

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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In re:

Jerome Reid,

Debtor.

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Case No. 09-33035

Chapter 13

Jerome Reid and Regina F. Reid,

Plaintiffs

v.

Wells Fargo Home Mortgage, Inc.  
and Wells Fargo Bank, N.A.,

Defendants

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Adv. Proceeding No. 10-50052

MEMORANDUM-DECISION AND ORDER

On July 12, 2010, Jerome Reid, *pro se* debtor in the pending chapter 13 proceeding (“Debtor”), and his wife, Regina F. Reid, (together “Plaintiffs”) commenced this adversary proceeding against Wells Fargo Home Mortgage, Inc. and Wells Fargo Bank, N.A. (together “Wells Fargo” or “Defendants”). Plaintiffs’ “Affidavit,” docketed on July 13, 2010, requests an immediate hearing on the relief requested for a “Stay of all foreclosure and eviction orders” and, ultimately, seeks an order to “vacate foreclosure and eviction.” Plaintiffs’ papers further allege “discrimination and retaliation” and “fraudulent and predatory lending tactics” by Defendants. Wells Fargo filed written opposition to the Plaintiffs’ motion (Document No. 7). The court scheduled and held a hearing on the Motion on shortened notice on July 27, 2010.

At the hearing, Plaintiffs appeared, as did the chapter 13 trustee, Mark Swimelar, by and through his counsel, Lynn Harper Wilson, Esq. On the record of the hearing, the court

summarized Mr. Reid’s history of previous bankruptcy filings and litigation in the state and federal courts pertaining to the underlying real property located at 634 West Brighton Avenue, Syracuse, New York (“Property”), which is where Debtor has resided since 1997. For ease of reference, a timeline that summarizes the history of those proceedings is affixed as an appendix to this order.<sup>1</sup>

On March 18, 2010, this court granted Wells Fargo relief from stay to proceed with eviction proceedings as to the Property, which had previously been the subject of a state court Judgment of Foreclosure and Sale and had been purchased at auction by Wells Fargo. The order was made effective April 16, 2010, “to permit Debtor time to quit the Property and relocate with his dependants.” Instead of timely filing an appeal of the March 18, 2010 order, Mr. Reid commenced a civil action in the United States District Court for the Northern District of New York on April 15, 2010, that, similar to the present action, sought to “vacate the judgment of foreclosure” and “stay the eviction.”<sup>2</sup> After carefully weighing the standard for granting injunctive relief in the Second Circuit as enunciated in *D.D. Ex Rel. V.D. v. New York City Bd. Of Educ.*, 465 F.3d 503, 510 (2d Cir. 2006) and considering application of the *Rooker-Feldman* doctrine,<sup>3</sup> United States District Judge David N. Hurd in his Memorandum Decision and Order entered May 6, 2010, dismissed the Debtor’s complaint with prejudice. Debtor appealed the decision to the Second Circuit, but since Debtor failed to timely comply with the Second

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<sup>1</sup> The appendix is also affixed to a separate order that the court is entering this date in the main case, Case No. 09-BK-33035, which dismisses Mr. Reid’s pending chapter 13 proceeding, his third bankruptcy proceeding filed in this court.

<sup>2</sup> In comparing the Debtor’s allegations made before the United States District Court for the Northern District of New York in *Reid v. Wells Fargo Home Mortgage, Inc.*, No. 5:10-CV-449, Doc. No. 1, with the allegations made in this case, three of the five numbered paragraphs in this case (No. 10-AP-50052, Doc. No. 3 at ¶¶ 2, 3 and 4) are identical to the allegations made before the district court (No. 5:10-CV-449, Doc. No. 1 at ¶¶ 18, 19 and 24).

<sup>3</sup> The *Rooker-Feldman* doctrine, aptly named for the United States Supreme Court precedent which defined its parameters, precludes lower federal courts from exercising appellate jurisdiction over final state court judgments. See *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 483 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 415-16 (1923). *Rooker-Feldman* applies to “cases brought by state-court losers complaining of injuries caused by state-court judgments . . . and inviting district court review and rejection of those judgments.” *Exxon Mobil*, 544 U.S. at 284.

