

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Pola Michaels	:	
	:	CIVIL ACTION
	:	
v.	:	NO. 04-CV-4398
	:	
	:	
Pimlico Realty Company,	:	
Eastern Bank, Scott A. Dietterick,	:	
Fountain Pointe Condo Ass.,	:	
Fountain Pointe President and Vice	:	
President	:	

MEMORANDUM & ORDER

SURRICK, J.

November 1, 2004

Presently before the Court is Defendants Pimlico Realty Co., Eastern Savings Bank and Scott A. Dietterick, Esquire’s Motion to Dismiss (Doc. No. 5) Plaintiff Pola Michael’s Complaint (Doc. No. 1). For the following reasons, Defendant’s Motion will be GRANTED.

I. Factual and Procedural History

On or about September 17, Plaintiff commenced the instant matter against Defendants by filing a Complaint “for damages and the cost of 3 properties in the Federal Court.” (Doc. No. 1 at 1.) Plaintiff, who is acting *pro se* accuses Defendants of filing a forged court order with the City of Philadelphia. (*Id.* at 2.) She alleges that Defendants forged a Traffic Court Judge’s signature on a court order to satisfy a municipal lien on the property located at 9200 Blue Grass Road, Unit 86, Philadelphia, PA 19114 (hereinafter “Real Property”) (*Id.* at 1.)¹ Plaintiff’s

¹Evidently, it was Plaintiff herself who committed forgery. Plaintiff entered a plea of nolo contendere and was found guilty of forgery in the Court of Common Pleas of Philadelphia

Complaint further alleges that Eastern Savings Bank, as foreclosing mortgagee of the Real Property did not properly notify Plaintiff of the state court foreclosure and ejectment proceedings and that Defendants attempted improperly to take possession of the Real Property. (Doc. No. 1 at 2.) In response, Defendants filed a Motion to Dismiss or Motion for a More Definite Statement, arguing that we do not have subject matter jurisdiction in the instant matter, that Plaintiff has failed to state a claim, and that Plaintiff has not submitted a coherent Complaint. (Doc. No. 5 at 2.)

On or about August, 1999, Defendant Eastern Savings Bank commenced foreclosure proceedings on the Real Property in the Philadelphia Court of Common Pleas (Docket Number 99-08-1780) (hereinafter “Foreclosure Action”). Plaintiff was served as owner of the Real Property with a copy of Defendant Eastern’s Complaint in Mortgage Foreclosure pursuant to an Order by the Court of Common Pleas of Philadelphia County and with a Notice of Sheriff Sale of the Real Property. (Doc. No. 5 Exs. B, C.) Pimlico was the successful bidder at the Sheriff Sale on August 6, 2002 and the Real Property was conveyed to Pimlico. (*Id.* Ex. D.) Although Pimlico owned the Real Property, Plaintiff continued to maintain possession of the property. Defendant Dieterick notified Plaintiff to vacate the Real Property by September 9, 2002. (*Id.* Ex. E.) Pimlico then filed a Complaint in Ejectment in the Philadelphia Court of Common Pleas (Docket Number 02-09-2761) (hereinafter “Ejectment Action”). Pimlico obtained a Court Order to serve Plaintiff the Complaint in Ejectment because Plaintiff had evaded Pimlico’s attempts at service. (Doc. No. 5, Ex. F.) A Writ of Possession of the Real Property was issued in favor of

County on July 30, 2004. She is presently serving a prison sentence of not less than one year nor more than two years and has been permitted to participate in the Work Release Program. (Doc. No. 5 Ex. A.)

Pimlico on May 6, 2003, and served by the Sheriff on May 14, 2003. (*Id.* Ex. G.) Plaintiff then filed a Petition to Stay Writ of Possession and later withdrew the Petition with prejudice. (*Id.* Ex. H.) Plaintiff also filed four bankruptcy actions in the Eastern District of Pennsylvania. The Bankruptcy Court dismissed all four actions. (Docket Nos. 00-14299, 03-31723, 01-19832, 02-13535.)² Plaintiff then filed a second Petition to Stay Writ of Possession in state court on January 14, 2004 which was denied. (*Id.* Ex. J.) By Order dated June 13, 2004, the Court permitted Pimlico to reschedule the eviction. (*Id.*) Plaintiff now approaches this Court requesting an injunction to stay the eviction proceedings. (Doc. No. 1 at 1.)

