SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1027-22

DR. MAC TRUONG,

Plaintiff-Appellant,

v.

LAKELAND BANK, LAKELAND BANCORP, INC., ALTHEA HOWARD, and CATHY BIANCAMANO,

Defendants-Respondents,

and

DESIGNSOLUTIONS101, SELLONLINEMAKEMONEY, JONATHAN GABRIEL, SHERWIN PAUL, JOE LUCAS, ELMA WILSON, and MATHEW ALPHONSE,

Defendants.

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Submitted May 22, 2024 – Decided January 2, 2025

Before Judges Gummer and Walcott-Henderson.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket No. DC-002901-22.

Mac Troung, appellant pro se.

Sherman Atlas Sylvester & Stamelman LLP, attorneys for respondents Lakeland Bank, Lakeland Bancorp, Inc., Althea Howard, and Cathy Biancamano (Anthony C. Valenziano, of counsel and on the brief).

The opinion of the court was delivered by

WALCOTT-HENDERSON, J.S.C. (temporarily assigned).

Plaintiff Mac Truong appeals from a July 7, 2023 order denying his motion to vacate an order dismissing his complaint against defendants Lakeland Bank and Lakeland Bancorp, Inc., (collectively the Bank defendants) and Designsolutions101 and Sellonlinemakemoney (collectively the Marketing defendants)[1] with prejudice. Plaintiff argues defendants owe him $5,200, which he asserts they wrongfully converted from his Lakeland Bank account. Plaintiff had previously filed suit against the Bank and the Marketing defendants in federal court, and that action was dismissed without prejudice for failure to state a claim. That same order gave plaintiff thirty days to amend his complaint. Because plaintiff failed to amend within the thirty-day timeframe prescribed in the order, the federal court dismissed plaintiff's complaint with prejudice in an order dated April 26, 2022. After plaintiff filed his complaint in the Special

[1] The Marketing defendants did not participate in this appeal.

Civil Part, the court dismissed the complaint based on the doctrine of res judicata. Plaintiff maintains the Special Civil Part judge erred because the federal court's dismissal of his complaint did not constitute a decision or judgment on the merits. We agree and reverse for the reasons that follow.

I.

The record in this case is extensive and includes various allegations made by plaintiff against defendants and the court. We therefore summarize only those facts pertinent to our determination of the legal issues before us.

Plaintiff entered into an arrangement with the Marketing defendants to obtain their e-mail marketing services "consisting of sending up to 50 million emails per day for [twelve] months to promote [his] Netflix-like business." Plaintiff paid the Marketing defendants a series of payments, which totaled $5,200. The payments were made from his account at Lakeland Bank.

According to plaintiff, in November 2021, "after numerous communications and alleged attempts to execute the contract of the parties, both plaintiff and defendants agreed that defendants' technical teams could not deliver services as promised." The Marketing defendants agreed to pay plaintiff a full refund of $5,200. Before doing so, plaintiff contacted Lakeland Bank to dispute one of those payments, in the amount of $1,500 to defendants, and was

initially given credit, but then Lakeland Bank later reversed because the bank determined it had been credited in error. Plaintiff in his federal complaint further alleged that in January 2022, plaintiff called Lakeland Bank and two bank employees "firmly stated that the bank had determined that Defendant Designsolutions101 was entitled to the [$1,500], but that plaintiff would not be entitled to any explanation or even any information such as the name of the banks of defendant Designsolutions101 that had received plaintiff's payments," asserting that Designsolutions101 had "provided written evidence that good services had been provided by them to plaintiff . . . ." Therefore, plaintiff did not receive any credit from the Bank defendants, and no portion of the $5,200 he paid to the Marketing defendants was refunded to him.

On February 1, 2022, plaintiff filed a pro se complaint in the federal court alleging that the Bank and the Marketing defendants "acted in concert and committed the felonies of conspiracy, perjury, keeping false business records, common law frauds, bank fraud, mail fraud, material misrepresentations, grand larcenies and wrongful appropriation of plaintiff's funds and assets in violation of [Article 121 of the Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 921.]" We note the UCMJ is applicable only to members of the armed services.

