United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JESSE C. BURCIAGA and EDNA K. BURCIAGA	§	
	§	
	§	
v.	§	CIVIL ACTION NO 4:14-CV-367
	§	Judge Mazzant
DEUTSCHE BANK NATIONAL TRUST COMPANY, NATIONAL ASSOCIATION	§	
	§	

MEMORANDUM OPINION AND ORDER

Pending before the Court is Defendant/Counter-Plaintiff's Motion for Summary Judgment and Brief in Support on Plaintiff/Counter-Defendant's Claims and on Defendant/Counter Plaintiff's Motion for Summary Judgment on Defendant/Counter-Plaintiff's Counterclaim (Dkt. #34). After reviewing the relevant pleadings, the Court finds that the motion should be granted.

BACKGROUND

In or about 1999, Plaintiffs purchased a house in Flower Mound, Texas (the "Property") and entered into a Purchase Money Mortgage (Dkt. #4 at ¶¶ 6-7). The Mortgage was subsequently refinanced in 2003 when Plaintiffs executed a Texas Home Equity Fixed/Adjustable Rate Note in the original principal amount of $344,000 (Dkt. #4 at ¶ 7; Dkt. #34 at ¶ 2). The Note and interest in the Security Instrument were subsequently assigned to Defendant in 2003.

Plaintiffs defaulted on their obligation under the Note and Security Instrument (Dkt. #34 at ¶ 6). In or about 2013, Defendant filed a suit for judicial foreclosure (Dkt. #4 at ¶ 8). On December 13, 2013, the 393rd Judicial District Court of Denton County, Texas issued a Home Equity Foreclosure Order (the "Foreclosure Order") that provided that Defendant could proceed with a foreclosure of the loan and sale of the Property (Dkt. #34 at ¶ 9). On December 13, 2013,

the Foreclosure Action was closed (Dkt. #34 at ¶ 9). On December 20, 2013, in the same court, Plaintiffs filed a Motion to Vacate the Home Equity Foreclosure Order in the Foreclosure Action and on the same day a Notice of Hearing on the Motion to Vacate was filed (Dkt. #34 at ¶ 13). On January 9, 2014, the state court entered an Order granting Plaintiffs' Motion to Vacate the Foreclosure Order (Dkt. #34 at ¶ 14).

A copy of the Foreclosure Order and a Notice of Sale were sent to Plaintiffs on April 10, 2014 (Dkt. #34 at ¶ 11). Defendant foreclosed on the loan on May 6, 2014 (Dkt. #34 at ¶ 12). Defendant purchased the Property at the sale for $455,784.96 (Dkt. #34 at ¶ 12).

Plaintiffs filed their Original Petition, Application for Temporary Restraining Order, and Application for Temporary Injunction (the "Complaint") on June 4, 2014, in the 393rd Judicial District Court of Denton County, Texas (Dkt. #1; Dkt. #4). Defendant removed the case to this Court on June 6, 2014 (Dkt. #1). On June 6, 2014, Defendant filed its Original Counterclaim (Dkt. #3). Plaintiffs answered the Original Counterclaim on August 12, 2014 (Dkt. #11). On February 24, 2015, Defendant filed its Motion for Leave to File Amended Counterclaim (Dkt. #31) and its Amended Counterclaim (Dkt. #32). On May 21, 2015, Defendant filed Defendant/Counter-Plaintiff's Motion for Summary Judgment and Brief in Support on Plaintiff/Counter-Defendant's Claims and on Defendant/Counter Plaintiff's Motion for Summary Judgment on Defendant/Counter-Plaintiff's Counterclaim (Dkt. #34) which addressed the claims in both the Original Counterclaim and the Amended Counterclaim. On June 5, 2015, Plaintiffs filed Plaintiffs'/Counter-Defendants' Response to Defendant/Counter-Plaiuntiff's Motion for Summary Judgment on Plaintiff's/Counter-Defendants' Claim and Motion for Summary Judgment on Defendant's/Counter-Plaintiff's Counterclaim (Dkt. #35). On June 10, 2015, the Court granted the Motion for Leave to File Amended Counterclaim (Dkt. #36). On June 25,

2015, Defendant filed Defendant/Counter-Plaintiff's Reply in Support of Motion for Summary Judgment (Dkt. #40).

LEGAL STANDARD

The purpose of summary judgment is to isolate and dispose of factually unsupported claims or defenses. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 327 (1986). Summary judgment is proper if the pleadings, the discovery and disclosure materials on file, and any affidavits "[show] that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). A dispute about a material fact is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The trial court must resolve all reasonable doubts in favor of the party opposing the motion for summary judgment. *Casey Enters., Inc. v. Am. Hardware Mut. Ins. Co.*, 655 F.2d 598, 602 (5th Cir. 1981) (citations omitted). The substantive law identifies which facts are material. *Anderson*, 477 U.S. at 248.