II. Legal Standard

When considering a Rule 12(b)(6) motion to dismiss, we must “accept as true all of the allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the non-moving party.” *Rocks v. City of Philadelphia*, 868 F.2d 644,645 (3d Cir. 1989). The court may dismiss a complaint only if “it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229, 249 (1989) (quoting *Hishon v. King & Spalding*, 467 U.S. 69 (1984)); *see also Markowitz v. Northeast Land Co.*, 906 F.2d 100, 103 (3d Cir. 1990) (“Dismissal under Rule 12(b)(6) . . . is limited to those instances where it is certain that no relief could be granted under any set of facts that could be proved.”). When considering a motion to dismiss, we need not credit a plaintiff’s “bald assertions” or “legal conclusions.” *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 906 (3d Cir. 1997).

The Court dismissed the fourth bankruptcy with prejudice and barred Plaintiff from filing another bankruptcy petition without leave of court on October 31, 2003. (Doc. No. 5, Ex. I.)

“In determining whether a claim should be dismissed,” a court generally “looks only to the facts alleged in the complaint and its attachment without reference to other parts of the record.” *Jordan v. Fox, Fothschild, O’Brien & Frankel*, 20 F.3d 1250, 1261 (3d. Cir.1994). The Third Circuit has recognized, however, that “a document integral to or explicitly relied upon in the complaint may be considered without converting the motion to dismiss into one for summary judgment.” *Angstadt v. Midd-West Sch. Dist.*, 377 F.3d 338, 342 (3d Cir. 2004) (quoting *U.S. Express Lines Ltd. v. Higgins*, 281 F.3d 383, 388 (3d. Cir. 2002)). Additionally, “a court may consider an undisputedly authentic document that a defendant attaches as an exhibit to a motion to dismiss if the plaintiff’s claims are based on the document.” *Pension Benefit Guar. Corp. v. White Consol. Indus.*, 998 F.2d 1182, 1196 (3d Cir. 1993). Because the orders of the prior state court litigation are integral to Plaintiffs’ claims in this case, we will consider these documents in evaluating Defendant’s Motion to dismiss.

III. Discussion

A. Jurisdiction

Plaintiff’s Complaint fails to plead a statement of the grounds upon which the district court has jurisdiction over this matter, as required by F.R.C.P. 8(a). Under Rule 12(b)(1), a court must grant a motion to dismiss if the court lacks subject matter jurisdiction. *ATE Kays Co. v. Pa. Convention Ctr. Auth.*, No. 00-3694, 2000 U.S. Dist. LEXIS 17226, at *4 (E.D. Pa. Nov. 23, 2000). District courts have subject matter jurisdiction over all civil actions (1) arising under the United States Constitution, laws, or treaties of the United States or (2) between citizens of different states where the matter in controversy exceeds \$75,000. 28 U.S.C. §§ 1332-1333 (2000). Federal question jurisdiction exists where it appears from the complaint that the

plaintiff's claim arises under the Constitution, laws or treaties of the United States. *Id.*

Diversity jurisdiction is not available when any plaintiff is a citizen of the same state as any defendant. 28 U.S.C. § 1332(a); *Owen Equip. & Erection Co. v. Kroger*, 437 U.S. 365, 374 (1978). Plaintiff's Complaint does not raise any federal questions. In addition, the Complaint does not indicate that we have diversity jurisdiction. In a Response to Defendants' Motion to Dismiss Plaintiff states that she is a citizen of Florida.³ (Doc. No. 10 at unnumbered 1.) While Federal Rule of Civil Procedure 8(a) requires Plaintiff to include the basis of jurisdiction in her Complaint, we must take into account Plaintiff's *pro se* status. The Supreme Court has explained that allegations by pro se petitioners, "however inartfully pleaded," are held "to less stringent standards than formal pleadings drafted by lawyers." *Haines v. Kerner*, 404 U.S. 519, 520 (1972). Under these circumstances, we would normally examine diversity jurisdiction in depth. However, in this instance, we need not dwell on this issue because it is clear that Plaintiff's Complaint must be dismissed on the grounds of res judicata and based on the Rooker-Feldman Doctrine.⁴

B. Res Judicata

Defendants argue that the doctrine of res judicata precludes the filing of the instant

³Plaintiff's Complaint also does not mention the amount in controversy.

