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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1805**

Community Finance Group, Inc.,
Appellant,

vs.

Main Street Otsego, LLC,
Respondent,

LandCor Companies, Inc.,
Respondent,

Robert L. Fields,
Respondent,

Patricia Fields,
Respondent,

ABP, LLC, et al.,
Respondents.

**Filed August 31, 2020
Affirmed in part, reversed in part, and remanded
Johnson, Judge**

Hennepin County District Court
File No. 27-CV-19-3611

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Considered and decided by Bryan, Presiding Judge; Johnson, Judge; and Reilly, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

In 2008, Community Finance Group, Inc. (CFG) lent \$500,000 to Main Street Otsego, LLC (MSO). The loan has not been repaid. For approximately 11 years, CFG has attempted to recover the debt by pursuing MSO's owner, Robert L. Fields, and members of his family. In this action, CFG brought claims under the Minnesota Uniform Voidable Transactions Act against various Fields family members and companies owned and controlled by them. The district court dismissed all of CFG's claims on a motion brought pursuant to rule 12.02(e) of the rules of civil procedure. We affirm in part, reverse in part, and remand for further proceedings.

FACTS

CFG's amended complaint includes 59 paragraphs of factual allegations. For purposes of this appeal, the following allegations are most pertinent.

In 2008, MSO was engaged in the business of real estate development. In November 2008, MSO borrowed \$500,000 from CFG to complete a project that was in progress. CFG lent the money because MSO's owner, Robert Fields, represented that the loan would be used to complete the project. MSO did not repay the loan.

In June 2009, CFG sued MSO, Robert Fields, and LandCor Companies, Inc. (LCC) (another company owned by Robert Fields) in Hennepin County District Court. In August 2010, the court entered a default judgment in favor of CFG and against MSO and LCC in the amount of \$506,514.

While the Hennepin County case was pending, Robert Fields and his wife, Patricia Fields, filed Chapter 7 bankruptcy petitions. CFG commenced an adversary proceeding against Robert Fields in his bankruptcy case. In November 2013, the bankruptcy court entered a judgment in favor of CFG and against Robert Fields in the amount of \$752,588. As of June 2019, Robert Fields owes more than \$1,300,000 on the bankruptcy court's judgment, with interest.

In the bankruptcy action, the bankruptcy trustee negotiated an agreement by which ABP, LLC (a company in which Robert Fields, Patricia Fields, and their three children, Alexander Fields, Benjamin Fields, and Patrick Fields, each owned a 20-percent interest) agreed to pay \$150,000 to the bankruptcy estate in exchange for Robert Fields's and Patricia Fields's interests in ABP.

In March 2019, CFG commenced this action. CFG served and filed an amended complaint in June 2019. CFG named as defendants five individuals and four companies: Robert, Patricia, Alexander, Benjamin, and Patrick Fields; MSO; LCC; ABP; and Progeny Group, LLC. The amended complaint pleaded 14 claims, each alleging a violation of the Minnesota Uniform Voidable Transactions Act (MUVTA), Minn. Stat. §§ 513.41-.51 (2018).

The defendants promptly brought three motions to dismiss for failure to state a claim upon which relief can be granted. *See* Minn. R. Civ. P. 12.02(e). The primary motion was brought by Alexander, Benjamin, Patrick, ABP, and Progeny Group (hereinafter ABP Defendants). Robert Fields and Patricia Fields filed separate motions. The defendants also filed affidavits and a total of 34 exhibits. In response, CFG filed a memorandum of law but did not submit any evidentiary materials.

In September 2019, the district court filed a nine-page order and memorandum in which it granted the ABP Defendants' motion and deemed Robert Fields's and Patricia Fields's motions moot. The district court reasoned that counts 1 through 10 of the amended complaint are barred by a release that the trustee gave to ABP as part of the April 2012 settlement of the trustee's adversary claims. The district court also reasoned that counts 1 through 10 are barred by the doctrine of *res judicata* based on CFG's prior action against Robert Fields, the trustee's prior action against ABP, and the trustee's prior action against Alexander Fields. The district court further reasoned that CFG failed to state a claim upon which relief can be granted in counts 5 through 8 and 11 through 14.

