IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 93-2816

IN THE MATTER OF:

J. EDGAR CLAYTON, JR.,
and
PHYLLIS KOZMA CLAYTON,

Debtors.

J. EDGAR CLAYTON, JR.,
and
PHYLLIS KOZMA CLAYTON,

Appellants,

VERSUS

SHELL OIL COMPANY,

Appellee.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-93-1921)

(July 11, 1994)

Before GARWOOD, JOLLY, and SMITH, Circuit Judges.

JERRY E. SMITH, Circuit Judge:[*]

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[*] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

I.

J. Edgar Clayton, Jr. was an employee of Shell Oil Company until June 1989. Shell guaranteed a home loan for the Clayton and his wife, Phyllis Clayton, secured by two parcels of real property. When the Claytons defaulted, Shell paid the bank and took assignment of the note, then sought payment from the Claytons.

A Texas court found Shell's note and deed of trust to the Clayton homestead valid and allowed nonjudicial foreclosure, rejecting counterclaims under the Texas Deceptive Trade Practices Act (DTPA) and the Federal Truth-in-Lending Act (TILA). The Claytons filed for bankruptcy under chapter 11. After a hearing, the bankruptcy court lifted the automatic stay of foreclosure. When the Claytons filed a motion for new trial, the parties agreed that the lifting of the automatic stay would be stayed pending that court's hearing the Claytons' motion or trial of another adversary proceeding, which addressed the remaining issues between the parties. During this litigation the Claytons filed four adversary proceedings and two state court cases.

Before a hearing or trial was held, the court dismissed the chapter 11 filing for failure to offer a plan of reorganization. The district court affirmed the dismissal, creating the basis for this appeal.

After the bankruptcy case was dismissed, Shell sent notice that the homestead would be foreclosed upon. Four days before the scheduled foreclosure, the Claytons filed for bankruptcy under chapter 11 a second time. At an expedited hearing, the bankruptcy

court took judicial notice of the previous order lifting the stay, then lifted it. Shell foreclosed. The bankruptcy court then denied a motion by the Claytons to vacate the foreclosure. That denial has not been appealed.

By the terms of the deed of trust under which Shell foreclosed, the Claytons became tenants at will. Shell gave them notice to vacate, but they refused to do so. Shell filed a forcible detainer action in justice of the peace court. The Claytons removed to the bankruptcy court, which remanded, and the state court ruled in Shell's favor.

The bankruptcy court also sanctioned the Claytons, ordering a $500 sanction and a prohibition against the filing of adversary actions dealing with the same issues that are currently under consideration. The district court affirmed. The Claytons appeal the lifting of the automatic stay, the remand of the forcible detainer action, and the imposition of sanctions.

II.

The Claytons argue that they have a right of rescission in the homestead under TILA, 15 U.S.C. § 1601 et seq. Therefore, the lower courts erred by lifting the automatic stay and permitting foreclosure. TILA allows the unilateral right to cancel certain credit transactions secured by a non-purchase money mortgage on the consumer's homestead. The consumer is allowed a notice of this right of rescission unless the transaction falls within an exception. 15 U.S.C. § 1635(e); 12 C.F.R. § 226.23(f).

The Claytons' argument fails for three reasons. First, it is moot, as Shell has already foreclosed and purchased the homestead. Second, the transaction is not subject to rescission as it falls within the purchase money exception to TILA. Finally, the claim of rescission is barred by res judicata.

A.

A stay pending appeal from bankruptcy orders granting a creditor relief from stay is moot after the creditor forecloses and purchases the property in question. The Claytons failed to obtain a stay pending appeal of the lifting of the automatic stay. The only exception to the mootness doctrine is where state law creates a statutory right of redemption. In re Sullivan Cent. Plaza I, Ltd., 914 F.2d 731 (5th Cir. 1990). The Claytons admit that Texas state law provides no statutory right of redemption. Lacking any state remedy that will reverse foreclosure, the claim is moot.

B.

Lacking any state right to rescission, the Claytons seek to create a right to rescission out of TILA, which protects consumers against certain lending tactics by allowing consumers to make informed decisions based upon the cost of credit on certain covered credit transactions. For some covered transactions, the consumer is allowed three days to rescind a credit contract, and notice of rescission is required.

TILA awards consumers a unilateral right to cancel certain

credit transactions secured by a non-purchase money mortgage on the consumer's principal residence. A consumer is entitled to a notice of a right of rescission of any consumer credit transaction in which a security interest is or will be retained or acquired in any property used as the principal dwelling of the person to whom the credit is extended unless the transaction falls within an exemption. 15 U.S.C. § 1635(a).

Under 15 U.S.C. § 1635(e)(1), a transaction is exempt if it is a residential mortgage transaction, as defined by 15 U.S.C. § 1602(w) which provides:

> The term "residential mortgage transaction" means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against the consumer's dwelling to finance the acquisition or initial construction of that dwelling.

A security interest granted as a first lien to finance the acquisition of construction of the consumer's residence qualifies as an exempt transaction for purposes of the right of rescission. 15 U.S.C. § 1635(e); La Grone v. Johnson, 534 F.2d 1360 (9th Cir. 1976); Heuer v. Forest Hill State Bank, 728 F. Supp. 1199 (D. Md. 1989), aff'd, 894 F.2d 402 (4th Cir. 1990).