⁴We note that Plaintiff states that she is a citizen of Florida. However, she is currently serving her sentence in Pennsylvania, provided a Philadelphia address on her Complaint and all correspondence with this Court, provided a Philadelphia address when she was sentenced in state court in July, 2004, and provided a Philadelphia address for all four filings in bankruptcy court dating back to April, 2000. In her Complaint, Plaintiff points out that Eastern Savings Bank "was to notify me at my last known address . . . 9573 A James St. Philadelphia, PA 19114." (Doc. No. 1 at unnumbered 2.) Moreover, the Real Property in question in the instant case is in Philadelphia. It seems apparent that Plaintiff's connections to Florida are tenuous at best and that this Court lacks diversity jurisdiction.

matter. Res judicata, also known as claim preclusion, “is a doctrine by which a former adjudication bars a later action on all or part of the claim which was the subject of the first action.” *R/S Fin. Corp. v. Kovalchick*, 552 Pa. 584, 716 A.2d 1228, 1230 (Pa. 1998) (quoting *Balent v. City of Wilkes-Barre*, 542 Pa. 555, 669, A.2d 309, 313 (Pa. Super. Ct. 1995)). “Res judicata applies not only to claims actually litigated, but also to claims which could have been litigated during the first proceedings if they were part of the same action.” *Id.* (quoting *Balent*, 669 A.2d at 313); *see also* 18 James Wm. Moore et al., *Moore’s Federal Practice* ¶ 131.10 (3d ed. 2000) (“A claim, for purposes of claim preclusion, includes not only those matters actually addressed by prior judgment, but those matters which could have been raised in that action Thus, matters that arise from the same facts, occurrence, or transactions that were the basis of a prior action may be within the scope of claim preclusion by that action.”).

“The preclusive effect of a state court judgment in a subsequent federal lawsuit generally is determined by the full faith and credit statute, which provides that state judicial proceedings ‘shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in the courts of such State . . . from which they are taken.’” *Marrese v. Am. Acad. Of Orthopaedic Surgeons*, 470 U.S. 373, 380 (1985) (quoting 28 U.S.C. § 1738 (2000)). Because the prior litigation occurred in the Pennsylvania state courts, we will apply Pennsylvania law to determine whether res judicata precludes Plaintiff’s suit in this Court. *See, e.g., Urrutia v. Harrisburg County Police Dep’t*, 91 F.3d 451, 461 (3d Cir. 1996) (applying Pennsylvania’s res judicata standard); *Allegheny Int’l v. Allegheny Ludlum Steel Corp.*, 40 F.3d 1416, 1429 (ed. Cir. 1994) (same).

Under Pennsylvania law, res judicata applies when there is (1) identity of issues, (2)

identity of causes of action, (3) identity of persons and parties to the action, and (4) identity of the quality or capacity of the parties suing or being sued in the two cases. *In re Iulo*, 564 Pa. 205, 766 A.2d 335, 337 (Pa. 2001) (citing *Safeguard Mut. Ins. Co. v. Williams*, 463 Pa. 567 (Pa. 1975) *see also Allegheny Int'l*, 40 F.3d at 1429 (same). “Although consistent in demanding satisfaction of these four criteria, the [Pennsylvania] courts have avoided mere technical adherence to mechanical principles.” *Gregory v. Chehi*, 843 F. 2d 111, 116 (3d Cir. 1988). A claim that res judicata applies “will ‘not be defeated by minor differences in form, parties or allegations’ where the ‘controlling issues have been resolved in a prior proceeding in which the present parties had an opportunity to appear and assert their rights.’” *Jett v. Beech Interplex, Inc.*, 2004 U.S. Dist. LEXIS 13352, No. 02-9131 at *2 (E.D. Pa. July 15, 2004) (quoting *Helmig v. Rockwell Mfg. Co.*, 389 Pa. 21, 131 A.2d 622, 627 (Pa. 1957)).

1. Identity of Issues

The first factor, the identity of issues, requires that the “same occurrence underlies both suits.” *Gregory*, 843 F.2d at 116 (citing *Duquesne Slag Prods. Co. v. Lench*, 490 Pa. 102, (1980)). In this case, Plaintiff is seeking an injunction to prevent her eviction from the property at 9200 Blue Grass Road. She sought identical relief involving the same property in the Philadelphia County Court of Common Pleas. On June 3, 2004, that court issued an Order stating that “upon consideration of Petitioner Pola Michaels’ Petition for Special Relief to Stay Writ of Possession and Petition to Open Judgment and Pimilco’s Realty, Inc.’s Answer thereto and Defendant Pola Michael’s Supplemental Memorandums and Pimlico Realty, Inc.’s Replies thereto, it is hereby ORDERED, ADJUDGED AND DECREED that Pimlico Realty, Inc. is permitted to reschedule the eviction for property known as Unit E-86, 9200 Bluegrass Road, Philadelphia, Pennsylvania

19114.” (Doc. No. 5, Ex. J.) The state court Order focuses on the identical issues raised by Plaintiff in the instant matter, the eviction from the Real Property.

2. Identity of Causes of Action

The second element does not require the claims to be identical, but rather, “identity of causes of action exist when, in both the prior and subsequent proceedings the subject matter and the ultimate issues are the same” *Jett*, 2004 U.S. Dist LEXIS 13352 at *3 (quoting *Patel v. Workmen’s Comp. Appeal Bd.*, 88 Pa. Commw. 76 (Pa. Commonw. Ct. 1985)). In the instant case, however, the cause of action is identical. Plaintiff is seeking a stay of her eviction from the Real Property just as she did in state court. (Doc. No. 5 Ex. J.)

3. Identity of the Parties

The third factor, whether there is “identity of the parties,” exists under Pennsylvania law when parties involved in the prior action are in privity with parties in the current litigation. *See Day v. Volkswagenwerk Aktiengesellschaft*, 318 Pa. Super. 225 (Pa. Super. Ct. 1983) (“The doctrine of res judicata applies to and is binding not only on actual parties to the litigation, but also to those who are in privity with them. A final judgment upon the merits by a court of competent jurisdiction bars any future suit between the same parties or their privies on the same cause of action.”) (quoting *Stevenson v. Silverman*, 417 Pa. 187 (Pa. 1965)). In the instant case, the Parties involved are identical to the parties involved in state court. Accordingly, this factor is also satisfied.

4. Identity of Capacity of the Parties

The final factor is whether the parties in the two actions are suing, or being sued, in the same capacity. In the instant matter, Plaintiff is suing Defendants in their same capacities as in

the state court proceedings.

C. *Rooker-Feldman*

Although Defendants do not argue that Plaintiff's claims are barred under the *Rooker-Feldman* doctrine, we will nevertheless discuss the application of *Rooker-Feldman* to this matter. The *Rooker-Feldman* doctrine, developed through two Supreme Court cases decided nearly sixty years apart, *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983), precludes litigants from using the lower federal courts to appeal unfavorable decisions from the state court system. *See Gulla v. N. Strabane Twp.*, 146 F.3d 168, 171 (3d Cir. 1998) ("State court litigants who have appealed an adverse judgment through the state system may seek review [only] in the United State Supreme Court; the lower federal courts may not sit in direct review of the decisions of a state tribunal.") The basis for the *Rooker-Feldman* doctrine lies in 28 U.S.C. § 1257, which states that "'final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court'" *Valenti v. Mitchell*, 962 F.2d 288, 296 (3d Cir. 1992) (quoting 28 U.S.C. § 1257 (2000)). Because Congress "has never conferred a similar power of review on the United States District Courts, the Supreme Court has inferred that Congress did not empower the District Courts to review state court decisions." *Desi's Pizza, Inc. v. City of Wilkes-Barre*, 321 F.3d 411, 419 (3d Cir. 2003). Consequently, "to ensure that Congress's intent to prevent the lower federal courts from sitting in direct review of the decisions of a state tribunal is given effect, the *Rooker-Feldman* doctrine prohibits district courts from adjudicating actions in which the relief requested determining whether the state court's decision is wrong or voiding the state court's ruling." *Id.* (citation and internal quotations omitted).

The *Rooker-Feldman* doctrine prevents a district court from reviewing a claim in two circumstances. First, a lower federal court is barred from review claims that were “actually litigated” in state court. *Id.* Second, the court may not consider a claim that is “inextricably intertwined” with the prior state court action. *Id.* If the state court claims were either “actually litigated” or are “inextricably intertwined” with the current federal action, a district court lacks jurisdiction over the federal claims, even if they were not previously raised in state court. *Parkview Assocs. v. P’ship v. City of Lebanon*, 225 F.3d 321, 327 (3d Cir. 2000); *see also* Adam McLain, Note, The Rooker-Feldman Doctrine: Toward a Workable Role, 149 U. Pa. L. Rev. 1555, 1581 (2001) (“*Rooker-Feldman*, unlike *res judicata*, is a jurisdictional doctrine rather than an affirmative defense.”).

In the instant case, Defendant Pimlico filed a Complaint in Ejectment in the Philadelphia Court of Common Pleas (Docket No. 02-09-2761) after Plaintiff refuse to vacate the Real Property and obtained an Order of Court granting special service of the Complaint. (Doc. No. 5, Ex. F.) The Court issued a Writ of Possession of the Real Property in favor of Defendant Pimlico on May 6, 2003, which was served by the Sheriff on May 14, 2003. (*Id.* Ex. G.) Plaintiff then filed a second Petition to Stay Writ of Possession in state court on January 14, 2004, which was denied, and Defendant Pimlico was permitted to reschedule eviction pursuant to Order of Court dated June 3, 2004. (*Id.* Ex. J.) Defendants correctly state that if Plaintiff had any further objections to either the Foreclosure Action or the Ejectment Action, she should have raised them in state court while the Foreclosure Action and Ejectment Action were pending.

We conclude that Plaintiff’s state court action satisfies the requirements of the Rooker-Feldman Doctrine. Her claims were “actually litigated” in state court and the instant matter is

“inextricably intertwined” with the state court matter. In both cases, Plaintiff seeks to stop eviction proceedings. The Court of Common Pleas of Philadelphia County has spoken on this matter. It is not for this Court to second-guess the Philadelphia Court of Common Pleas. Based upon *Rooker-Feldman*, Plaintiff cannot seek review of the state court’s decision in this Court.

D. Conclusion

Based upon the foregoing, Defendants’ Motion to Dismiss will be granted and Plaintiff’s Complaint (Doc. No. 5) and Plaintiff’s request for an Injunction To Stop All Eviction & Sale Proceedings (Doc. No. 7) will be dismissed.

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FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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v.	:	NO. 04-CV-4398
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Pimlico Realty Company,	:	
Eastern Bank, Scott A. Dietterick,	:	
Fountain Pointe Condo Ass.,	:	
Fountain Pointe President and Vice	:	
President,	:	

ORDER

AND NOW, this 1st day of November, 2004, upon consideration of Defendants Pimlico Realty Co., Eastern Savings Bank, and Scott A. Dietterick, Esquire's Motion to Dismiss Plaintiff Pola Michaels' Complaint (Doc. No. 5, No. 04-cv-04398), it is ORDERED that the Motion is GRANTED and Plaintiff's Complaint and request for an INJUNCTION TO STOP ALL EVICTION & SALE PROCEEDINGS (Doc. No. 7) are DISMISSED.

BY THE COURT:

R. Barclay Surrick, Judge