The party moving for summary judgment has the burden to show that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. *Id.* at 247. If the movant bears the burden of proof on a claim or defense on which it is moving for summary judgment, it must come forward with evidence that establishes "beyond peradventure *all* of the essential elements of the claim or defense." *Fontenot v. Upjohn Co.*, 780 F.2d 1190, 1194 (5th Cir. 1986). Where the nonmovant bears the burden of proof, the movant may discharge its burden by showing that there is an absence of evidence to support the nonmovant's case. *Celotex*, 477 U.S. at 325; *Byers v. Dallas Morning News, Inc.*, 209 F.3d 419, 424 (5th Cir. 2000). Once the movant has carried its burden, the nonmovant must "respond to the motion for summary judgment by setting forth particular facts indicating there is a genuine issue for trial."

Byers, 209 F.3d at 424 (citing *Anderson*, 477 U.S. at 248-49). The nonmovant must adduce affirmative evidence. *Anderson*, 477 U.S. at 257. No "mere denial of material facts nor…unsworn allegations [nor] arguments and assertions in briefs or legal memoranda" will suffice to carry this burden. *Moayedi v. Compaq Computer Corp*., 98 F. App'x 335, 338 (5th Cir. 2004). Rather, the Court requires "significant probative evidence" from the nonmovant in order to dismiss a request for summary judgment supported appropriately by the movant. *United States v. Lawrence*, 276 F.3d 193, 197 (5th Cir. 2001). The Court must consider all of the evidence, but must refrain from making any credibility determinations or weighing the evidence. *See Turner v. Baylor Richardson Med. Ctr.*, 476 F.3d 337, 343 (5th Cir. 2007).

ANALYSIS

The Rooker-Feldman Doctrine[1]

Although the parties do not contest the Court's jurisdiction, federal courts are duty-bound to examine their subject-matter jurisdiction sua sponte. *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982) (citing *Mansfield, C. & L.M. Ry. Co. v. Swan*, 111 U.S. 379, 382 (1884)); *H & D Tire & Automotive-Hardware, Inc. v. Pitney Bowes Inc.*, 227 F.3d 326, 328 (5th Cir. 2000). As outlined below, the Rooker-Feldman doctrine impacts the Court's subject-matter jurisdiction. Consequently, the question of whether this action is subject to Rooker-Feldman must be addressed. *See Union Planters Bank Nat. Ass'n v. Salih*, 369 F.3d 457, 460 (5th Cir. 2004) (examining sua sponte subject matter jurisdiction pursuant to Rooker-Feldman.) (citations omitted).

As the Fifth Circuit recently explained,

[1] On September 28, 2015, the Court ordered the parties to brief the issue of jurisdiction and if any claims or counterclaims are barred by the Rooker-Feldman doctrine (Dkt. #43). On October 8, 2015, Defendant filed its Brief Regarding Jurisdiction (Dkt. #46). On October 14, 2015, Plaintiffs filed their Brief Regarding Jurisdiction (Dkt. #49).

> *Exxon*, the Court's most authoritative recent pronouncement on Rooker-Feldman, makes plain that the doctrine has four elements: (1) a state-court loser; (2) alleging harm caused by a state-court judgment; (3) that was rendered before the district court proceedings began; and (4) the federal suit requests review and reversal of the state-court judgment.

Houston v. Venneta Queen, 606 F. App'x 725, 730 (5th Cir. 2015) *cert. denied sub nom. Houston v. Queen*, 136 S. Ct. 503 (2015) *reh'g denied*, No. 15-311, 2016 WL 101421 (U.S. Jan. 11, 2016) (citing *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005)).

This Fifth Circuit has observed that "[a] state court judgment is attacked for purposes of Rooker-Feldman 'when the [federal] claims are inextricably intertwined with a challenged state court judgment,' or where the losing party in a state court action seeks 'what in substance would be appellate review of the state judgment.'" *Weaver v. Tex. Capital Bank, N.A.*, 660 F.3d 900, 904 (5th Cir. 2011) (per curiam) (citations omitted); *see also Houston*, 606 F. App'x. at 730. However, Rooker-Feldman "does not preclude federal jurisdiction over an 'independent claim,' even 'one that denies a legal conclusion that a state court has reached.'" *Weaver*, 660 F.3d at 904 (quoting *Exxon*, 544 U.S. at 293). Indeed, the doctrine "generally applies only where a plaintiff seeks relief that directly attacks the validity of an existing state court judgment." *Weaver*, 660 F.3d at 904. Nonetheless, a party cannot escape Rooker-Feldman by "casting . . . a complaint in the form of a civil rights action." *Liedtke v. State Bar of Tex.*, 18 F.3d 315, 317 (5th Cir. 1994).

In the current case, Plaintiffs assert a trespass to try title claim because Plaintiffs believe that they have superior title. Plaintiffs' argue that they have superior title because the state court's Foreclosure Order was improper and it was later properly vacated by the state court. Plaintiffs also claim they are entitled to a temporary restraining order and a temporary injunction preventing Defendant from enforcing the state court's Foreclosure Order.

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