

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

MICHAEL T. CHAPPELL,)
)
Plaintiff,)
)
v.)
)
CHASE BANK/HOME FINANCE)
LLC, *et al.*,)
)
Defendants.)

CASE NO. 2:10-cv-1026-MHT

REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE

I. INTRODUCTION

The Plaintiff, a prison inmate proceeding *pro se*, filed this action on December 2, 2010 alleging that the Defendants violated his rights when they illegally seized funds in his bank account and wrongfully instituted foreclosure on his home. In the complaint, Plaintiff named as defendants JPMorgan Chase Bank National Association, (“Chase”); Jay Hueling, ostensibly an employee of Chase¹; Regions Bank, (“Regions”); Charles Stewart, ostensibly an employee of Regions²; and Compass Bank. (“Compass”). He seeks monetary and injunctive relief against these defendants. *See* Doc. 1, Complaint.

Pursuant to 28 U.S.C. § 636(b)(1) this case was referred to the undersigned United States Magistrate Judge for review and submission of a report with recommended findings

¹The Court granted Chase’s Motion to Quash service on Jay Hueling and directed the Clerk to resend the complaint and summons to a different address. (Doc. 68). Hueling has filed an answer in this action. (Doc. 76).

²The court granted Regions’ Motion to Quash service on Charles Stewart. (Doc. 67)

of fact and conclusions of law (Doc. 3). Plaintiff moved for and was granted leave to proceed *in forma pauperis* by the court. (Doc. 2 and 17). 28 U.S.C. § 1915 governs cases where a party proceeds *in forma pauperis*. On September 2, 2011, the Magistrate Judge recommended dismissal prior to service of process pursuant to 28 U.S.C. § 1915(e)(2)(B).³ (Doc. 41). After a late motion by Plaintiff to file objections to the Recommendation of the Magistrate Judge, the court vacated the Order adopting the Recommendation and the Final Order entered in this case and allowed Plaintiff to file objections. (Doc. 45). After review of Plaintiff's objections, the court vacated the Report and Recommendation of the Magistrate Judge filed September 2, 2011. (Doc. 51). The court further directed that each party file evidence of his or her citizenship and suspended time for answer until such was filed. (Doc. 52).

On the basis of the parties' evidence of citizenship, and the Plaintiff's and Compass' and Regions' motions to dismiss, the Magistrate Judge issued a Report and Recommendation on May 25, 2012 (Doc. 69), recommending that the motions to dismiss be granted and that Compass and Regions be dismissed as parties to this action. Subsequently, the District Judge adopted the Report and Recommendation of the Magistrate Judge and dismissed Compass and Regions with prejudice as parties to this action. (Doc. 78). Thus, Chase and Hueling remain as the sole defendants in this action.

³ The statute provides, in pertinent part: "[T]he court shall dismiss the case at any time if the court determines that . . . the action or appeal – (i) is frivolous or malicious, (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B).

II. DISCUSSION AND ANALYSIS

Chase and Hueling in their Answers to the Complaint, deny the allegations in the Complaint and raise six affirmative defenses. (Docs. 66 and 76). In their answers, both Chase and Hueling claim as affirmative defenses res judicata and collateral estoppel arising from Chappell's state court action, *Michael T. Chappell v. Chase Bank/Home Finance LLC*, Case No. CV - 2010-001327, in the Circuit Court of Montgomery County, Alabama. Summary Judgment was entered in that case against Plaintiff on January 19, 2012, and the case is currently on appeal.⁴

Pursuant to 28 U.S.C. § 1915(e)(2)(B) this court "shall" dismiss a case "at anytime" if the court concludes that the action "fails to state a claim on which relief maybe granted." Chase and Hueling argue that plaintiff's complaint fails to state a claim upon which relief maybe granted because his claims are barred by res judicata as the claims at bar are identical to those raised in and dismissed by the Circuit Court of Montgomery County, Alabama. (Docs. 66 and 76).

"Our res judicata analysis has always required a consideration of the facts and legal theories of two causes of action as well as the rights and duties involved in each case." *Draper v. Atlanta Indep. Sch. Sys.*, 377 Fed. Appx. 937, 940 (11th Cir. 2010)

⁴Originally, Chappell filed this action in small claims court, *see* 03-SM- 2010-1328 and appealed the case to Circuit Court in October 2010. In the complaint, Chappell alleges that Chase owes him the sum of \$1490.00 and that "I have 79 cases of this action that Chase stole from me". The Court interprets that to mean that Chappell alleges Chase has stolen a large sum of money from him.

certiorari denied, 131 S.Ct. 342, 178 L.Ed. 2d 223, 79 USLW 3205 (Oct. 4, 2010) *citing Manning v. City of Auburn*, 953 F.2d 1355, 1359 (11th Cir. 1992). “We have consistently concluded that when the substance and facts of each action are the same, res judicata bars the second suit.” *Id.* In *I.A. Durbin, Inc. v. Jefferson National Bank*, 793 F.2d 1541 (11th Cir. 1986), the Court summarized the doctrine of res judicata as follows:

Res judicata or claim preclusion refers to the preclusive effect of a judgment in foreclosing relitigation of matters that were litigated or could have been litigated in an earlier suit. . . . In order for the doctrine of res judicata to bar a subsequent suit, four elements must be present: (1) there must be a final judgment on the merits; (2) the decision must be rendered by a court of competent jurisdiction; (3) the parties, or those in privity with them, must be identical in both suits; and (4) the same cause of action must be involved in both cases.

I.A. Durbin, 793 F.2d at 1549 (citations omitted). It is to these elements the court now turns.

(1) A Final Judgment. In June 2010, Chappell filed suit against Chase Bank/Home Finance LLC in the Small Claims Court of Montgomery County, Alabama. *See Case Action Summary*, in the case of, *Michael T. Chappell v. Chase Bank/Home Finance LLC*, Case No. CV - 2010-001327, in the Circuit Court of Montgomery County, Alabama. In that case, Chappell sued Chase alleging that Chase “stole” a sum of money from him. *See Id.*, Compl., doc. 1 at 1. On September 14, 2011, Chase filed a motion for summary judgment in state court because Chappell defaulted on his mortgage on 18 Creek Drive Montgomery AL 36117, (“the Property”), a property on which Chase held the note. Indeed, Chase averred Chappell had been in default under the terms of the

Note and Mortgage since April 11, 2010. Further, Chase averred that as a result of the state court filing, Chase cancelled a previously scheduled foreclosure sale and as of the date of the filing of the Motion for Summary Judgment, the Property had not been foreclosed. *See* MSJ at p. 3. Chase moved for Summary Judgment on the basis that “Plaintiff materially breached and defaulted on the provisions of the Mortgage and Plaintiff has presented no evidence to the contrary.” Chase further asked the state court to grant the motion for summary judgment and enter judgment in favor of Chase and against Chappell and to dismiss all Chappell’s claims against Chase with prejudice. Chase further asked to be allowed to proceed with the foreclosure of the Property.” *See* MSJ at p. 7. The Judge’s hand written notation on the Defendant’s Motion for Summary Judgment reads “1/18/12 Review of All Pleadings. Motion Granted. Dismissed.” *See* MSJ at p. 1

The court now turns to whether the state court’s decision on the defendant’s motion for summary judgment was a decision on the merits.

“A judgment is on the merits when it amounts to a decision as to the respective rights and liabilities of the parties, based on the ultimate fact or state of the parties disclosed by the pleadings or evidence, or both, and on which the right of recovery depends, irrespective of formal, technical, or dilatory objections or contentions. Key factors in determining whether a judgment may be considered as on the merits are that there have been notice and an opportunity to be heard . . .

“It is not necessary, however, that there should have been a trial. If the judgment is general, and not based on any technical defect or objection, and the parties had a full legal opportunity to be heard on their respective claims and contentions, it is on the merits, *although there was no actual hearing on*

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