

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SHERRY MCMAHON,

Plaintiff,

v.

WASHINGTON STATE BANK,

Defendant.

MEMORANDUM AND ORDER
05-C-122-S

Plaintiff Sherry McMahon commenced this action to rescind a mortgage she granted to defendant Washington State Bank for alleged violations of the Truth in Lending Act (TILA). Jurisdiction is based on 28 U.S.C. § 1331. The matter is presently before the Court on defendant's motions to dismiss for lack of subject matter jurisdiction and for summary judgment. The following facts are undisputed for purposes of the pending motions.

FACTS

On May 16, 2002 plaintiff executed a \$120,000 note and mortgage to defendant. At the time of the mortgage closing defendant provided certain disclosures to the plaintiff pursuant to the Truth in Lending Act. The disclosures were improper because they overstated the amount financed by \$142.76 and used the wrong model form for the "Notice of Right to Cancel."

Plaintiff defaulted on the note by failing to make her payment due December 1, 2003 and all payments due thereafter. On March 12, 2004 defendant filed a foreclosure action in the circuit court for

Polk County, Wisconsin. Plaintiff failed to answer the complaint and judgment of foreclosure was entered on April 16, 2004. Foreclosure sale was scheduled for October 21, 2004.

On September 20, 2004 plaintiff filed a petition in bankruptcy staying the foreclosure sale. On November 12, 2004 defendant moved for relief from the said stay which was granted on December 3, 2004 without objection from plaintiff.

In this action plaintiff seeks to rescind the mortgage foreclosed in state court based on the alleged disclosure improprieties pursuant to TILA. Principal among the remedies plaintiff seeks is the cancellation of the mortgage lien which was the subject of the state court foreclosure judgment.

MEMORANDUM

Defendant contends that plaintiff's complaint amounts to a challenge to the state court judgment and is therefore barred by the Rooker-Feldman doctrine. Alternatively, defendant argues that claim for rescission is untimely and factually unsupported. Plaintiff contends that Rooker-Feldman is inapplicable because her Truth in Lending claim is independent of the state court foreclosure.

Summary judgment is appropriate when, after both parties have the opportunity to submit evidence in support of their respective positions and the Court has reviewed such evidence in the light most favorable to the nonmovant, there remains no genuine issue of material fact and the moving party is entitled to judgment as a

matter of law. Rule 56(c), Fed. R. Civ. P. A fact is material only if it might affect the outcome of the suit under the governing law. A factual issue is genuine only if the evidence is such that a reasonable factfinder, applying the appropriate evidentiary standard of proof, could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 254 (1986). There being no relevant facts in dispute, the matter is subject to resolution on summary judgment.

The Court is obligated to first assesses defendant's challenge to its jurisdiction based on Rooker-Feldman. Long v. Shorebank Redevelopment Corp., 182 F.3d 548, 555 (7th Cir. 1999). The doctrine is premised on the fact that district courts are not empowered to exercise appellate jurisdiction over state court judgments. Exxon Mobil Corp. v. Saudi Basic Industries Corp., 125 S. Ct. 1517, 1521-22 (2005). The doctrine applies to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." Id. While there is no dispute that plaintiff was a loser in the state court foreclosure judgment, there remains the issue whether this action is properly characterized as an effort to obtain review and rejection of that judgment.

The TILA right of rescission and cancellation of the mortgage lien was not raised or addressed in the state court proceeding. However, a claim need not be argued in the state proceeding if the claim was "inextricably intertwined" with the state court judgment. Ritter v. Ross, 992 F.2d 750, 753 (7th Cir. 1993). An argument is inextricably intertwined when it could have been raised in the prior proceeding and when the injury of which plaintiff complains resulted from the state court judgment. Long 182 F.3d 548, 555. Plaintiff's claim meets this standard. The TILA claim could have been raised in the foreclosure action. Plaintiff's requested remedy, avoidance of the lien foreclosed in state court, reveals that the injury stems from the foreclosure and the essence of the claim is to overturn that state court judgment.

The only circuit court of appeals to address the precise issue has held that Rooker-Feldman bars a TILA claim which would overturn a mortgage foreclosure judgment. Crutchfield v. Countrywide Home Loans, 389 F.3d 1144 (10th Cir. 2004).

If [plaintiff] were to receive his requested relief, the district court would issue a declaratory judgment that he had validly rescinded the mortgage and this removed the lien on the property. Mr. Crutchfield is thus asking a federal court to do precisely what Rooker-Feldman prohibits: to undo the effects of the state court judgment.... Consequently, Mr. Crutchfield's request for a declaratory judgment is inextricably intertwined with the state court judgment.

Id. at 1148. The Court further held that the request to recover

mortgage payments, being dependent to the right to avoid the mortgage, was equally intertwined. Id. at n. 1. Finally, the Court rejected as irrelevant to its Rooker-Feldman analysis whether state law treats the TILA claim as a compulsory counterclaim. Id. at 1149 n. 2.

Crutchfield's analysis is persuasive and its facts indistinguishable from plaintiff's claims. Other district courts addressing the issue have reached the same result. Thompson v. Ameriquist Mortgage Co., 2003 WL 22012207 (N.D. Ill., August 21, 2003); Mercado v. Playa Realty Corp., 2005 WL 1594306 at *5 (E.D.N.Y., July 7, 2005). Plaintiff's claims are an effort to overturn the state court mortgage foreclosure by raising a claim which could have been resolved in the state court and which goes precisely to the validity of the lien foreclosed. Accordingly, the Court lacks jurisdiction over the claim pursuant to the Rooker-Feldman doctrine.

ORDER

IT IS ORDERED that defendant's motion to dismiss plaintiff's complaint for lack of subject matter jurisdiction is GRANTED.

IT IS FURTHER ORDERED judgment be entered dismissing plaintiff's complaint with prejudice and costs.

Entered this 13th day of July, 2005.

BY THE COURT:

/s/

JOHN C. SHABAZ
District Judge