
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

BONNIE B. GRAY, Plaintiff, individually
and as representative of putative Class A,

Plaintiff,

v.

EXPRESS RECOVERY SERVICES, INC.;;
EDWIN B. PARRY;
AND JOHN DOES 1-10,

Defendants.

**AMENDED MEMORANDUM
DECISION AND ORDER**

Case No. 2:07-cv-00113-DB

Judge Dee Benson

BACKGROUND

On June 10, 2005, Express Recovery Services, Inc. (“Express Recovery”) filed a debt collection action in Utah state court against Bonnie and Gary Gray to recover \$90.73 of unpaid medical expenses. Ms. Gray asserted several counterclaims against Express Recovery and its attorney, Edwin Parry. A year later, the action had not resolved and on June 1, 2006, Ms. Gray filed a motion to amend her counterclaims to include class-action claims for violations of the Fair Debt Collection Practices Act (15 U.S.C. § 1692) (“FDCPA”), unauthorized practice of law, and Rule 11 of the Utah Rules of Civil Procedure. On September 1, 2006, the state court denied Ms. Gray’s motion to amend, ruling that “the Defendants’ [the Gray’s] class action counterclaims are legally insufficient and therefore futile because the [Grays] lack traditional or public interest standing to bring them.” (Dkt. No. 64-1.) Ms. Gray moved the Utah Court of Appeals for an interlocutory appeal of this order, which was denied on October 3, 2006. Ms. Gray then filed the present federal lawsuit, asserting essentially the same claims.

Defendants moved to stay the federal litigation in lieu of the pending state litigation and on March 5, 2008, the magistrate judge issued a Report and Recommendation recommending to this court that defendants' Motion to Stay be granted. On March 27, 2008, this court entered an order adopting the Report and Recommendation and stayed the case. The state litigation then continued for an additional three years, until it was ultimately dismissed on June 14, 2011. Ms. Gray chose not to appeal the state court's order that her proposed counterclaims were improper.

Defendants moved for summary judgment under the doctrines of res judicata and collateral estoppel which preclude relitigation of issues where the parties, claims, and issues are substantially similar and there has previously been a final judgment. (Dkt. No. 64.) They argue that because the state action has been dismissed and Ms. Gray chose not to appeal the state court's order, her claims in this case are barred.

Ms. Gray argues that the court should allow her to cure any issues of res judicata and collateral estoppel by granting leave to allow her to file a second amended complaint. Ms. Gray also asserts that because the state court's decision denying her counterclaims was based on a finding that she lacked standing, the ruling was not on the merits, and issue preclusion does not attach. (Dkt. No. 92 at 4.)

ANALYSIS

This case is governed by *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1219 (10th Cir. 2006), where the Tenth Circuit Court of Appeals expressly ruled that prior rulings on standing similar to those presented in the instant case apply to issue preclusion. There is no question Ms. Gray's claims here are substantially similar to her state court claims.

When the state trial court denied Ms. Gray's motion to amend her counterclaims and subsequently dismissed the entire matter, the ruling became a final judgment on the merits. Ms.

Gray did not appeal the final judgment. Instead, she is attempting to litigate essentially the same claims in this court by filing a motion to lift the stay once the state case was dismissed.

Principles of res judicata and collateral estoppel prevent her from doing so.

CONCLUSION

For the reasons set forth above, and those stated in defendant's memorandum in support of summary judgment, the court GRANTS defendant Express Recovery Services, Inc.'s motion for summary judgment. Plaintiff's motion for leave to file a second amended complaint is DENIED.

IT IS SO ORDERED.

DATED this 1st day of April, 2013.

BY THE COURT:



DEE BENSON

United States District Judge