See 10 U.S.C. § 921 Art. 121. Plaintiff does not allege he is a member of that group.

Plaintiff then moved for summary judgment as well as other relief. Plaintiff's motion for summary judgment and the other motions he filed in federal court are not included in the appellate record. R. 2:6-1(a)(1). On February 21, 2022, Bank defendants opposed the motion for summary judgment and cross-moved for dismissal of plaintiff's complaint.

Plaintiff failed to appear at the motion hearing scheduled for March 16, 2022, and on March 17, 2022, the federal judge granted Bank defendants' motion to dismiss plaintiff's complaint for failure to state a claim, without prejudice, pursuant to Federal Rule of Civil Procedure 12(b)(6). The same order granted plaintiff "thirty (30) days to file an [a]mended [c]omplaint." The order did not explain the federal court's reasoning, and neither party provided the transcript of the motion hearing to the extent that there was such a hearing on March 16, 2022.

In his appellate brief, plaintiff admits he abandoned the federal court case and filed a new complaint in the Superior Court, Special Civil Part, on April 4, 2022, against the Bank and the Marketing defendants, asserting the same

statutory claim he had asserted in his federal complaint as well as a breach-of-contract claim.

When plaintiff failed to file an amended complaint in the federal court within the thirty-day period as set forth in the March 17, 2022 order, the judge dismissed plaintiff's complaint with prejudice in an order dated April 26, 2022, for failure to amend his pleadings, pay the appropriate filing fee, or submit an application to proceed in forma pauperis within the allotted time provided.

On May 17, 2022, plaintiff appealed the federal court's dismissal of his complaint with prejudice to the United States Court of Appeals for the Third Circuit. Plaintiff subsequently sought to "withdraw" the appeal without prejudice on September 21, 2022. The withdrawal request was granted by the Third Circuit on October 28, 2022. On December 5, 2022, plaintiff moved to reinstate his appeal before the Third Circuit. On May 9, 2023, the Third Circuit denied plaintiff's motion to reinstate his appeal.

On October 12, 2022, the Bank defendants moved to dismiss plaintiff's state court complaint, and plaintiff cross-moved for summary judgment. The court held oral argument on these motions on November 4, 2022, and in an order dated November 4, 2022, granted Bank defendants' motion to dismiss plaintiff's complaint with prejudice, holding in a decision placed on the record on

November 4, 2022 that the doctrine of res judicata precluded plaintiff from proceeding with the state court action. As part of that decision, the court alternatively held that if it had found res judicata did not apply, the federal statutory claim would be dismissed substantively and plaintiff's breach-of-contract claim would survive. The court denied plaintiff's cross-motion for summary judgment in a separate order dated November 18, 2022. Plaintiff appealed from the order dismissing his Special Civil Part complaint.

We dismissed plaintiff's appeal from the November 4, 2022 order dismissing his Special Civil Part complaint because the order was interlocutory.

On June 8, 2023, plaintiff moved to reinstate his Special Civil Part complaint. The Bank defendants opposed that motion. On July 7, 2023, the court denied plaintiff's motion to reinstate his complaint, "with prejudice based on res judicata," stating plaintiff's arguments "were or should have been made before the trial court and the Appellate Court." On August 17, 2023, we granted a motion by plaintiff to reinstate his appeal of the November 4, 2022 order.

Plaintiff asserts the following arguments for our consideration.

POINT I

THE LOWER COURT ERRED WHEN IT GRANTED FULL RES JUDICATA EFFECTS TO A DISMISSAL ORDER OF A COURT HAVING NEITHER

PERSONAL NOT SUBJECT-MATTER JURISDICTION.