Circuit's June 22, 2010 order, the appeal was dismissed effective July 13.<sup>4</sup> Instead of timely pursuing the appeal, on July 12, 2010, the Debtor commenced this adversary proceeding,<sup>5</sup> consonant with Judge Hurd's astute observation:

Plaintiff has made the same claims regarding this property countless times from 2004 until the present. He has been turned down at every level, and instead of properly appealing decisions, he continues to simply file new cases, couching the facts and legal arguments in slightly different terms in an effort to get a different court to reverse the judgment of foreclosure and prevent the eventual eviction.<sup>6</sup>

As stated at the hearing, this court finds that the doctrine of *res judicata* precludes Plaintiffs from bringing the present action. *Res judicata* precludes relitigation of issues that were or could have been raised in a prior action when there has been a final judgment on the merits. *Allen v. McCurry*, 449 U.S. 90, 94 (1980). *Res judicata* applies where: "(1) the previous action involved an adjudication on the merits;<sup>7</sup> (2) the previous action involved the parties or those in privity with them; and (3) the claims asserted in the subsequent action were, or could have been, raised in the prior action." *Pike v. Freeman*, 266 F.3d 78, 91 (2d Cir. 2001).

The court finds that all three elements of the doctrine are satisfied. As previously discussed, Mr. Reid commenced an action in the District Court against Wells Fargo on April 15, 2010. The claims asserted in this adversary proceeding, namely that there were defects in the foreclosure and eviction proceedings, are a subset of the claims that were before Judge Hurd. On May 6, 2010, the District Court issued a Memorandum Decision and Order denying injunctive

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<sup>4</sup> *Reid v. Wells Fargo Home Mortgage, Inc.*, No. 5:10-CV-2435, (2d Cir. filed June 18, 2010) Doc. No. 5. The court notes that after the deadline of July 13 passed, Mr. Reid filed a motion on July 19, 2010 to proceed *in forma pauperis*. To the extent that the Second Circuit's June 22, 2010 order is not determined to be a final disposition of the appeal of Judge Hurd's decision, any further proceedings regarding the decision would properly be before the Circuit and not before this court.

<sup>5</sup> The Debtor also commenced a civil action in the District Court of Maryland which although styled as a "whistleblower's complaint" seeks identical relief with respect to a stay of eviction from the Property. See *Reid v. Wells Fargo Home Mortgage*, No. 1:10-CV-1853 (D. Md. filed July 8, 2010).

<sup>6</sup> *Reid v. Wells Fargo Home Mortgage, Inc.*, No. 5:10-CV-449 (N.D.N.Y. filed April 15, 2010) Doc. No. 9.

<sup>7</sup> In the event that the appeal is still considered pending, its pendency does not affect the preclusive effect of the judgment. *DiSorbo v. Hoy*, 343 F.3d 172, 183 (2d Cir. 2003); See also *Antonious v. Muhammad*, 873 F.Supp. 817, 824 (S.D.N.Y. 1995).

relief and dismissing the complaint with prejudice. Mr. Reid's appeal was dismissed effective July 13, 2010. As such, *res judicata* precludes relitigation of the issues framed in the present complaint before the court.

Although this court never reaches the underlying issues, it would similarly find that the standard for granting injunctive relief has not been met by Plaintiffs and that the *Rooker-Feldman* doctrine precludes this court from reopening the final judgment of the state court.

Accordingly, for the foregoing reasons, the court denies the request for an injunction and shall dismiss Plaintiffs' complaint with prejudice. A separate judgment shall be entered in accordance with Federal Rule of Civil Procedure 58(a), as incorporated by Federal Rule of Bankruptcy Procedure 7058.

So Ordered.

