

STATE OF MICHIGAN
COURT OF APPEALS

NATALIE RAY,

Plaintiff-Appellant,

v

CITIBANK, N.A.,

Defendant-Appellee.

UNPUBLISHED

November 29, 2005

No. 256322

Oakland Circuit Court

LC No. 2003-054571-CH

Before: Whitbeck, C.J., and Saad and O'Connell, JJ.

PER CURIAM.

In this quiet title action, plaintiff appeals by right the trial court's orders setting aside a default judgment entered against defendant Citibank, N.A., and granting summary disposition in favor of Citibank under MCR 2.116(C)(7). We affirm.

On May 24, 1999, plaintiff refinanced her Bloomfield Hills property through a loan from the Prime Financial Group, Inc. On the same day, the loan was assigned to Chase Manhattan Mortgage Corporation. Just over a year later, the mortgage was reassigned to Citibank. In October 2002, plaintiff learned from a collection agency that she was in default on the loan and that foreclosure proceedings were going to be commenced. In response, plaintiff wrote to Citibank inquiring into the interest it had in the property. Citibank answered that the company was unable to find any loan information concerning the property based on the information plaintiff provided. Nevertheless, a sheriff's sale was held on December 10, 2002.

Plaintiff subsequently filed suit in federal court against Citibank and several other parties asserting that the sheriff's sale violated her equal protection and due process rights under the United States Constitution. Plaintiff also asserted in the federal action that the collection agency violated the federal Fair Debt Collection Practices Act, 15 USC 1692 *et seq.* Plaintiff's federal claims were dismissed under FR Civ P 12(b)(6), for failure to state a claim upon which relief can be granted. Plaintiff appealed this decision, but while her federal appeal was pending, she filed this state action.

Citibank failed to respond to the complaint and default judgment was entered against it. Twenty-six days later, Citibank moved to set aside the default judgment, asserting that because plaintiff had not properly served it with the summons and complaint, the court did not have personal jurisdiction over it. In the alternative, Citibank asserted that it had good cause for failing to plead because it did not have notice of the pendency of the case. The trial court agreed

to set aside the default judgment. It later granted Citibank's motion for summary disposition based on res judicata.

Plaintiff asserts that the trial court erred in setting aside the default judgment because the motion was not timely under MCR 2.603(D)(2)(b) and was not supported by an affidavit of facts based on personal knowledge. A trial court's decision on a motion to set aside a default judgment is reviewed for an abuse of discretion. *Amco Builders & Developers, Inc v Team Ace Joint Venture*, 469 Mich 90, 94; 666 NW2d 623 (2003).

Plaintiff attempted to serve Citibank with the summons and complaint by sending them to a Citibank office address in New York via certified mail. The service was not directed to anyone in particular and the return receipt was not signed. Therefore, plaintiff's method of service fails to comport with the court rules that govern the manner of service for a private corporation. MCR 2.105(D). Moreover, plaintiff failed to present any evidence that the service timely apprised Citibank of this action. Because plaintiff's return receipt is unsigned, it is not clear who accepted the summons and complaint, and we cannot know whether it was delivered to someone within Citibank who could direct the corporation's litigation. Accordingly, the trial court did not have personal jurisdiction over Citibank and properly set aside the default judgment. MCR 2.603(D)(1); *Alycekay Co v Hasko Constr Co, Inc*, 180 Mich App 502, 505-506; 448 NW2d 43 (1989).

Plaintiff asserts that the trial court erred by granting summary disposition in favor of Citibank under MCR 2.116(C)(7). We disagree. A motion for summary disposition pursuant to MCR 2.116(C)(7) is reviewed de novo "to determine whether the moving party was entitled to judgment as a matter of law." *Stoudemire v Stoudemire*, 248 Mich App 325, 332; 639 NW2d 274 (2001).

Citibank asserted that it was entitled to summary disposition under the doctrine of res judicata because of the prior federal court action. Where a prior action occurred in federal court, the applicability of the doctrine of res judicata is determined under federal law. *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 380-381; 596 NW2d 153 (1999). Under federal law, a claim is barred by res judicata when the following requirements have been met:

- (1) a final decision on the merits by a court of competent jurisdiction; (2) a subsequent action between the same parties or their privies; (3) an issue in the subsequent action which was litigated or which should have been litigated in the prior action; and (4) an identity of the causes of action. [*Kane v Magna Mixer Co*, 71 F3d 555, 560 (CA 6, 1995).]

Taking these criteria in order, plaintiff's federal claims were dismissed pursuant to FR Civ P 12(b)(6) for failure to state a claim upon which relief can be granted. "In the federal courts, a dismissal pursuant to Rule 12(b)(6) is considered a decision on the merits with full res judicata effect." *Dyer v Intera Corp*, 870 F2d 1063, 1066 (CA 6, 1989). It is undisputed that the federal court had jurisdiction over plaintiff's federal claims and that plaintiff also claimed federal diversity jurisdiction against Citibank in her federal complaint. Therefore, the first criterion is satisfied. It is also undisputed that plaintiff and defendant were opposing parties in the federal action. Under federal law, it is immaterial for res judicata purposes that the prior action included

additional parties, so the second criterion is satisfied. *Nolan v Owensboro*, 75 F2d 375, 376-377 (CA 6, 1935). Regarding the third criterion, the present quiet title action, which encompasses the same mortgage transactions and foreclosure proceedings as plaintiff's federal action, should have been brought in the federal action. If plaintiff had succeeded on her federal claims, she would have requested that the court grant her clear, fee simple title to the property. As for the fourth criterion, federal law recognizes an identity of causes of action when there is an "an identity of the facts creating the right of action and of the evidence necessary to sustain each action." *Westwood Chemical Co v Kulick*, 656 F2d 1224, 1227 (CA 6, 1981). Here, plaintiff's quiet title action seeks to determine plaintiff's rights and the rights of Citibank in the disputed property. Such a determination would necessarily entail a review of the facts underlying the foreclosures on the property and their validity, which was the primary issue in the federal action. In fact, plaintiff submitted the same exhibits in support of her federal complaint as she submitted in support of her complaint in the present action. Therefore, there is an identity of the causes of action between this case and the dismissed federal case.¹ Accordingly, res judicata bars plaintiff's quiet title action, and the trial court did not err when it reached this result.

Affirmed.

/s/ William C. Whitbeck
/s/ Henry William Saad
/s/ Peter D. O'Connell

¹ Although neither party raises the issue, we note that plaintiff based her federal claim against Citibank on diversity jurisdiction, 28 USC 1332, as well as federal subject-matter jurisdiction, 28 USC 1331, so the limitations in *Pierson Sand & Gravel*, *supra* at 386, regarding the unlikelihood that a federal court would retain jurisdiction over a state claim are inapposite.