CFG appeals, arguing that the district court erred with respect to each of the three bases of its ruling. The ABP Defendants filed a responsive brief on all issues raised by CFG. Robert Fields filed a responsive brief with respect to the third issue. Patricia Fields filed a letter brief joining in Robert Fields's argument. MSO and LCC have not filed briefs or otherwise appeared in this court.

DECISION

CFG argues that the district court erred by granting the ABP Defendants' motion to dismiss.

A district court may grant a motion to dismiss if a complaint “fail[s] to state a claim upon which relief can be granted.” Minn. R. Civ. P. 12.02(e). “A claim is sufficient against a motion to dismiss for failure to state a claim if it is possible on any evidence which might be produced, consistent with the pleader’s theory, to grant the relief demanded.” *Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 603 (Minn. 2014). In considering a motion to dismiss pursuant to rule 12.02(e), a district court must “consider only the facts alleged in the complaint, accepting those facts as true and must construe all reasonable inferences in favor of the nonmoving party.” *Finn v. Alliance Bank*, 860 N.W.2d 638, 653 (Minn. 2015) (quotation omitted). A district court may grant a motion to dismiss filed pursuant to rule 12.02(e) “only if it appears to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded.” *Bahr v. Capella Univ.*, 788 N.W.2d 76, 80 (Minn. 2010) (quotation omitted).

“If . . . matters outside the pleadings are presented to and not excluded by the court, the motion [to dismiss] shall be treated as one for summary judgment and disposed of as provided for in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.” Minn. R. Civ. P. 12.02. Notwithstanding this provision, a district court may, without converting a motion to dismiss into a motion for summary judgment, consider a document that is attached to the complaint. *Hardin County Sav. Bank v. Housing & Redevelopment Auth. of Brainerd*,

821 N.W.2d 184, 192 (Minn. 2012). In addition, a district court may, without converting a motion to dismiss into a motion for summary judgment, consider a document if “the complaint refers to the [document] and the [document] is central to the claims alleged.” *In re Hennepin Cnty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 497 (Minn. 1995). A district court may not consider a document that is neither attached to the complaint nor referenced in the complaint but, rather, submitted to the district court along with a party’s motion papers, at least not without converting the motion to dismiss into a motion for summary judgment. *Northern States Power Co. v. Metropolitan Council*, 684 N.W.2d 485, 491 (Minn. 2004).

If a district court intends to convert a motion to dismiss into a motion for summary judgment, “a party against whom this procedure is used . . . is normally entitled to notice that conversion is occurring,” which allows the non-moving party to “understand that the burden will be on him to produce affidavits, not merely allegations in pleadings, to rebut what has become a motion for summary judgment.” *Country Club Estates, L.L.C. v. Town of Loma Linda*, 213 F.3d 1001, 1005 (8th Cir. 2000). If the district court does not give the non-moving party a “reasonable opportunity to present all material made pertinent to such a motion by Rule 56,” Minn. R. Civ. P. 12.02, the appellate court should remand to ensure that the non-moving party has an opportunity to submit evidentiary materials that are responsive to the motion, unless the district court’s error is harmless. *See Brooks v. Midwest Heart Grp.*, 655 F.3d 796, 799-801 (8th Cir. 2011); *Van Zee v. Hanson*, 630 F.3d 1126, 1128-29 (8th Cir. 2011); *BJC Health Sys. v. Columbia Cas. Co.*, 348 F.3d 685, 687-88 (8th Cir. 2003); *Country Club Estates*, 213 F.3d at 1004-06.

In this case, CFG alerted the district court to the fact that the ABP Defendants had submitted numerous exhibits into the motion record. CFG requested that the district court exclude “all of the purported evidence offered by Defendants.” The district court did not state that the defendants’ evidentiary materials would be excluded. As described further below, it is apparent that the district court relied on the evidentiary materials submitted by the defendants. But the district court did not expressly state its intention to rely on defendants’ evidentiary materials or give CFG an opportunity to submit its own evidentiary materials. By not taking either of those steps, the district court erred. *See Northern States Power*, 684 N.W.2d at 491; *see also Country Club Estates*, 213 F.3d at 1004-06. Whether CFG is entitled to a remedy for that procedural error is addressed below.

I. Contractual Release

CFG argues that the district court erred by concluding that some of CFG’s claims are barred by the bankruptcy trustee’s release of claims against ABP as part of the April 2012 settlement of the trustee’s adversary claims against ABP.