Dated: August 2, 2010  
Syracuse, New York

/s/ Hon. Margaret Cangilos-Ruiz  
Hon. Margaret Cangilos-Ruiz  
U.S. Bankruptcy Judge

**APPENDIX**

<b>Year</b>	<b>Month and Day</b>	<b>Event</b>
1997	June 9	Jerome Reid (“Debtor”) executes note and mortgage in favor of Island Mortgage Network for real property located at 634 W. Brighton Ave., Syracuse, New York (“Property”), which was later assigned to Wells Fargo.
2003	October 1	Debtor defaults under note and mortgage.
2004	March 5	Wells Fargo commences foreclosure action.
	July 27	Judgment of Foreclosure and Sale entered by New York State Supreme Court, Onondaga County.
	August 20	Debtor files chapter 13 bankruptcy petition in United States Bankruptcy Court for the Northern District of New York (case number 04-BK-65984) (“First Case”).
	December 8	Wells Fargo files Motion for Relief from Automatic Stay with Respect to Property in First Case.
2005	February 18	Conditional Order Terminating Automatic Stay with Respect to Property in First Case. (SDG) <sup>1</sup>
	March 7	Chapter 13 Trustee files Default Motion to Dismiss First Case.
	April 5	Conditional Order Dismissing First Case. (SDG)
	May 18	Order Dismissing First Case. (SDG)
	May 25	Debtor files Motion to Vacate Order of Dismissal entered May 18, 2005 and Reinstate Automatic Stay with Respect to Property in First Case.
	July 1	Order Conditionally Vacating Order of Dismissal entered May 18, 2005 and Reinstating Automatic Stay with Respect to Property in First Case. (SDG)
	July 13	Amended Order Conditionally Vacating Order of Dismissal entered May 18, 2005 and Reinstating Automatic Stay with Respect to Property in First Case. (SDG)
	September 2	Order of Dismissing First Case. (SDG)
	September 15	Debtor files Motion to Vacate Order of Dismissal entered September 2, 2005 and Reinstate Automatic Stay with Respect to Property in First Case.
	September 28	Order Vacating Order of Dismissal entered September 2, 2005. (SDG)
	October 5	Order Terminating Automatic Stay with Respect to Property in First Case. (SDG)
	October 28	Chapter 13 Trustee files Default Motion to Dismiss First Case.
	November 17	Debtor files Motion to Reinstate Automatic Stay with Respect to Property in First Case.
	November 29	Interim Conditional Order Dismissing First Case. (SDG)
	December 9	Order Dismissing First Case. (SDG)

<sup>1</sup> “SDG” refers to former Chief United States Bankruptcy Judge Stephen D. Gerling, who presided over the Debtor’s First Case and Second Case through date of transfer to Syracuse Division.

2006	February 22	Debtor files chapter 13 bankruptcy petition in United States Bankruptcy Court for the Northern District of New York (case number 06-BK-60206; assigned case number 06-BK-33795 when transferred to Syracuse division) (“Second Case”).
	March 31	Chapter 13 Trustee files Default Motion to Dismiss Second Case.
	April 10	Order Confirming Termination of Automatic Stay as of March 22, 2006 with respect to Property in Second Case. (SDG)
	June 21	Debtor files Motion to Vacate Order entered April 10, 2006 and Reinstate Automatic Stay with Respect to Property in Second Case.
	July 25	Order Vacating Order entered April 10, 2006 and Extending Automatic Stay with Respect to Property for Duration of Second Case. (SDG)
	August 2	Conditional Order of Dismissing Second Case. (SDG)
	September 25	Wells Fargo files Motion for Relief from Automatic Stay with Respect to Property in Second Case.
	October 26	Order Dismissing Second Case. (SDG)
	November 16	Debtor files Motion to Vacate Order of Dismissal entered October 26, 2006 and Reinstate Automatic Stay with Respect to Property in Second Case.
2007	March 7	Order Vacating Order of Dismissal entered October 26, 2006 and Reinstating Automatic Stay with Respect to Property in Second Case. (SDG)
	April 3	Amended Order Vacating Order of Dismissal entered October 26, 2006 and Reinstating Automatic Stay with Respect to Property in Second Case. (SDG)
	July 7	Wells Fargo files Motion for Relief from Automatic Stay with Respect to Property in Second Case.
	December 28	Conditional Order Terminating Automatic Stay with Respect to Property in Second Case. (MCR) <sup>2</sup>
2008	March 26	Wells Fargo files Ex-Parte Application for Relief from Automatic Stay with Respect to Property in Second Case.
	May 27	Ex-Parte Order Terminating Automatic Stay with Respect to Property in Second Case. (MCR)
	June 13	Chapter 13 Trustee files Default Motion to Dismiss Second Case.
	July 21	Order Dismissing Second Case. (MCR)
	August 12	Debtor files Motion to Vacate Order of Dismissal entered July 21, 2008 and Reinstate Automatic Stay with Respect to Property in Second Case.
	August 18	Order Confirming Dismissal of Second Case and Enjoining Debtor from Refiling Under Any Chapter of the Bankruptcy Code for 180 Days. (MCR)
	August 20	Amended Order Confirming Dismissal of Second Case and Enjoining Debtor from Refiling Under Any Chapter of the Bankruptcy Code for 180 Days. (MCR)
	November 18	Foreclosure auction (Wells Fargo purchases Property).

<sup>2</sup> “MCR” refers to United States Bankruptcy Judge Margaret Cangilos-Ruiz.

	December 1	Wells Fargo serves Notice to Quit Premises After Sale.
	December 12	Wells Fargo files Motion for Writ of Assistance in New York State Supreme Court, Onondaga County.
2009	January 1	Debtor files Notice of Appeal of Judgment of Foreclosure and Sale in New York State Supreme Court, Onondaga County (Wells Fargo contends appeal not properly perfected).
	August 20	Order Granting Writ of Assistance entered by New York State Supreme Court, Onondaga County.
	October 27	Debtor unsuccessfully attempts to file adversary proceeding in Second Case as Wells Fargo waits for “lock out” date.
	October 30	Debtor files chapter 13 bankruptcy petition in United States Bankruptcy Court for the Northern District of New York (case number 09-BK-33035) (“Third Case”).
	December 16	Wells Fargo files Motion for Relief from Automatic Stay with Respect to Property in Third Case.
2010	February 9	Order Directing Wells Fargo to Submit Further Documentation in Support of its Motion for Relief from Automatic Stay with Respect to Property in Third Case. (MCR)
	February 18	Wells Fargo files further documentation in support of its Motion for Relief from Automatic Stay, which demonstrates its ownership interest in Property.
	March 18	Order Terminating Automatic Stay with Respect to Property in Third Case Effective April 16, 2010. (MCR)
	April 6	Debtor files Motion to Extend Time to File Notice of Appeal and Reinstate Automatic Stay with Respect to Property Pending Appeal.
	April 7	Order Denying Extension of Time to File Notice of Appeal. (MCR)
	April 15	Debtor commences civil action in United States District Court for the Northern District of New York (case number 5:10-CV-449) (“NDNY Action”).
	May 6	Memorandum Decision and Order Denying Debtor’s Request to Proceed <i>In Forma Pauperis</i> , Denying Injunctive Relief and Dismissing NDNY Action with Prejudice. (DNH) <sup>3</sup>
	May 25	Chapter 13 Trustee files Default Motion to Dismiss Third Case.
	June 18	Debtor files appeal of Order entered May 6, 2010 in United States Court of Appeals for the Second Circuit (case number 5:10-CV-2435) (“Appeal”).
	June 22	Order Dismissing Appeal (effective July 13, 2010 unless Debtor Pays Filing Fee or Moves to Proceed <i>In Forma Pauperis</i> by July 13, 2010). (2d Cir.)
	June 28	Debtor receives notice of eviction.
	June 30	Order Denying Debtor’s Request for Stay Pending Appeal in NDNY Action. (DNH)
	June 30	Debtor files Request to Stay Eviction Proceedings in Third Case.

<sup>3</sup> “DNH” refers to United States District Judge David N. Hurd.

	June 30	Order Denying Debtor's Request to Stay Eviction Proceedings in Third Case. (MCR)
	July 8	Debtor commences civil action in United States District Court for the District of Maryland (case number 1:10-CV-01853).
	July 12	Debtor commences adversary proceeding in Third Case (case number 10-AP-50052).
	July 13	Appeal Dismissed per Order entered June 22, 2010. (2d Cir.)
	July 19	Debtor files untimely Motion to Proceed <i>In Forma Pauperis</i> in United States Court of Appeals for the Second Circuit.