2016 IL App (2d) 150753-U
No. 2-15-0753
Order filed May 31, 2016
Modified upon denial of rehearing September 6, 2016.



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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| FRANCESCA I. MONTANEZ,<br><br>Plaintiff-Appellant,<br><br>v.<br><br>CASS WOLFENBERGER, VISIONLOAN d/b/a Vision Mortgage Group, and NORTHWEST BANK OF ROCKFORD,<br><br>Defendants-Appellees. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | Appeal from the Circuit Court of Winnebago County.<br><br>No. 15-L-4<br><br>Honorable J. Edward Prochaska, Judge, Presiding. |

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JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Jorgensen concurred in the judgment.

**ORDER**

¶ 1 *Held*: The trial court properly dismissed plaintiff's complaint as barred by *res judicata* given plaintiff's prior identical and unsuccessful suit against the same defendants in federal court.

¶ 2 Plaintiff, Francesca I. Montanez, appeals from the trial court's order dismissing her complaint against defendants—Visionloan (Vision), company president Cass Wolfenberger, and Northwest Bank of Rockford (Northwest). The trial court dismissed the complaint based on *res*

*judicata* because Montanez had previously brought the same suit against the same defendants (and others) in federal court, without success.

¶ 3 Both suits have the same set of operative facts. In March 2007, Montanez purchased a home with a mortgage originated by Vision. In 2008, she refinanced with Countrywide, which later became a subsidiary of Bank of America. In 2012, Bank of America began foreclosure proceedings in state court. Three days after Bank of America filed its foreclosure action however, Montanez filed suit in the United States District Court for the Northern District of Illinois against Vision, Northwest, Wolfenberger, and Tim Hill (an employee of Vision). Eventually, Montanez brought an amended complaint against those defendants and nine others including Bank of America, State Farm Insurance Company, three Bank of America subsidiaries, and four individuals who were employed by either Vision or a Bank of America subsidiary. The gist of the complaint was that defendants engaged in predatory lending practices in connection with a mortgage on Montanez's home; that defendants steered Montanez to a loan at a higher interest rate than she would otherwise have been eligible for, charged her excessive fees, and arranged for the home to be appraised at an inflated value. Montanez asserted claims under federal law, including a violation of the Racketeer Influenced and Corrupt Organizations Act (RICO) (18 U.S.C. § 1962), and various common-law fraud claims under Illinois law.

¶ 4 Vision, Northwest, Wolfenberger, and Hill filed motions to dismiss; the nine additional defendants did not file motions to dismiss and there is some indication that they were not served. The district court (Judge Kapala) dismissed Montanez's suit in its entirety because Montanez's claims were brought too late. The district court noted that Montanez's RICO claim was subject to the longest limitations period of any of her claims (4 years), and had since expired. Although the district court did not cite 735 ILCS 5/13-202 (West 2012) specifically, by implication the district

court also found that Montanez's state-law claims fared no better than her RICO claim under Illinois' two-year statute of limitations. Further, the district court rejected Montanez's argument that the limitations period on her federal and state claims were equitably tolled on grounds of fraudulent concealment. With respect to Vision, Northwest, Wolfenberger, and Hill, the district court dismissed both Montanez's federal and state-law claims with prejudice. With respect to the nine additional defendants (who, again, did not file motions to dismiss), the district court dismissed Montanez's federal claims with prejudice and her state-law claims without prejudice. *Montanez v. Wolfenberger*, No. 12-C-50309 (N.D. Ill. Aug. 5, 2013).

¶ 5 Montanez appealed and the Seventh Circuit affirmed the dismissal in a *per curiam* order. *Montanez v. Wolfenberger*, 567 F. Appx. 461, 463 (7th Cir. 2014). Montanez then filed the present action in the Circuit Court of Winnebago County against Vision, Northwest, Wolfenberger, and Hill, though later she voluntarily dismissed Hill. The remaining defendants moved to dismiss under 735 ILCS 5/2-619(a)(4) (West 2014) on the ground that the present action was barred by the prior federal action under *res judicata*. The trial court agreed with the defendants and dismissed the case.

¶ 6 Montanez appeals and contends that the trial court erred by dismissing her complaint on *res judicata* grounds. The doctrine of *res judicata*, or estoppel by prior judgment, provides that a final judgment on the merits rendered by one court bars any relitigation in another court of the same issues between the same parties. *Rein v. David A. Noyes & Co.*, 172 Ill. 2d 325, 334 (1996). Montanez initially contends that the district court's dismissal of her complaint was on limitations grounds and thus not "on the merits." The problem with that argument is that it conflates a ruling "on the merits" with a trial on the merits. The statute of limitations is an integral part of a lawsuit however. Thus, an involuntary dismissal premised on the expiration of the limitations period *is* a

dismissal "on the merits" and operates as a final judgment for *res judicata* purposes. *Rein*, 172 Ill. 2d at 336; see also Ill. S. Ct. R. 273.

¶ 7 Next, Montanez disputes the district court's jurisdiction over her state-law claims. According to Montanez, once the trial court dismissed her federal claims against Vision, Northwest, and Wolfenberger, it "lost" supplemental jurisdiction under 28 U.S.C. § 1367 to adjudicate her Illinois claims against those defendants. This, too, is incorrect. As the Seventh Circuit has explained:

> "The general rule is that when as here the federal claim drops out before trial (here *way* before trial), the federal district court should relinquish jurisdiction over the supplemental claim. *** If, however, an interpretation of state law that knocks out the plaintiff's state claim is obviously correct, the federal judge should put the plaintiff out of his misery then and there, rather than burdening the state courts with a frivolous case. [Citation.] The district judge evidently thought that this case was within this 'no brainer' exception to the duty to relinquish federal jurisdiction over the supplemental claim when the main claim drops out before trial." *Van Harken v. City of Chicago*, 103 F.3d 1346, 1354 (7th Cir. 1997).

