

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
CLYDE KENNARD JONES,)	CASE NO. 09-91932 - MHM
)	
Debtor.)	
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CLYDE KENNARD JONES,)	
)	
Plaintiff,)	
v)	ADVERSARY PROCEEDING
)	NO. 10-9039
DEUTSCHE BANK NATIONAL)	
TRUST COMPANY,)	
)	
Defendant.)	

**ORDER GRANTING DEFENDANT'S MOTION
FOR JUDGMENT ON THE PLEADINGS**

Defendant moves for judgment on the pleadings under Federal Rule of Civil Procedure 12(c). Defendant asserts that the claims made by Plaintiff are barred under principles of res judicata based on a judgment of the Superior Court of Clayton County, Georgia. Plaintiff filed responses opposing Defendant's motion (Doc. Nos. 9 and 10). For the reasons set forth below, Defendant's motion will be granted.

I. STATEMENT OF THE FACTS

On May 26, 2005, Plaintiff, Clyde Kennard Jones, executed a note to Fremont Investment and Loan for \$148,000 secured by his real property in Jonesboro, Georgia (the "Property"). The note and security deed were both later assigned by Fremont to Defendant, Deutsche Bank National Trust Company.

On October 7, 2008, Plaintiff defaulted on the note. Defendant conducted a foreclosure sale of the Property, followed by a dispossessory action against Plaintiff, which prompted Plaintiff to file a bankruptcy petition December 1, 2009, to obtain the protection of the automatic stay of 11 U.S.C. §362(a). The bankruptcy court, however, granted relief from the stay to Defendant, allowing the dispossessory action to proceed (Doc. No. 33, Case No. 09-91932-MHM).¹

Prior to filing his bankruptcy petition, Plaintiff, acting *pro se*, had petitioned the Superior Court of Clayton County (the "State Court") April 16, 2009, to set aside the foreclosure sale and cancel the note and mortgage for reasons of "fraud, usury, material misrepresentation, fraud in the inducement, fraud in fact, lack of consideration, claim in recoupment, and quiet title against all known counter and cross defendants and for declaratory and injunctive relief" (Case No. 2009-CV-01524-9). The State Court granted Defendant's motion for summary judgment August 27, 2009, after it determined that Plaintiff failed to present any evidence in support of his accusations against Defendant. Plaintiff's case was dismissed with prejudice.

Defendant took possession of the Property after Plaintiff's eviction, but on May 14, 2010, Plaintiff filed the complaint commencing this adversary action, disputing Defendant's title to the Property. In the complaint, Plaintiff asserts that Defendant's foreclosure sale had irregularities, that the assignment of his note to Defendant was fraudulent, and that he was the victim of predatory lending. Plaintiff also recorded a notice of pending litigation regarding the Property in the land records of Clayton County,

¹ That order also allowed Defendant to defend the action brought by Plaintiff in state court.

thus creating a cloud on Defendant's title to the Property. Therefore, Defendant is currently unable to sell the Property.

Defendant's motion for judgment on the pleadings asserts that Plaintiff's action was previously adjudicated in the State Court and thus the relief Plaintiff seeks in this action is barred by *res judicata*. Plaintiff responds that the assignment of the note was not properly executed. Plaintiff failed to respond to Defendant's arguments with regard to whether his claim is barred by *res judicata*.

II. CONCLUSIONS OF LAW

A party may file a motion for judgment on the pleadings after pleadings are closed. Fed. R. Civ. P. 12(c). "The court will consider the pleadings closed after there has been a complaint and answer." *Bertoni v. Stock Building Supply, Inc.*, 2005 WL 6353963 at *2 (S.D. Fla., November 2, 2005). Judgment on the pleadings is appropriate when no material facts are in dispute and a party is entitled to judgment as a matter of law. *Cannon v. City of West Palm Beach*, 250 F.3d 1299, 1301 (11th Cir. 2001). The court may render judgment "by considering the substance of the pleadings and any judicially noticed facts." *Horsley v. Rivera*, 292 F.3d 695, 700 (11th Cir. 2002) citing *Hawthorne v. Mac Adjustment, Inc.*, 140 F.3d 1367, 1370 (11th Cir. 1998). The court must view the facts of the case in the light most favorable to the non-moving party. *Bertoni v. Stock Building Supply, Inc.*, 2005 WL 6353963 at *2 (S.D. Fla., November 2, 2005).

III. DISCUSSION

Principles of *res judicata* bar the filing of claims that were raised or could have been raised in an earlier proceeding. *Ragsdale v. Rubbermaid, Inc.*, 193 F.3d 1235, 1238

(11th Cir. 1999). A claim could have been raised if it was "in existence at the time the original complaint [was] filed or [it was] actually asserted . . . in the earlier action [T]he underlying core of facts must be the same in both proceedings." *In re Piper Aircraft Corp.*, 244 F.3d 1289, 1298-1301 (11th Cir. 2001). "The purpose behind the doctrine of *res judicata* is that the 'full and fair opportunity to litigate protects [a party's] adversaries from the expense and vexation attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions.'" *Ragsdale* at 1238, citing *Montana v. United States*, 440 U.S. 147 (1979).

State court judgments receive full faith and credit in federal courts and carry the same preclusive effect as they would in state courts. *Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985) citing 28 U.S.C. § 1783. Under Georgia law, a

judgment of a court of competent jurisdiction shall be conclusive between the same parties and their privies as to all matters put in issue or which under the rules of law might have been put in issue in the cause wherein the judgment was rendered until the judgment is reversed or set aside.

Ga. Code Ann. § 9-12-40. Thus, Georgia bars a subsequent filing if four elements for *res judicata* are met:

1. a final judgment was entered on the merits in the prior proceeding;
2. the judgment in the prior proceeding was rendered by a court of competent jurisdiction;
3. the parties are identical; and

4. the same cause of action is involved in both proceedings.

In Plaintiff's previous litigation in State Court, that court granted summary judgment for Defendant on the same claim Plaintiff seeks to litigate in this adversary proceeding. His State Court case was dismissed *with prejudice*, constituting a final judgment on the merits. All of the claims alleged by Plaintiff in this proceeding in his complaint and in his responses to Defendant's motion for judgment on the pleadings were or could have been raised in the litigation in State Court. The State Court is a court of competent jurisdiction to render such a judgment. The parties in that suit are the same as in this adversary proceeding. Thus, all four factors required to foreclose litigation in this adversary proceeding are met. Federal courts are bound to give the same preclusive effect to state court judgments as state courts would, so Plaintiff's action in the bankruptcy court is barred by *res judicata*. Accordingly, it is hereby

ORDERED that Defendant's *Motion for Judgment on the Pleadings* is **granted**:
Judgment for Defendant will be entered.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Plaintiff's attorney, Defendant's attorney, and the Chapter 7 Trustee.

IT IS SO ORDERED, this the 2nd day of June, 2011.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE