Affirmed and Memorandum Opinion filed April 26, 2016.

In The

Fourteenth Court of Appeals

NO. 14-15-00388-CV

CHERYL E. HILL, Appellant

V.

FEDERAL NATIONAL MORTGAGE ASSOCIATION (FANNIE MAE) AND NATIONSTAR MORTGAGE LLC, Appellees

On Appeal from the 281st District Court
Harris County, Texas
Trial Court Cause No. 2014-24269

M E M O R A N D U M O P I N I O N

Appellant Cheryl E. Hill appeals the trial court's grant of summary judgment in favor of Federal National Mortgage Association (Fannie Mae) and Nationstar Mortgage LLC (Nationstar), collectively Appellees. Specifically, Hill asserts summary judgment was improper because Appellees did not prove one of the elements of their affirmative defense of res judicata. We affirm.

I. BACKGROUND

In early 2014, Fannie Mae initiated a forcible entry and detainer suit against Hill

to obtain possession of property located at 5106 Nassau Road, Houston, Texas 77021. After the court awarded Fannie Mae possession of the property, Hill exhausted her appeals.

Subsequently, Hill filed complaints against Fannie Mae and Nationstar, as mortgage servicer and debt collector, in both state and federal court. In the underlying state case, the subject of this appeal, Hill claimed Appellees violated the Fair Debt Collection Practices Act (FDCPA). Hill also alleged other theories of relief under state and federal law, including trespass to try title, quiet title, wrongful foreclosure, violations of the Texas Deceptive Trade Practices Act and the Texas Debt Collection Act, and civil rights claims.

In federal court, Hill claimed Appellees violated the FDCPA and breached the implied covenant of good faith and fair dealing under the Uniform Commercial Code (UCC). Hill also sought an injunction to prevent her eviction from 5106 Nassau Road. The federal court dismissed Hill's claims with prejudice, ordering: "This dismissal disposes of all Hill's claims and all claims that she could have brought, including claims about the loan, its collection, the property, its financing, its foreclosure, and its possession. . . . If she sues again she may be held in coercive contempt." Hill did not appeal that decision.

Relying upon the federal judgment, Appellees sought and obtained summary judgment in this case on the basis of res judicata. Hill timely appealed and explicitly urges a very narrow basis for appeal: that the prior federal judgment was not rendered by a court of competent jurisdiction.[1]

[1] Although Hill is very clear about the specific element of res judicata she attacks, her argument is less clear. For example, Hill argues that "[t]here was no good reason for the federal court to extend its jurisdiction to rule on state-law claims pending before another court." Even if we ignore Hill's explicit issue and construe her argument to challenge whether the claims adjudicated in federal court and the claims adjudicated in state court are the same, we would still conclude that the trial court correctly determined that Appellees established their res judicata defense as a matter of law. Under the

II. STANDARD OF REVIEW AND APPLICABLE LAW

We review the trial court's summary judgment de novo. *Ferguson v. Bldg. Materials Corp. of Am.*, 295 S.W.3d 642, 644 (Tex. 2009) (per curiam). To be entitled to summary judgment under Rule 166a(c), a movant must establish there is no genuine issue of material fact so that the movant is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(c); *Mann Frankfort Stein & Lipp Advisors, Inc. v. Fielding*, 289 S.W.3d 844, 848 (Tex. 2009).

Res judicata is an affirmative defense. Tex. R. Civ. P. 94. A defendant moving for summary judgment on its affirmative defense must conclusively prove each element of that defense. *Shah v. Moss*, 67 S.W.3d 836, 842 (Tex. 2001). The parties urge, and we agree, that federal law controls the determination of whether the federal court's judgment should bar Hill's state court action.[2] *See San Antonio Indep. Sch. Dist. v. McKinney*, 936 S.W.2d 279, 281 (Tex. 1996) (noting that because the first suit was decided in federal court, federal res judicata law controls); *Eagle Props., Ltd. v. Scharbauer*, 807 S.W.2d 714, 718 (Tex. 1990) (same). "The res judicata effect of a prior judgment is a question of law that we review de novo." *Oreck Direct, LLC v.*

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transactional test, claims arising from the same nucleus of operative facts, even if articulated through different legal theories, are subject to the preclusive effect of the first judgment. *See Warren v. Mortg. Electr. Registration Sys, Inc.*, 616 F. App'x 735, 738 (5th Cir. 2015) (citing *United States v. Davenport*, 484 F.3d 321, 326 (5th Cir. 2007) (applying the transactional test to conclude that different substantive theories of liability for an attempted foreclosure arising from a single loan and assignment of that loan was the "same cause of action" for purposes of res judicata)). All of Hill's variously alleged claims arise from Appellees' attempt to collect on Hill's loan on 5106 Nassau Road and evict her from that property.