As in *Van Harken*, the district judge "thought that this case was within this 'no brainer' exception to the duty to relinquish federal jurisdiction over the supplemental claim when the main claim drops out before trial." *Id.* That was not improper; the act of applying Illinois' statute of limitations to Montanez's state-law claims was a simple and straightforward matter. Disposing of such claims under supplemental jurisdiction, "while not automatic, is a favored and normal course of action" (*Promisel v. First American Artificial Flowers, Inc.*, 943 F.2d 251, 254 (2d Cir. 1991)), which the district court unquestionably had the authority to undertake.

¶ 8 Next, Montanez contends that the district court *did* relinquish jurisdiction over her state-law claims. For that proposition, Montanez cites a portion of Seventh Circuit's order reciting the case's procedural history, which states, "Having dismissed [plaintiff's] federal claims with prejudice, the court relinquished jurisdiction over her remaining state-law claims." *Montanez*,

567 F. Appx. at 463. The statement however is erroneous; the district court's order clearly stated that Montanez's complaint—including the federal and state-law claims—was "dismissed *with prejudice* as against Wolfenberger, Vision, Northwest Bank, and Hill." (Emphasis added.) *Montanez*, No. 12-C-50309, slip order at 7. The statement Montanez quotes from the Seventh Circuit opinion did not modify the district court's order; it merely provided generic background information about the case, albeit incorrectly.

¶ 9 Montanez also argues that defense counsel committed fraud on the district court, which "vitiated" the court's subsequent actions. However, Montanez points to nothing remotely fraudulent to support her claim. She just recites facts that the district court obviously knew—*e.g.*, that the attorney representing Wolfenberger also represented Hill and that Hill raised the *same* defenses as Wolfenberger—and makes completely unsubstantiated allegations—e.g., that defense counsel "knew that Tim Hill was less than honest with judge [*sic*] Kapala [(the district court judge)] when he said he hadn't received any documents." Yet Montanez does not explain how she "knows" what defense counsel knew and, in any event, whether Hill "received *** documents" before entering his appearance in the case had nothing to do with the district court's ultimate decision to dismiss the action based on the expiration of the statute of limitations. It certainly did not "vitiate" the district court's final judgment dismissing the case—a proposition for which Montanez cites no relevant authority.

¶ 10 Finally, Montanez argues that the district court erred when it dismissed the state-law claims in her federal complaint. In her petition for rehearing, Montanez puts a finer point on the issue, asserting that we "missed the fact" the district court applied the "incorrect" statute of limitations—the two-year statute of limitations for personal-injury claims (735 ILCS 5/13-202 (West 2012)) as opposed to the five-year limit for "all civil actions not otherwise provided for"

(735 ILCS 5/13-205 (West 2012))—to her breach-of-fiduciary duty claim against her mortgage broker, Hill. We note that in Montanez's federal complaint made this allegation against all of the federal-court defendants, not just Hill, but the discrepancy is immaterial. Montanez's federal complaint contained no support for her assertion that any defendant, including Hill, owed her a fiduciary duty in the first place. See *Neade v. Portes*, 193 Ill. 2d 433, 444 (2000).[1] Given the lack of specificity in the complaint, the district court would have been well within its rights to conclude that Montanez's breach-of-fiduciary-duty claim was more in the vein of a personal injury claim, and therefore subject to the statute of limitations for personal injuries rather than the residual statute of limitations generally applicable to breach-of-fiduciary-duty claims. See *Pavlik v. Kornhaber*, 326 Ill. App. 3d 731, 748 (2001) (recharacterizing fraud claim as a personal injury claim thus subject to two-year statute of limitations) (citing Armstrong v. Guigler, 174 Ill. 2d 281, 286 (1996)).

¶ 11 More importantly though, whether the district court's decision was "[ ]correct" or not is irrelevant to our *res judicata* analysis. Illinois Supreme Court Rule 273 provides that "an involuntary dismissal of an action, other than a dismissal for lack of jurisdiction, for improper venue, or for failure to join an indispensable party, operates as an adjudication upon the merits." *Id*. Incorrectness is not an exception. Unless it has been overturned or modified by orderly processes of review, an order entered by a court of competent jurisdiction "must be [respected], even if it is erroneous." *People v. Nance*, 189 Ill. 2d 142, 145 (2000). The correctness of the

[1] There is a statute (which Montanez did not cite in her federal complaint) declaring that a mortgage broker is considered to have a fiduciary relationship to a borrower (see 205 ILCS 635/5-7(a) (West 2012)), but that statute did not take effect until June 1, 2008 (see P.A. 95-691, § 10), which was more than a year after Montanez closed on her initial loan.

district court's order was a question for the Seventh Circuit, not us. Accordingly, since Montanez's complaint in federal court was not dismissed for lack of jurisdiction, or for improper venue, or for the failure to join an indispensible party, under Rule 273, the district court's judgment precludes Montanez from attempting to litigate the same issues in a different judicial forum.

¶ 12 In sum, we determine that the trial court correctly dismissed Montanez's complaint on *res judicata* grounds. Therefore, we affirm the judgment of the circuit court of Winnebago County.

¶ 13 Affirmed.