FILED
United States Court of Appeals
Tenth Circuit

August 1, 2023

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

RICHARD L. MCMURRAY,

Plaintiff - Appellant,

v.

FORSYTHE FINANCE, LLC,

Defendant - Appellee.

No. 21-4014
(D.C. No. 1:20-CV-00008-TS)
(D. Utah)

ORDER AND JUDGMENT*

Before **MORITZ**, **EBEL**, and **EID**, Circuit Judges.

Plaintiff-Appellant Richard McMurray entered an agreement with CarFinance Capital, LLC ("CarFinance") to buy a motor vehicle through installment payments, for which the vehicle itself served as collateral. McMurray defaulted, and the repossession and sale of his car yielded a deficiency balance. Forsythe Finance, LLC ("Forsythe") bought the debt from CarFinance and sued McMurray in Utah state court after he failed to pay it. McMurray filed an answer but did not reply to Forsythe's motion for summary judgment, which resulted in a default judgment in Forsythe's favor.

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

McMurray then filed an action in Utah state court, alleging that Forsythe was not licensed as a collection agency when it attempted to collect his debt. The action was removed to the District of Utah. The district court granted Forsythe's motion for summary judgment, holding that McMurray's claims were barred by claim preclusion.[1] McMurray timely appealed. We affirm the district court's grant of summary judgment to Forsythe on McMurray's Unfair Claims Settlement Practices Act ("UCSPA"), Fair Debt Collection Practices Act ("FDCPA"), and damages claims.[2]

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[1] Throughout the district court's opinion and the parties' briefs, the terms "claim preclusion" and "res judicata" are used interchangeably. The Supreme Court has referred to res judicata as both an overarching term to encompass claim preclusion and issue preclusion (often referred to as "collateral estoppel"), *see Hoag v. New Jersey*, 356 U.S. 464, 470 (1958) (describing collateral estoppel as "an aspect of the broader doctrine of res judicata"), and as a synonym for claim preclusion, which is related to but separate from the doctrine of issue preclusion, *see Lawlor v. Nat'l Screen Serv. Corp.*, 349 U.S. 322, 326 (1955) (noting that there is a "distinction between the doctrines of res judicata and collateral estoppel"). The Supreme Court clarified in *Taylor v. Sturgell* that "claim preclusion and issue preclusion . . . are collectively referred to as 'res judicata.'" 553 U.S. 880, 892 (2008). But there is still confusion in state and federal courts about the precise definition of the term. For clarity's sake, we avoid using the term "res judicata" in this opinion, instead specifying the type of preclusion to which we are referring.

[2] We requested the parties to submit supplemental briefing on the application of the *Rooker-Feldman* doctrine to this case. The *Rooker-Feldman* doctrine bars federal courts, other than the Supreme Court, from sitting in review of final state court judgments. *See generally Rooker v. Fid. Tr. Co.*, 263 U.S. 413 (1923); *D.C. Ct. of Appeals v. Feldman*, 460 U.S. 462 (1983). Both parties argued that *Rooker-Feldman* does not apply. We agree. There is a distinction between the validity of a debt and the validity of the actions taken to collect on that debt. The claims that McMurray raises in his federal suit, concerning the validity of Forsythe's collection efforts, were not raised or ruled on in the prior Utah state court action, which concerned the validity of McMurray's underlying debt. *See* App'x at 91–92 (McMurray's Answer to Forsythe's Complaint); *Forsythe Fin., LLC v. McMurray*, No. 199700249 (2d Jud. Dist. Utah Apr. 12, 2019) (Utah state court decision granting

I.

McMurray purchased a motor vehicle pursuant to a retail installment contract, which was assigned to CarFinance and secured by the purchased vehicle as collateral. When McMurray defaulted, the car was repossessed and sold at auction. The sale resulted in a deficiency balance, and CarFinance sold the debt to Forsythe.

Because McMurray did not pay the outstanding debt when Forsythe demanded it, Forsythe brought suit against him in Utah state court. McMurray answered and asserted, among other things, that Forsythe was not entitled to relief, but did not provide any further details. Forsythe filed a motion for summary judgment, to which McMurray did not reply, and the court entered a default judgment in Forsythe's favor.

McMurray then brought a putative class action in state court, asserting claims under the UCSPA and the FDCPA based on his allegation that Forsythe was not registered as a collection agency under state law when it attempted collection, as well as a damages claim for emotional distress. McMurray's action was removed to the United States District Court for the District of Utah under 28 U.S.C. § 1441(b). Forsythe moved for summary judgment, which the district court granted on January

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summary judgment to Forsythe on claim preclusion grounds); *see also Merrill Lynch Bus. Fin. Servs., Inc. v. Nudell*, 363 F.3d 1072, 1076 (10th Cir. 2004) (holding that the "inextricably intertwined" test is "not satisfied when a federal plaintiff brings claims that the state court did not review on the merits"). Thus, we find that *Rooker-Feldman* does not apply, and that we have jurisdiction over this case.