[2] The parties agree that the inclusion of Buckley Madole, a Texas law firm, in Hill's federal complaint destroyed diversity jurisdiction. *See* 28 U.S.C. § 1332 (2014). Because there was not complete diversity among the parties to the federal lawsuit, we agree the federal court did not have diversity jurisdiction over Hill's state-law claims. *See Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 373–74 (1978). Therefore, we need not address Appellees' concerns about the application of federal res judicata law to a diversity action. *See Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S.497, 508–09 (2001); *Heartland Holdings, Inc. v. U.S. Trust Co. of Tex.*, 316 S.W.3d 1, 10 (Tex. App.—Houston [14th Dist.] 2010, no pet.).

Dyson, Inc., 560 F.3d 398, 401 (5th Cir. 2009) (quoting *Davis v. Dallas Area Rapid Transit*, 383 F.3d 309, 313 (5th Cir. 2004)).

"Under federal law, the doctrine of res judicata will apply if: (1) the parties are identical in both suits; (2) the prior judgment is rendered by a court of competent jurisdiction; (3) there is a final judgment on the merits; and (4) the same cause of action is involved in both cases." *Eagle Props.*, 807 S.W.2d at 718 (citing *Nilsen v. City of Moss Point*, 701 F.2d 556, 560 (5th Cir. 1983)); *Clear Lake Ctr., L.P. v. Garden Ridge, L.P.*, 416 S.W.3d 527, 540–41 (Tex. App.—Houston [14th Dist.] 2013, no pet.). Res judicata "bars all claims that were or could have been advanced in support of the cause of action on the occasion of its former adjudication . . . not merely those that were adjudicated." *In re Howe*, 913 F.2d 1138, 1144 (5th Cir. 1990) (quoting *Nilsen*, 701 F.2d at 560).

III. ANALYSIS

Hill challenges the second element of res judicata—that "the prior judgment [was] rendered by a court of competent jurisdiction." *Eagle Props.*, 807 S.W.2d at 718. Hill does not dispute elements one, three, or four—"the parties are identical in both suits," "there is a final judgment on the merits," and "the same cause of action is involved in both cases." *Id.*[3]

As generally understood, a court of competent jurisdiction includes all courts with jurisdiction to conclusively resolve a dispute. *See B & B Hardware, Inc. v. Hargis Indus., Inc.*, 135 S. Ct. 1293, 1312–13 (2015). A federal court can have original jurisdiction either through express statutory mandate, diversity jurisdiction, or federal-question jurisdiction. *See* 28 U.S.C. §§ 1331, 1332 (2014); *Exxon Mobil Corp. v.*

[3] *See Ellis v. Amex Life Ins. Co.*, 211 F.3d 935, 937–38 (5th Cir. 2000) (noting that final judgment first rendered in one of the actions becomes conclusive in the other action regardless of which action was brought first).

Allapattah Servs., Inc., 545 U.S. 546, 552 (2005). If a federal district court has original jurisdiction over a claim, it may exercise "supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. § 1367(a); *Exxon Mobil*, 545 U.S. at 552–53.

A. Hill Invoked Federal-Question Jurisdiction

Federal-question jurisdiction applies when a civil action arises "under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Hill concedes there was federal-question jurisdiction over her claims under federal law, stating Appellees "at best had supplemental jurisdiction based on the pending federal question." In her federal complaint, Hill asserted the federal district court had jurisdiction over her claims under United States Code section 1331. *See id.* Moreover, Hill's claims under the FDCPA alone were sufficient to confer federal-question jurisdiction on the district court. *See French v. EMC Mortg. Corp.*, 566 F. App'x. 285, 286–87 (5th Cir. 2014) (finding a case properly removed to federal court under federal-question jurisdiction because the amended complaint brought a claim under the FDCPA). Therefore, the federal district court had original federal-question jurisdiction over Hill's claims under federal law. *See* 28 U.S.C. § 1331.

B. The Federal Court Had Supplemental Jurisdiction over the Non-FDCPA Claim

The district court had original jurisdiction over Hill's claims arising under the FDCPA. The only other claim raised by Hill in her federal complaint was a claim for breach of the "obligation of good faith and fair dealing under provisions of the Uniform Commercial Code." To the extent that this allegation is intended to state a claim under the UCC,[4] it is not a claim that arises under federal law. *See Westley v. Mann*, 896 F.

[4] *See Sgroe v. Wells Fargo Bank, N.A.*, 941 F. Supp. 2d 731, 748–49 (E.D. Tex. 2013) (noting

Supp. 2d 775, 805 (D. Minn. 2012) (noting that the UCC is not a federal statute and a claim under the UCC does not provide an independent basis for federal jurisdiction). On the contrary, to the extent that, liberally construed, the allegation is intended to state a claim under the Texas Business and Commerce Code,[5] it is a state-law claim. Nevertheless, we conclude that the federal court had supplemental jurisdiction over the claim.