The district court’s analysis of this issue is contained entirely in one paragraph of its order and memorandum, in which the district court stated as follows:

[T]he court finds that Plaintiff’s claims are barred by the terms of the express release of claims given by the Trustee to ABP. The court finds that that release of claims constituted a full and complete release of all claims that were or could have been asserted by the Trustee against ABP in the Trustee’s adversary proceeding against ABP. Therefore, Plaintiff’s claims are also barred by this release.

The district court did not expressly state which defendant or defendants were dismissed based on this reasoning. We assume that the district court intended its reasoning to apply only to ABP.

The district court did not state whether its analysis of this issue was based solely on the complaint or on both the complaint and the documents submitted by the ABP Defendants in their motion papers. The district court's analysis does not specifically identify or refer to any particular document. CFG's amended complaint alleges simply, "As a part of the bankruptcy, Robert Fields and his counsel negotiated with the bankruptcy trustee for the trustee to accept \$150,000 from ABP for Robert Fields's and Patricia Fields's 40% interest of ABP." This allegation does not refer to any particular document or to a release of claims. The release itself, which is one provision in a settlement agreement, was submitted into the record by the ABP Defendants as an exhibit to an affidavit.¹ The ABP Defendants also submitted additional exhibits that relate to the trustee's agreement with ABP, such as the trustee's adversary complaint against ABP and the bankruptcy court order approving the settlement. The district court apparently reviewed and relied on the release itself and perhaps also the other documents related to the release. None of those documents are attached to or referenced in the amended complaint. Thus, the district court erred by considering documents that were neither attached to nor referenced in the amended complaint. *See Northern States Power,*

¹The relevant provision of the settlement agreement states, "This agreement shall constitute a full and complete release by the trustee and the bankruptcy estate of any and all claims which were or could have been asserted in the adversary case against ABP . . . , except for the obligations expressly undertaken in this agreement."

684 N.W.2d at 491. If the issue were fact-dependent such that CFG might be able to defeat the motion by submitting evidence, we would reverse and remand so that CFG might have a “reasonable opportunity to present all material made pertinent to such a motion by Rule 56.” Minn. R. Civ. P. 12.02; *see also Country Club Estates*, 213 F.3d at 1004-06. We will proceed to consider the parties’ substantive arguments to determine whether the district court’s procedural error is harmless.

CFG asserts that it “seeks to invalidate” the settlement between the trustee and ABP “to the extent that it dispossessed Robert Fields of his ownership interest in ABP for less than its actual value.” CFG asserts that the settlement was ill-advised and insufficiently advantageous for the bankruptcy estate or insufficiently disadvantageous for ABP and the Fields family. CFG cites no caselaw for the proposition that a settlement agreement can be invalidated eight years after the fact on the ground that there was insufficient consideration. CFG makes no other argument as to why the trustee’s release of claims is ineffective or should not bar its claims. CFG has not demonstrated that the district court substantively erred in its legal reasoning when it granted the ABP Defendants’ motion. Accordingly, in light of the lack of merit in CFG’s sole argument, the district court’s procedural error in not giving CFG an opportunity to submit additional evidentiary materials into the summary-judgment record is a harmless error with respect to this issue. *See Van Zee*, 630 F.3d at 1128-29 (concluding that district court’s error in not allowing reasonable opportunity to submit evidentiary materials was harmless).

Thus, the district court did not commit reversible error by concluding that some of CFG’s claims are barred by the bankruptcy trustee’s release of claims against ABP.

II. *Res Judicata*

CFG also argues that the district court erred by concluding that some of CFG's claims are barred by the doctrine of *res judicata*.