POINT II

THE LOWER COURT ERRED WHEN IT GRANTED FULL RES JUDICATA EFFECTS TO A DISMISSAL ORDER OF A COURT IN A PROCEEDING THAT COMMENCED AFTER THE VALID COMMENCEMENT OF THE CASE AT BAR.

POINT III

THE LOWER COURT ERRED WHEN IT GRANTED FULL RES JUDICATA EFFECTS TO A DISMISSAL ORDER OF A COURT THAT HAD INTENTIONALLY FAILED TO GRANT PARTIES A FULL AND FAIR OPPORTUNITY TO LITIGATE THE MATERIAL ISSUES ON THE MERITS.

POINT IV

THE LOWER COURT ERRED WHEN IT GRANTED FULL RES JUDICATA EFFECTS TO A DISMISSAL ORDER BY A PRIOR COURT WITHOUT FINDING THAT THE MATERIAL ISSUES BEING DECIDED BY BOTH COURTS WERE IDENTICAL.

II.

We review motions to dismiss for failure to state a claim upon which relief can be granted de novo. Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C., 237 N.J. 91, 108 (2019). A reviewing court must examine "the legal sufficiency of the facts alleged on the face of the complaint," giving

the plaintiff the benefit of "every reasonable inference of fact." Id. at 107 (quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989)). "Nonetheless, if the complaint states no claim that supports relief, and discovery will not give rise to such a claim, the action should be dismissed." Ibid.

We review de novo a trial judge's order dismissing an action on res judicata grounds. Walker v. Choudhary, 425 N.J. Super. 135, 151 (App. Div. 2012). "The doctrine of res judicata 'contemplates that when a controversy between parties is once fairly litigated and determined it is no longer open to relitigation.'" Culver v. Ins. Co. of N. Am., 115 N.J. 451, 460 (1989) (quoting Lubliner v. Bd. of Alcoholic Beverage Control, 33 N.J. 428, 435 (1960)). Res judicata "precludes parties from relitigating substantially the same cause of action." Ibid. (quoting Kram v. Kram, 94 N.J. Super. 539, 551 (Ch. Div. 1967), rev'd on other grounds, 98 N.J. Super. 274, 237 (App. Div. 1967), aff'd, 52 N.J. 545, 247 (1968)).

Res judicata applies and bars subsequently filed claims where: "(1) the judgment in the prior action must be valid, final, and on the merits; (2) the parties in the later action must be identical to or in privity with those in the prior action; [and] (3) the claims in the later action must grow out of the same

transaction or occurrence as the claim in the earlier one." Watkins v. Resorts Int'l. Hotel & Casino, Inc., 124 N.J. 398, 412 (1991). "[A] dismissal with prejudice constitutes an adjudication on the merits 'as fully and completely as if the order had been entered after a trial.'" Velasquez v. Franz, 123 N.J. 498, 506-07 (1991) (quoting Gambocz v. Yelencsics, 468 F.2d 837, 840 (3d Cir. 1972)). The res judicata doctrine applies only when a final judgment is rendered.

Here, we disagree with the Special Civil Part judge's conclusion that the federal court's order dismissing plaintiff's complaint with prejudice constituted a final adjudication on the merits. In this appeal, plaintiff's central argument in his pro se brief is that the court erred by dismissing his Special Civil Part complaint based on the doctrine of res judicata because the federal court had not "given [him] a full and fair opportunity to litigate the issues, raised in the federal complaint" prior to its dismissal for failure to state a claim. He further argues the federal court's sua sponte April 26, 2022 order dismissing his complaint with prejudice constitutes error because the order was entered without a formal motion by Bank defendants and "in the total absence of the [c]ourt's personal and subject-matter jurisdiction."

The Bank defendants maintain the court correctly applied the doctrine of res judicata to bar plaintiff from relitigating the claims that were dismissed by

the federal court. Relying on Velasquez, 123 N.J. at 505, they maintain it is well settled that "[a] dismissal with prejudice constitutes an adjudication on the merits as fully and completely as if the order had been entered after a trial." Addressing the second prong of the res judicata analysis, whether the parties are the same, the Bank defendants assert the parties in the state court action are identical to those in the federal court action.