A federal court may exercise supplemental jurisdiction over state-law claims within a federal complaint if those claims are part of the same case or controversy as the federal claim. 28 U.S.C. § 1367(a). This means there must be a common nucleus of operative fact between the state and federal claims, so a plaintiff would be expected to try them in one proceeding. *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 349 (1988); *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966) (holding: "The state and federal claims must derive from a common nucleus of operative fact. But if, considered without regard to their federal or state character, a plaintiff's claims are such that he would ordinarily be expected to try them all in one judicial proceeding, then, assuming substantiality of the federal issues, there is power in federal courts to hear the whole.").

Both the federal claims and the state claims raised in Hill's federal complaint arose from a common nucleus of operative fact. As stated, Hill's federal claim was a violation of the FDCPA, which protects "consumers from a host of unfair, harassing, and deceptive debt collection practices without imposing unnecessary restrictions on ethical debt collectors." *Peter v. GC Servs. L.P.*, 310 F.3d 344, 351–52 (5th Cir. 2002) (citations omitted). In her FDCPA claim against Appellees, Hill refers to Appellees'

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that the UCC does not apply to deeds of trust and there is no authority "to support [the] view that there is a duty of good faith and fair dealing in the mortgage context").

[5] *See 1/2 Price Checks Cashed v. United Auto. Ins. Co.*, 344 S.W.3d 378, 380 n.1 (Tex. 2011) ("Texas's version of the UCC is codified in the Business and Commerce Code. . . .").

effort to collect on the mortgage for 5106 Nassau Road as collection of a debt.

More specifically, Hill's complaints all arise from a 2005 deed on 5106 Nassau Road, which Hill originally signed with lender GMAC, and the subsequent actions of Fannie Mae, as assignee lender, and Nationstar, as mortgage servicer, who "did not give a loan or pledge any collateral support of a loan to Cheryl Hill." According to Hill, these actions and certain "false representations" caused Hill to "rescind [] all contracts and associated transactions." Hill's goal was, by injunction, to prevent her eviction from the Nassau Road property and to prevent any further efforts to collect payment on the property.

Hill further pleads, under her own heading: "Statement of Facts Common to All Claims," that (a) she does not owe any money to Fannie Mae or Nationstar, (b) the original lender GMAC has been paid in full; (c) neither Fannie Mae nor Nationstar has "validated the debt"; and (d) they continue to threaten Hill with eviction. Finally, Hill asserts that she has "exhausted all remedies in pursuing this matter, and the defendants . . . continue to abuse their legal authority in attempt to deprive the Plaintiff of her property without providing a legal and lawful remedy."

We conclude that all of the claims Hill pled in her federal complaint arise from a common nucleus of facts concerning Hill's indebtedness on the Nassau Road property, as well as Appellees' collection and eviction efforts. *See, e.g., French*, 566 F. App'x at 287, n.1 (noting the concession that the servicing of a mortgage loan and the foreclosure of the subject deed of trust "derive from the same nucleus of operative facts"); *see also Bent v. Mackie Wolfe Zientz & Mann, P.C.*, No. 3:13-CV-2038-D, 2013 WL 4551614, at *4 (N.D. Tex. Aug. 28, 2013) (holding that plaintiffs' FDCPA claims, to wit, defendant's attempts to collect the debt arise from the "very same 'common nucleus of operative facts'" as the defendant's attempt to evict the plaintiffs from the property); *Martinez-Bey v. Bank of Am., N.A.*, No. 3:12-12-CV-4986-G (BH), 2013 WL 3054000,

at *7 (N.D. Tex. June 18, 2013) (holding plaintiff's federal debt collection and federal foreclosure claims arose from the same common nucleus of operative facts as the state foreclosure claims). The federal court was a court of competent jurisdiction to adjudicate the claims Hill raised.

To Hill's point that the federal court *should* have declined to exercise supplemental jurisdiction after dismissing the federal claim, we note that federal courts may exercise supplemental jurisdiction over state-law claims under certain circumstances even when all federal claims have been dismissed. *See Brookshire Bros. Holding, Inc. v. Dayco Prods., Inc.*, 554 F.3d 595, 602 (5th Cir. 2009). Any argument that the court erred in doing so here should have been raised in an appeal to the Fifth Circuit, but it was not.

IV. CONCLUSION

Having concluded that the federal court had both original jurisdiction over Hill's FDCPA claims and supplemental jurisdiction over Hill's non-FDCPA claims, we determine that the federal court was a court of competent jurisdiction. Because Hill disputed no other element of res judicata, we overrule her sole issue. Therefore, we affirm the trial court's order granting summary judgment in favor of Fannie Mae and Nationstar.

/s/ Sharon McCally
Justice

Panel consists of Justices Christopher, McCally, and Busby.