of his fire loss are foreclosed from relitigation in this Court.

For all these reasons, the Court concludes that summary judgment in Defendant's favor is warranted. Concomitantly, Plaintiff's motion for summary judgment is without merit**.**

IV.

WHEREUPON, Plaintiff's *Motions to Supplement*, **Doc. Nos. 26 and 27 and 36,** are **GRANTED;** Plaintiff's *Motion to Bifurcate*, **Doc. No. 34**, is **DENIED**.

It is **RECOMMENDED** that *Plaintiff's Motion for Summary Judgment*, **Doc. No. 29**, be **DENIED** and that *Defendant's Motion for Summary Judgment*, **Doc. No. 31** be **GRANTED**.

If any party seeks review by the District Judge of this *Report and Recommendation*, that

party may, within fourteen (14) days, file and serve on all parties objections to the *Report and Recommendation,* specifically designating this *Report and Recommendation,* and the part thereof in question, as well as the basis for objection thereto. 28 U.S.C. §636(b)(1); F.R. Civ. P. 72(b). Response to objections must be filed within fourteen (14) days after being served with a copy thereof. F.R. Civ. P. 72(b).

The parties are specifically advised that failure to object to the *Report and Recommendation* will result in a waiver of the right to *de novo* review by the District Judge and of the right to appeal the decision of the District Court adopting the *Report and Recommendation. See Thomas v. Arn,* 474 U.S. 140 (1985); *Smith v. Detroit Federation of Teachers, Local 231 etc.,* 829 F.2d 1370 (6th Cir. 1987); *United States v. Walters,* 638 F.2d 947 (6th Cir. 1981).

May 24, 2011
DATE

s/ Norah McCann King
NORAH McCANN KING
UNITED STATES MAGISTRATE JUDGE