As to the third prong of the res judicata analysis, the Bank defendants contend that "both actions plainly [arise] out of the same set of facts, i.e., the reversal of the $1,500 provisional credit," and, citing Watkins, that they must be "deemed part of a single claim if they arise out of the same transaction or occurrence." 124 N.J. at 412. And, the Bank defendants further assert that plaintiff was obliged to present all theories against them in the first action — filed in the federal court — and that the failure to do so bars any alleged new claims, referring to plaintiff's breach-of-contract claim made only in the state court action. Watkins, 124 N.J. at 413.

In Velasquez, our Supreme Court addressed the question whether the dismissal of the plaintiff's federal complaint based on the failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) barred the same claim from subsequently being filed in state court. 123 N.J. at 500. In that case, the plaintiff

sued the defendants, including a corporate entity and an individual trustee of the corporation, for manufacturing a machine that he alleged was defective and caused him injuries. Id. at 501. The federal court's decision relied primarily on Federal Rule of Civil Procedure 17(b), which instructs that "[t]he capacity of a corporation to sue and be sued shall be determined by the law under which it is organized," and recognizing that the defendant was an Illinois corporation, the federal district court held that Illinois law governed the defendant's capacity to be sued. The federal court then analyzed the Illinois Business Corporations Act of 1983 and concluded that "[c]onsistent with its plain language, the [Illinois statute], . . . and its predecessor section have been uniformly interpreted to permit the survival of, for the specified period, those causes of action which accrued prior to the dissolution of the corporation," and granted the defendant's motion to dismiss the plaintiff's lawsuit with prejudice. Id.

Following the dismissal of the federal complaint, the plaintiff filed a "virtually identical" complaint in state court. Id. at 500. The defendants moved for dismissal and the motion court granted the motion. We affirmed the dismissal order, and the plaintiff sought certification to our Supreme Court. The Court held that for a ruling to have preclusive effect, "it must be a valid and final adjudication on the merits of the claim," and explicitly stated, "a motion to

dismiss for failure to state a claim is an adjudication on the merits for res judicata purposes, unless the judge specifies that it is 'without prejudice.'" Id. at 506-07 (citing Fed. R. Civ. P. 41(b)). The Court further held the federal court's analysis constituted a final adjudication on the merits for purposes of res judicata because Rule 4:37-2(d) relating to the finality of dismissals "substantially parallels" the federal rule, under which "a motion to dismiss for failure to state a claim is an adjudication on the merits." Velasquez, 123 N.J. at 507.

Our review of this record, however, persuades us that our Court's holding in Velasquez cannot be so easily applied. Rather, the Court's holding in Velasquez is distinguishable because in that case the federal court correctly applied Federal Rules of Civil Procedure 12(b)(6), 17(b), and 41(b) to determine whether plaintiff had stated a cause of action against defendants and stated its reasoning in its opinion.

Here, the only document supporting the court's dismissal of plaintiff's complaint with prejudice is the federal court's April 26, 2022 order. In that order, the federal judge also referenced plaintiff's failure to amend his complaint, "pay the appropriate filing fee, or submit an [in forma pauperis] application." The record is devoid of any indication that between the issuance of the order dismissing the federal complaint without prejudice and the issuance

of the order dismissing the federal complaint with prejudice, the federal court made any substantive determination of the merits of plaintiff's case.

In another case addressing a similar issue to the one before us, the Supreme Court held the dismissal with prejudice of the plaintiffs' federal complaint based on lack of standing, did not constitute an adjudication "on the merits." Watkins, 124 N.J. at 405, 418-19. In Watkins, the plaintiffs sued in federal court, claiming that as minority bus-line owners they had been the targets of discriminatory practices. They sought relief pursuant to federal anti-discrimination laws. The federal court dismissed the plaintiffs' complaint with prejudice citing a lack of standing to sue. The plaintiffs did not appeal the federal court's holding but filed a complaint alleging the same facts in state court. The Law Division judge dismissed plaintiffs' complaint, and we affirmed the dismissal. Our Supreme Court reversed.