The doctrine of *res judicata*, also known as claim preclusion, prevents a party from asserting a claim after the completion of a prior lawsuit involving an earlier claim if “(1) litigation on a prior claim involved the same cause of action, (2) there was a judgment on the merits, (3) the claim involved the same parties or their privies, and (4) the party against whom *res judicata* is applied has had a full and fair opportunity to litigate the matter in the prior proceeding.” *Schober v. Commissioner of Rev.*, 853 N.W.2d 102, 111 (Minn. 2013). The doctrine applies if “‘a subsequent action or suit is predicated on the same cause of action,’ or claim, that has been previously determined by a judgment.” *Mach v. Wells Concrete Prod. Co.*, 866 N.W.2d 921, 925 (Minn. 2015) (quoting *Hauser v. Mealey*, 263 N.W.2d 803, 806 (Minn. 1978)). “*Res judicata* applies equally to claims actually litigated and to claims that could have been litigated in the earlier action.” *Brown-Wilbert, Inc. v. Copeland Buhl & Co.*, 732 N.W.2d 209, 220 (Minn. 2007). This court applies a *de novo* standard of review to a district court's determination that the requirements of the *res judicata* doctrine are satisfied. *Schober*, 853 N.W.2d at 111. If the requirements are satisfied, this court applies an abuse-of-discretion standard of review to a district court's ultimate decision that the doctrine precludes a plaintiff's claims. *Leiendecker v. Asian Women United*, 731 N.W.2d 836, 843 (Minn. App. 2007), *review denied* (Minn. Aug. 7, 2007).

The district court concluded that the doctrine of *res judicata* bars CFG's claims for three reasons: CFG's prior adversary action against Robert Fields, the bankruptcy trustee's prior adversary action against ABP, and the bankruptcy trustee's prior adversary action against Alexander Fields. CFG challenges all three of these conclusions.

A. Preclusion Based on CFG's Prior Action

The district court first concluded that counts 1 through 10 are barred by CFG's adversary action against Robert Fields in the bankruptcy action, which resulted in a judgment in favor of CFG. The district court's analysis of this issue is contained entirely in one paragraph of its order and memorandum, in which the district court stated as follows:

[T]he court finds that Counts I through X of Plaintiff's Complaint are claims which could have been asserted by Plaintiff in the adversary proceeding commenced by Plaintiff against Robert Fields in the Bankruptcy Matter. Therefore, the court finds that Plaintiff's claims are precluded by the judgment entered in the adversary proceeding commenced by Plaintiff against Robert Fields in the Bankruptcy Matter.

CFG contends that its claims are not barred by its prior adversary action against Robert Fields because the two actions do not satisfy the first requirement of the doctrine of *res judicata*, that the two legal proceedings concern "the same cause of action." "[A] plaintiff may not split his cause of action and bring successive suits involving the same set of factual circumstances." *Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004) (quotation omitted). A cause of action or claim is "a group of operative facts giving rise to one or more bases for suing." *Id.* (quotation omitted). To determine whether the claims alleged in two lawsuits involve the same set of factual circumstances, courts "'inquire whether the same evidence will sustain both actions.'" *Id.* at 840-41 (quoting *McMenomy*

v. Ryden, 148 N.W.2d 804, 807 (Minn. 1967)). Importantly, two claims are not considered the same cause of action if “the right to assert the second claim did not arise at the same time as the right to assert the first claim.” *Id.* at 841 (quotation omitted). A cause of action for fraudulent or voidable transfer does not accrue until a plaintiff discovers the facts that are necessary to support the claim. *See* Minn. Stat. § 541.05, subd. 1(6) (2018); *Kassan v. Kassan*, 400 N.W.2d 346, 349 (Minn. App. 1987).

CFG’s amended complaint does not explain the nature of the claims it asserted in its adversary action against Robert Fields. The ABP Defendants submitted documents that provide some details about CFG’s adversary claims against Robert Fields, but those documents are neither attached to nor referenced in CFG’s amended complaint. Counts 1 through 10 of CFG’s amended complaint assert claims that multiple defendants made voidable transfers between 2008 and approximately 2013 and that CFG discovered the facts underlying its voidable-transfer claims only after taking the depositions of Alexander, Benjamin, and Patrick in September 2018 during post-judgment discovery. Taking this allegation in the light most favorable to CFG, we cannot conclude that CFG’s voidable-transfer claims arise from the same set of factual circumstances as the claims raised in the prior adversary proceeding.

Thus, the district court erred by concluding that CFG’s voidable-transfer claims are barred by the doctrine of *res judicata* on the ground that CFG previously alleged and succeeded on adversary claims against Robert Fields.

