UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

In re:

TAYLOR, BEAN & WHITAKER MORTGAGE CORPORATION, et al.,

Case No.: 3:09-bk-7047-JAF
Jointly Administered Under
Chapter 11

Debtors.
_____/

CASSANDRA BOYD-BEY,

Claimant,

v.

Contested Matter
Objection to Claim No. 1569

TAYLOR, BEAN & WHITAKER MORTGAGE CORPORATION,

Applicable Debtor.
_____/

ORDER GRANTING PLAN TRUSTEE'S MOTION FOR SUMMARY JUDGMENT OF DISALLOWANCE OF CLAIM NO. 1569

This case is before the Court on the Plan Trustee[1] Neil F. Luria's Motion for Summary Judgment for Disallowance of Claim No. 1569 (Doc. 4982, "Motion") and Claimant Cassandra Boyd-Bey's (the "Claimant") response in opposition thereto (Doc. 5133). For the reasons stated herein, the Motion (Doc. 4982) is granted.

I. BACKGROUND

On August 24, 2009, Taylor, Bean & Whitaker Mortgage Corporation ("TBW") filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532,

[1] On July 21, 2011, a plan of liquidation (the "Plan") was confirmed by the Court (Case No. 3:09-bk-7047-JAF [Doc. 3420]). The Plan provides for the establishment of a liquidating trust and the appointment of Plan Trustee, Neil F. Luria (the "Plan Trustee"), to administer the liquidating trust.

thereby commencing the instant case. On May 14, 2010, the Claimant filed a proof of claim (Claim No. 1569) in excess of $244 million against the estate of TBW. The basis for the claim is "civil injury/malicious mortgage note & willful injury." Attached to the claim is an incomplete copy of a promissory note the Claimant executed in favor of First Service Mortgage, Inc. ("First Service Mortgage") in the amount of $222,000.00. The Note was executed in relation to the Claimant's purchase of a home located at 3377 Holly Hills Parkway, Ellenwood, Georgia. TBW objected to Claim No. 1569 in Debtors' Omnibus Objection No. 8 (Doc. 2244) on the basis that TBW did not have any record of a claim owing to the Claimant.

Claimant previously sued TBW, M&T Bank Mortgage Corporation ("M&T Bank"), and First Service Mortgage in the Superior Court of DeKalb County, Georgia, in 2008 on a number of theories, including that the transfer of the Note from First Service Mortgage to M&T Bank was fraudulent because the Note originally contained an endorsement making it payable to TBW, which was voided in writing. On February 4, 2010, the judge in the Georgia litigation issued a final order on Claimant's complaint and found, among other things: (1) First Service Mortgage was legally entitled to assign the Note to a third party; (2) the Claimant's consent with respect to any assignment of the Note was not required by the terms of the Note; (3) the endorsement on the Note in favor of TBW was voided; (4) the Note was not materially altered by virtue of the voiding of the TBW endorsement; (5) the Note was properly assigned by First Service Mortgage to M&T Bank; (6) Claimant received notice of the assignment of her loan to M&T Bank; and (7) there was no fraud in the execution and transfer of the Note (Doc. 4982-1, Final Order of the Superior Court of DeKalb County, Georgia). A few months after entry of the Final Order, *supra*, Claimant filed Claim No. 1569.

II. SUMMARY JUDGMENT STANDARD

Federal Rule of Civil Procedure 56 is applicable to bankruptcy proceedings pursuant to Federal Rule of Bankruptcy Procedure 7056. Granting summary judgment is appropriate if, based upon the materials in the record, "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a) and (c). The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986).

The non-moving party, after a movant makes a properly supported summary judgment motion, must establish specific facts showing the existence of a genuine issue of fact for trial. FED. R. CIV. P. 56(c). The non-moving party may not rely on the allegations or denials in its pleadings to establish a genuine issue of fact, but must come forward with an affirmative showing of evidence. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). A court determining entitlement to summary judgment must view all evidence and make reasonable inferences in favor of the party opposing the motion. *Haves v. City of Miami*, 52 F.3d 918, 921 (11th Cir. 1995). "When the moving party has carried its burden under Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

III. UNDISPUTED FACTS[2]

TBW has never had any interest in or ownership of the Claimant's mortgage (Doc. 4982-1 at 7). TBW neither bought Claimant's loan from First Service Mortgage, nor did TBW take an

[2] The Claimant has not come forward with evidence to dispute the facts as found by the Superior Court of DeKalb County, Georgia.

assignment of the Note or the Deed to Secure Debt (*id*). As the Superior Court of DeKalb County, Georgia, found: "Taylor, Bean & Whitaker [TBW] does not now and has not ever had, any legal or equitable interest in or to the Note, the Deed to Secure Debt, and/or the Property" (*id.*). M&T Bank bought Claimant's loan from First Service Mortgage (*id.*).[3] The Claimant has recognized M&T Bank as the holder of the Note. Specifically, Claimant made two payments under the Note to M&T Bank (apparently these were the only payments made under the Note as of the time of the Georgia litigation) and also attempted to tender a promissory note in the amount of $1 million to M&T Bank as payment in full of her loan (Doc. 4982-1 at 6; Doc. 4982-2 at 41-44).