11, 2021. Among other reasons, Forsythe's motion was granted on the ground that McMurray's claims were barred by claim preclusion. McMurray timely appealed.

II.

We review "a district court's grant of summary judgment de novo, using the same standard applied by the district court pursuant to Fed. R. Civ. P. 56(a)." *Cillo v. City of Greenwood Vill.*, 739 F.3d 451, 461 (10th Cir. 2013). Summary judgment must be granted if "there is no genuine dispute as to any material fact" and the moving party is "entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). This Court views "facts in the light most favorable to the non-moving parties, . . . resolving all factual disputes and reasonable inferences in their favor." *Cillo*, 739 F.3d at 461 (internal quotation marks omitted).

III.

a.

Claim preclusion "prevent[s] a party from litigating a legal claim that was or could have been the subject of a previously issued final judgment." *Lenox MacLaren Surgical Corp. v. Medtronic, Inc.*, 847 F.3d 1221, 1239 (10th Cir. 2017) (quoting *MACTEC, Inc. v. Gorelick*, 427 F.3d 821, 831 (10th Cir. 2005)); *see also Haik v. Salt Lake City Corp.*, 393 P.3d 285, 289 (Utah 2017).

We apply Utah state law on claim preclusion to this case because, "[i]n determining whether a state court judgment precludes a subsequent action in federal court, we must afford the state judgment full faith and credit, giving it the same

preclusive effect as would the courts of the state issuing the judgment." *Reed v. McKune*, 298 F.3d 946, 949 (10th Cir. 2002).

Utah state law dictates that the following elements must be satisfied for claim preclusion to apply: (1) "both cases must involve the same parties or their privies"; (2) "the claim that is alleged to be barred must have been presented in the first suit or must be one that could and should have been raised in the first action"; and (3) "the first suit must have resulted in a final judgment on the merits." *Madsen v. Borthick*, 769 P.2d 245, 247 (Utah 1988).

Utah state courts employ a "transactional" test to determine if claims "could and should have been raised" in a prior action. "[C]laims are the same if they arise from the same operative facts, or in other words from the same transaction." *Pioneer Home Owners Ass'n v. TaxHawk Inc.*, 457 P.3d 393, 404 (Utah Ct. App. 2019) (quoting *Van Leeuwen v. Bank of Am. NA*, 387 P.3d 521, 525 (Utah Ct. App. 2016)). "What . . . constitutes a 'transaction' . . . [is] to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage." *Pioneer Home Owners Ass'n*, 457 P.3d at 403 (quoting Restatement (Second) of Judgments § 24(2) (Am. L. Inst. 1982)).

While Utah law is clear that claim preclusion does not apply to claims arising out of operative facts that have occurred *after* the initial complaint is filed, *see id.* at 403–04, the parties in this case disagree over whether claim preclusion applies to

claims arising *at the time* the initial complaint is filed. Here, McMurray alleges the injury occurred when Forsythe filed to collect on the debt as an unlicensed debt collector. We interpret Utah state law to preclude claims that arose at the time of filing of the initial complaint.

McMurray points out that, in *Macris & Assocs., Inc. v. Neways, Inc.*, 16 P.3d 1214 (Utah 2000), the Utah Supreme Court stated that "a party is required to include claims in an action for res judicata purposes only if those claims arose before the filing of the complaint in the first action." Aplt. Br. at 22 (quoting *Macris & Assocs., Inc.*, 16 P.3d at 1220). However, in the same case, the Utah Supreme Court affirmed the Utah Court of Appeals's statements that "[t]he scope of litigation is framed by the complaint *at the time it is filed*" and claim preclusion "does not apply to new rights acquired *pending the action*," indicating that a claim that arises at the time of filing would be precluded under the doctrine. *Macris & Assocs., Inc. v. Neways, Inc.*, 986 P.2d 748, 751 (Utah Ct. App. 1999) (emphases added) (quoting *NAACP v. Los Angeles*, 750 F.2d 731, 739 (9th Cir. 1984)); *see also Pioneer Home Owners Ass'n*, 457 P.3d at 404. Our case applying Utah claim preclusion law, *Hatch v. Boulder Town Council*, 471 F.3d 1142 (10th Cir. 2006), confirms the latter understanding, stating, "Plaintiffs filed their Utah state court action on July 12, 1999. Thus, any causes of action based on facts that occurred after that date need not have been included in the case for claim-preclusion purposes." *Id.* at 1148. We therefore conclude that claim preclusion applies to this case, where the claims arose at the time the initial complaint was filed.

b.

The first and third elements of the Utah claim preclusion test are not disputed by either party. *See* Aplt. Br. at 23 ("McMurray will only address the second element [of claim preclusion] as the others are undisputed."). Thus, we must determine whether the claims that McMurray brought in federal court could have been raised in the Utah state court action.