B. Preclusion Based on Trustee's Prior Actions

The district court also concluded that counts 1 through 8 are barred by the bankruptcy trustee's adversary actions. With respect to the bankruptcy trustee's adversary action against ABP, the district court reasoned as follows:

The court finds that Counts I through VIII of Plaintiff's Complaint are also barred by the adversary proceeding commenced by the Trustee against ABP. . . . The court finds that the Trustee asserted fraudulent transfer claims against ABP in the Trustee's earlier adversary proceeding against ABP. The Trustee asserted these claims as the representative of the general unsecured creditors of the Robert Fields bankruptcy estate. Those claims were fully adjudicated through the settlement agreement to which the parties agreed together with the Notice of Dismissal with prejudice filed by the Trustee. Plaintiff itself, through its attorney, received notice of this settlement agreement and did not object. Accordingly, the court finds that the adjudication of the Trustee's claims against ABP preclude Plaintiff's fraudulent transfer claims against ABP in the present action.

The district court engaged in nearly identical reasoning with respect to the trustee's adversary action against Alexander Fields.

CFG again contends that the first requirement of the *res judicata* doctrine is not satisfied. Specifically, CFG contends, in essence, that the trustee's claims against ABP and his claims against Alexander were different from CFG's present claims. CFG's amended complaint includes only a brief and general allegation that the trustee entered into a settlement agreement with ABP that resulted in a transfer of Robert Fields's and Patricia Fields's interests in ABP. But the amended complaint does not include any allegations concerning the nature of the trustee's claims against ABP. Furthermore, the amended complaint contains no allegations whatsoever concerning the bankruptcy trustee's

adversary action against Alexander Fields. Counts 1 through 10 of CFG's amended complaint assert claims that multiple defendants made voidable transfers between 2008 and approximately 2013 and that CFG discovered the facts underlying its voidable-transfer claims only after taking the depositions of Alexander, Benjamin, and Patrick in September 2018 during post-judgment discovery. Taking those allegations in the light most favorable to CFG, we cannot conclude that CFG's voidable-transfer claims arise from the same set of factual circumstances as the claims raised in the prior adversary proceedings against ABP and against Alexander Fields. Thus, the first requirement of the doctrine of *res judicata* is not satisfied.

CFG also contends that the third requirement of the *res judicata* doctrine is not satisfied on the ground that CFG is not in privity with the bankruptcy trustee. The doctrine of *res judicata* binds a party to a prior case and anyone in privity with a party to the prior case. *Rucker v. Schmidt*, 794 N.W.2d 114, 117 (Minn. 2011). A person is in privity with a party only if the person's "interests are affected by the judgment with reference to interests involved in the action, as if they were parties" or if the person "is otherwise so identified in interest with another that he represents the same legal right." *Rucker*, 794 N.W.2d at 118 (quotation omitted).

The district court quoted a federal court opinion for the proposition that a bankruptcy trustee "represents the interests of the debtor's estate and its creditors." *In re Nangle*, 288 B.R. 213, 219 (B.A.P. 8th Cir.), *aff'd*, 83 F. App'x 141 (8th Cir. 2003). CFG does not challenge the district court's reliance on *Nangle*. Instead, CFG cites two opinions of this court. *See Beck v. American Sharecom, Inc.*, 514 N.W.2d 584, 588 (Minn. App.

1994), *review denied* (Minn. June 29, 1994); *Sunrise Elec., Inc. v. Zachman Homes, Inc.*, 425 N.W.2d 848, 851 (Minn. App. 1988). We note that none of these three opinions addresses the question whether a creditor and a bankruptcy trustee are in privity for purposes of *res judicata*. See *Nangle*, 288 B.R. at 217-20; *Beck*, 514 N.W.2d at 588; *Sunrise Elec.*, 425 N.W.2d at 852. Our independent research reveals that a bankruptcy trustee may be in privity with an *unsecured* creditor (but not a *secured* creditor) in the present circumstances. See, e.g., *Bezanson v. Bayside Enter., Inc., (In re Medomak Canning)*, 922 F.2d 895, 900-03 (1st Cir. 1990); *Farmers Nat. Bank v. Shirey*, 878 P.2d 762, 767-68 (Idaho 1994); *Holesinger v. Dubuque Feeder Pig Co., Inc.*, 432 N.E.2d 645, 649-50 (Ill. App. Ct. 1982). CFG's amended complaint alleges that it obtained a default judgment against MSO in the Hennepin County District Court and a judgment against Robert Fields in the bankruptcy court. But there is no allegation in the amended complaint concerning whether CFG is a secured or unsecured creditor. Cf. *C&M Real Estate Services, Inc. v. Thondikulam*, 739 N.W.2d 725, 728-29 (Minn. App. 2007), *review denied* (Minn. Dec. 19, 2007); *Nussbaumer v. Fetrow*, 556 N.W.2d 595, 598-99 (Minn. App. 1996), *review denied* (Minn. Feb. 26, 1997). It appears possible that "evidence . . . might be produced, consistent with the pleader's theory, to grant the relief demanded." See *Walsh*, 851 N.W.2d at 603. Stated differently, it does not "appear[] to a certainty that no facts, which could be introduced consistent with the pleading, exist which would support granting the relief demanded." See *Bahr*, 788 N.W.2d at 80. Thus, the third requirement of the doctrine of *res judicata* is not satisfied.