IV. ANALYSIS

As discussed more comprehensively below, the Court finds there are no genuine issues of material fact in dispute as to Claim No. 1569 and that the Plan Trustee is entitled to judgment as a matter of law. More particularly, since it is undisputed that TBW has never had an ownership interest in the Note, the Claimant lacks standing to bring a claim against TBW based upon the Note.[4] Standing is an "essential and unchanging part of the case or controversy requirement of Article III." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). Standing is a "threshold jurisdictional question which must be addressed prior to and independent of the merits of a party's claims." *Dimaio v. Democratic Nat'l Comm.*, 520 F.3d 1299, 1301 (11th Cir. 2008)

[3] On the same day the Claimant executed the Note, First Service Mortgage sold it to M&T Bank. The endorsement on the Note originally stated First Service Mortgage would be selling the Note to TBW; however, that endorsement was voided on the same day and First Service Mortgage executed an allonge that assigned the Note to M&T Bank (Doc. 4982-1 at 5-6). The Superior Court of DeKalb County, Georgia, found the Claimant had a duty to read the assignment language in the Note and could not claim the assignment of the Note was fraudulent simply by virtue of the voided endorsement to TBW (*id.* at 8-10).

[4] Claimant's loan documents, on their face, reveal Claimant's loan was never assigned to TBW (Doc. 4982-4 at 1-3; Doc. 4982-7).

(citations omitted). Standing requires a plaintiff to have suffered an injury in fact, with a causal connection between the injury and the complained of conduct. *Lujan*, 504 U.S. at 560-61 (internal citations omitted).

Even if Claimant somehow had standing to bring a claim against TBW, her claim(s) would nevertheless be barred by the doctrine of *res judicata*.

To illustrate, *res judicata* prevents parties to an action from re-litigating matters that were, or could have been, litigated in an earlier lawsuit. *Shurick v. Boeing Co.*, 623 F.3d 1114, 1116 (11th Cir. 2010). "*Res judicata* prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding." *Brown v. Felsen*, 442 U.S. 127, 131 (1979). "Thus matters that arise from the same facts, occurrences or transactions that were the basis of a prior action may be within the scope of claim preclusion by that action." 18 J. Moore, *et al.*, MOORE'S FEDERAL PRACTICE § 131.10[3][c], p. 131-19 (3d ed. 2011).

When a prior court's decision from state court is before a federal court, the applicable law with respect to *res judicata* derives from the state in which the decision was made. *See Green v. Jefferson County Comm'n*, 563 F.3d 1243, 1252 (11th Cir. 2009); *Kizzire v. Baptist Health Sys., Inc.*, 441 F.3d 1306, 1308 (11th Cir 2006).

The subject decision was made by the Superior Court in Georgia; accordingly, Georgia law on *res judicata* is applicable in this instance. As held in Georgia, "*[r]es judicata* requires three elements: adjudication by a court of competent jurisdiction in the first action; identity of the parties and subject matter in both actions; and, finally, the party against whom *res judicata* is

raised must have had a full and fair opportunity to litigate in the first action." *Sanders v. Trinity Universal Ins. Co.*, 647 S.E.2d 388, 391 (2007).

Here, the Superior Court of DeKalb County, Georgia, is a court of competent jurisdiction with respect to Claimant's first action. The identity of the parties and the subject matter in both the Claimant's initial litigation in Georgia and the contested matter relating to Claim No. 1569 are the same.[5] Finally, the Claimant had a "full and fair opportunity" to litigate her claims in Georgia. The Claimant appeared and argued on her own behalf at a number of hearings that were held by the judge in the Georgia litigation. In light of Claimant's *pro se* status, the judge in Georgia attempted to assist the Claimant, and even ordered that the original loan documents be produced so that she could review them. The Final Order of the Superior Court of DeKalb County, Georgia, disposing Claimant's case, is an extremely thorough and well reasoned opinion.

V. CONCLUSION

Based on the foregoing, the Court finds Claimant does not have standing to bring a claim against TBW pursuant to the Note. In addition, the doctrine of *res judicata* bars Claim No. 1569. As such, and there being no genuine issues of material fact, it is **ORDERED**:

1. Plan Trustee Neil F. Luria's Motion for Summary Judgment for Disallowance of Claim No. 1569 (Doc. 4982) is granted.

[5] An irrelevant difference is that the Claimant initially sued TBW as wells as other parties.

2. A separate judgment will enter.

DATED this 17th day of July, 2012 in Jacksonville, Florida.

JERRY A. FUNK
United States Bankruptcy Judge

Copies to:
Cassandra Boyd-Bey
Arthur J. Spector, Counsel to the Plan Trustee