The Claytons claim that because a vendor's lien arose by operation of law in connection with the deed of trust, they have a right of rescission because the vendor's lien is not exempt from rescission. This argument flies in the face of the unambiguous language of section § 1635(e) characterizing this transaction as a purchase money lien arising from the "acquisition or initial

construction" of a homestead.

C.

The Claytons' claim is also barred by res judicata. In 1991 a Texas state court validated Shell's lien and its entitlement to non-judicial foreclosure. This judgment is a final judgment on the merits rendered by a court of competent jurisdiction and is entitled to full faith and credit in the federal courts. 28 U.S.C. § 1738; In re Brady Mun. Gas Corp., 936 F.2d 212 (5th Cir.), cert. denied, 112 S. Ct. 657 (1991).

Res judicata bars the relitigation of any issues that were or could have been tried in the original litigation. Reed v. Marketing Servs. Int'l, Ltd., 540 F. Supp. 893, 896 (S.D. Tex. 1982). A subsequent suit is barred if it arises out of the subject matter of a previous suit and with an exercise of diligence could have been litigated in the prior suit. Barr v. Resolution Trust Corp., 837 S.W.2d 627, 631 (Tex. 1992). Therefore, if the Claytons had a defense to the validity of Shell's lien by virtue of a right of rescission, entry of final judgment by a state court of competent jurisdiction has precluded litigation of that issue in another forum.

D.

The Claytons contend that the foreclosure notice periods provided by the Texas Property Code are extended by 11 U.S.C. § 108. Under TEX. PROP. CODE § 51.002(d), following a default a

secured creditor must provide a debtor twenty days to cure the default on or before the time a notice of sale is given. After this period, a debtor must also be given twenty-one days' notice before the collateral can be sold. It is uncontested that Shell complied with all of these notice and time requirements.

The Claytons now claim that because they filed their second bankruptcy case, § 108 extended for sixty days the time period for curing the default from the time they filed their bankruptcy proceeding. Thus, the foreclosure sale was voidable because it occurred prior to the twenty-one-day notice period as extended by § 108.

The Claytons' argument is based upon an erroneous understanding of the import of § 108. By filing bankruptcy, the foreclosure that was noticed was stayed by the injunction of 11 U.S.C. § 362. Sections 362 and 108 are mutually exclusive: The specific provisions of § 362 prevail if it conflicts with the more general provisions of section 108. In re Carver, 828 F.2d 463, 464 (8th Cir. 1987). Actions stayed under § 362 are not further extended under § 108. When the bankruptcy court lifted the § 362 automatic stay, Shell was no longer enjoined from proceeding with the foreclosure that had been timely posted pursuant to state law.

III.

The Claytons argue that the bankruptcy court erred by remanding the forcible detainer action to state court. The Claytons contend that the action is a core proceeding in bankruptcy

and thus must be heard in the bankruptcy court.

We lack jurisdiction to review the propriety of the remand. 28 U.S.C. § 1452(b) states:

> The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground. An order entered under this subsection remanding a claim or cause of action, or a decision to not remand, is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title.

Under the plain language of this statute, the order of remand is not appealable beyond the district court. The appeal of the order to remand is dismissed.

IV.

The bankruptcy court imposed sanctions of a $500 fine and a prohibition against filing any adversary actions dealing with the issues currently under consideration. The Claytons contend that sanctions prevented them from pursuing their claims against Shell and that the sanctions were imposed without findings of fact or a chance for the Claytons to respond to Shell's charges.

Where the record readily indicates the reasons for imposing sanctions, the court need not make specific findings and conclusions. Foval v. First Nat'l Bank of Commerce, 841 F.2d 126 (5th Cir. 1988); Thomas v. Capital Sec. Servs., Inc., 836 F.2d 866, 883 (5th Cir. 1988) (en banc). Appropriate sanctions may be imposed by the bankruptcy court against parties and counsel who multiply bankruptcy proceedings unreasonably and vexatiously. In re Kinney, 51 B.R. 840 (Bankr. C.D. Cal. 1985).

The Claytons' pattern of vexatious and repetitive litigation is established by the record. Shell's motion for sanctions was accompanied by a list of the pleadings filed by the Claytons and was supported by counsel's affidavit. The Claytons have repeatedly filed duplicative claims and motions for rehearing.

The Claytons have not been denied appropriate access to the courts. They are barred from filing only cases and pleadings that raise issues already disposed of or currently pending. Non-duplicative claims are still permitted, and the record indicates that the court has considered at least one motion raising new legal theories, claims, and allegations.

A court may impose sanctions that are appropriate under the circumstances. Thompson v. Housing Auth., 782 F.2d 829 (9th Cir.), cert. denied, 479 U.S. 829 (1986). Given the Claytons' track record, the sanctions imposed were reasonable under the circumstances.

The appeal of the remand is DISMISSED for want of jurisdiction. The orders lifting the automatic stay and imposing sanctions are AFFIRMED. The Claytons, as appellants, and J. Edgar Clayton, in his capacity as an attorney and officer of the court, are warned that further meritless filings, including, without limitation, frivolous petitions for rehearing or suggestions of rehearing en banc, will subject them to additional sanctions and/or discipline.