Thus, the district court erred by concluding that CFG's voidable-transfer claims are barred by the doctrine of *res judicata* on the ground that the bankruptcy trustee previously alleged adversary claims against ABP and Alexander Fields.²

III. Failure to State a Claim

CFG last argues that the district court erred by concluding that counts 5 through 8 and 11 through 14 do not state a claim upon which relief can be granted.

Under the MUVTA, “A transfer made or obligation incurred *by a debtor* is voidable as to a creditor . . . if *the debtor made the transfer or incurred the obligation . . . to hinder, delay, or defraud any creditor*” or “without receiving a reasonably equivalent value in exchange for the transfer or obligation.” Minn. Stat. § 513.44(a)(1)-(2) (emphasis added). The purpose of the act is “to prevent debtors from placing property that is otherwise available for the payment of their debts out of the reach of their creditors.” *Landmark Cmty. Bank, N.A. v. Klingelhutz*, 874 N.W.2d 446, 450 (Minn. App. 2016) (quotation omitted), *review denied* (Minn. Apr. 27, 2016). To state a claim for relief under MUVTA, a plaintiff must allege that a transfer was made by the debtor, not by some other person. *See* Minn. Stat. § 513.44(a). The term “transfer” is defined to mean “every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset” Minn. Stat. § 513.41(16) (2018). The term “asset” is defined to mean “property of the debtor.” Minn. Stat. § 513.41(2).

²CFG does not contend that either the second requirement or the fourth requirement of the *res judicata* doctrine is not satisfied. *See Schober*, 853 N.W.2d at 111 (requiring “judgment on the merits” and “full and fair opportunity to litigate the matter in the prior proceeding”).

The district court reasoned that all transfers alleged in counts 5 through 8 and 11 through 14 were allegedly made “by parties other than the debtor, Robert Fields” and that “none of those transactions involved conveyances of the property of Robert Fields.” For those two reasons, the district court concluded that the alleged transfers “do not fall within the definition of transactions covered by MUVTA.”

CFG challenges the district court’s reasoning but not with specificity. CFG does not identify any allegations in the specified counts that describe actions by Robert Fields or assets belonging to him. CFG does not contradict the district court’s legal premises except to contend generally that the statute should be broadly construed. In response, the ABP Defendants acknowledge that CFG alleged transfers by Robert Fields of his own assets in counts 1, 3, and 9 but contend that the allegations in all other counts describe actions by persons other than Robert Fields. CFG has not demonstrated that the district court either misinterpreted the statute or misread the amended complaint.

Thus, the district court did not err by concluding that counts 5 through 8 and 11 through 14 do not state a claim upon which relief can be granted under the MUVTA.

In sum, we affirm the district court’s ruling that counts 1 through 10 of the amended complaint are dismissed with respect to ABP on the ground that those claims are barred by the bankruptcy trustee’s release of claims against ABP as part of the trustee’s April 2012 settlement with ABP. We reverse the district court’s ruling that counts 1 through 10 of the amended complaint are dismissed with respect to all defendants based on the doctrine of *res judicata*. And we affirm the district court’s ruling that counts 5 through 8 and 11 through 14 of the amended complaint are dismissed with respect to all defendants on the

ground that CFG failed to state a claim on which relief can be granted. We remand the case to the district court for further proceedings on the remaining claims, which are counts 1, 2, 3, 4, 9, and 10 of the amended complaint to the extent that those counts are asserted against defendants other than ABP.

Affirmed in part, reversed in part, and remanded.