McMurray asserted in his federal complaint that "[t]his case has to do with the prosecution of bogus debt collection actions by Forsythe when it did not have the right to engage in the business of debt collection in the State of Utah." App'x at 25. According to McMurray, by filing a lawsuit in Utah state court without having obtained the necessary debt collection license, Forsythe engaged in (1) "action[s] that cannot be legally taken" in violation of the FDCPA and (2) deceptive and unconscionable practices in violation of the UCSPA. *Id.* at 26 (internal quotation marks omitted).

In his complaint, McMurray requested the following: (1) "a declaration on behalf of Plaintiff class members, that since Defendant Forsythe was acting unlawfully as an unlicensed collection agency, Forsythe: (i) did not have legal standing to pursue recovery on assigned debts through litigation" and "(ii) did not have legal standing to obtain any judgment in Utah Courts against Plaintiff Class Members and those judgments should be declared (a) void and unenforceable"[3] and

[3] We understand McMurray to be asking for relief from Forsythe's alleged improper collection on the Utah state court judgment, rather than attacking the

"(b) Forsythe should not be entitled to collect any sums on those judgments or debts related to the Plaintiff Class members"; (2) disgorgement of "all sums [Forsythe] collected on a judgment amounts [sic] from the Plaintiff Class member's [sic] amounts that Forsythe obtained as a result of the judgments" improperly entered; (3) injunction "from attempting to collect any judgment amounts entered improperly against the Plaintiff Class Members"; (4) "statutory damages of $2,000 each or their actual damages (whichever is greater) under the [UCSPA]"; and (5) damages for the emotional distress, with physical manifestations, that McMurray suffered "as a result of the litigation pursued by [Forsythe]." *Id.* at 15–16.

McMurray's first four claims—regarding the unenforceability of the judgment, and requesting disgorgement, an injunction, and statutory damages under the UCSPA—arose at the time Forsythe's complaint was filed in Utah state court. In fact, it was the very filing of Forsythe's complaint that gave rise to McMurray's claims, because Forsythe's complaint expressed its intention to collect from McMurray, and now McMurray complains of Forsythe's legal inability to collect due to its alleged improper registration. Moreover, Forsythe's alleged improper

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underlying judgment itself. Though McMurray's complaint requests "any judgment in Utah Courts against Plaintiff Class Members" to be voided, *see* App'x at 33, he later clarifies that "[w]hether or not Forsythe violated the consumer protection laws that govern its collection activities[] when it sought or obtained a judgment[] are independent of the judgment by the state court in Forsythe's collection action," *see* Aplt. Fed. R. App. P. 28(j) Letter at *5 (Aug. 22, 2022). It is undisputed that McMurray owes a debt to Forsythe. *See* Aplt. Br. at 12. The focus of McMurray's appeal is whether Forsythe may properly collect on that debt. *See id.* at 13 ("Forsythe did not register with the State of Utah . . . . Accordingly, Forsythe violated Utah law throughout the pendency of the collection action.").

registration existed well before Forsythe filed its complaint. Because McMurray's claims before this Court arose from the same transaction as his Utah state court claims, they could and should have been raised in the Utah state court action.

Moreover, as the district court noted, a claim is precluded in a case that involves a collateral attack on a prior judgment when "a different outcome in the second action 'would nullify the initial judgment or would impair rights established in the initial action.'" *Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc.*, 140 S. Ct. 1589, 1597 (2020) (quoting Restatement (Second) of Judgments § 22(2)(b)). McMurray's first four claims are precluded because if his claims were granted, they would nullify the Utah state court's judgment in favor of Forsythe and impair Forsythe's ability to collect on that judgment.

McMurray's fifth claim—requesting damages for the emotional distress he suffered as a result of Forsythe's attempt to collect a judgment from him—is predicated on the success of his UCSPA and FDCPA claims. In order for McMurray to obtain damages for emotional distress stemming from the litigation pursued against him by Forsythe, McMurray must first establish that Forsythe violated state or federal debt collection laws by pursuing said litigation. *See Llewellyn v. Allstate Home Loans, Inc.*, 711 F.3d 1173, 1182 (10th Cir. 2013) (reversing grant of summary judgment to defendants based on "Plaintiff's claim that he suffered emotional damages *as a result of the [] Defendants' alleged violation* of the [Fair Credit Reporting Act]" (emphasis added)). Because we have found that McMurray's UCSPA and FDCPA claims are precluded, he has not established any violation

committed by Forsythe in pursuing litigation against him, so he cannot obtain damages for emotional distress.[4]

IV.

For the foregoing reasons, we AFFIRM the district court's grant of summary judgment to Forsythe on McMurray's FDCPA, UCSPA, and damages claims.

Entered for the Court

Allison H. Eid
Circuit Judge

[4] We do not reach the merits of the second issue that McMurray raised on appeal—whether he has a viable cause of action under the UCSPA—because we find that this claim is precluded in any case.