In reversing, the Court held, "[m]erely because standing may be intertwined with substantive issues . . . does not mean that a dismissal for lack of 'standing' constitutes a judgment 'on the merits.'" Id. at 421. The Court reasoned the federal court had dismissed the plaintiff's complaint in the interest of the "sensible administration of the civil rights laws," not on the merits, as the

court neither determined the defendants had acted legally nor if the plaintiffs had been injured. Ibid.

Applying the Court's holding in Watkins to these facts, we agree that the federal court's dismissal of plaintiff's complaint with prejudice did not constitute an adjudication of plaintiff's claims on the merits. We make this determination based on the record showing the federal court dismissed plaintiff's complaint in two-steps: the initial order, entered on March 17, 2022, granting the Bank defendant's cross-motion to dismiss plaintiff's complaint and dismissing the complaint without prejudice for failure to state a claim. The federal court granted plaintiff thirty-days to file an amended complaint. The federal court's second order, the operative order, entered on April 26, 2022, referenced the March 17, 2022 order and dismissed plaintiff's complaint with prejudice because plaintiff failed to file an amended complaint within the thirty-days. Given the lack of any findings considering the merits of plaintiff's case or any indication the dismissal with prejudice was, we cannot conclude it was a dismissal on the merits.

Generally, a dismissal based on a court's "procedural inability to consider a case will not preclude a subsequent action on the same claim." Id. at 416. Here, the federal court's order dismissing plaintiff's complaint with prejudice

was in response to plaintiff's failure to amend his pleading within the thirty-day period the court had allotted him in its initial order dismissing his complaint for failure to state a claim. Thus, as in Watkins, the federal court's dismissal was not based on the merits. Id. at 424-25.

The first step of the res judicata analysis requires a final judgment on the merits by a court of competent jurisdiction. Here, the federal court's April 26, 2022 order was not a final judgment on the merits. This first factor, therefore, has not been established, and we need not address the remaining prongs of the res judicata doctrine — the same issues, involving the same parties or parties in privity, addressing the same cause of action — and reject Bank defendant's arguments. Brookshire Equities LLC v. Montaquiza, 346 N.J. Super. 310, 318 (2002).

Having determined that plaintiff's federal court action had been dismissed without a judgment on the merits and, thus, those claims are not barred by the doctrine of res judicata, we further note that plaintiff's breach-of-contract claim was not in his previous federal complaint. Therefore, the court erred in dismissing the entirety of the complaint because the breach-of-contract claim should have survived. Watkins, 124 N.J. at 414-15 ("We conclude that even if plaintiffs could have asserted all their claims in federal court, the federal court's

determination of the federal claims was not of such a nature as to preclude plaintiffs' subsequent assertion of their state claims in the state courts").

Lastly, plaintiff claims defendant violated the UCMJ when Lakeland Bank reversed a $1,500 credit it provided to plaintiff. See 10 U.S.C. § 921. This cited federal statute pertains to the crime of "larceny and wrongful appropriation" committed by members of the United States Armed Forces. See 10 U.S.C. § 921. However, as the motion court correctly ruled at the November 4, 2022 hearing, plaintiff's claim under this federal criminal statute is not legally viable because the statute does not provide a private right of action and hence does not provide a claim upon which relief can be granted. 10 U.S.C. § 802. See Jalowiecki v. Leuc, 182 N.J. Super. 22, 29-30 (App. Div. 1981); Livingston v. Shore Slurry Seal, Inc., 98 F. Supp. 2d 94 (D.N.J. 2000). Thus, we agree with the motion's court alternative finding that this claim under the UCMJ should be dismissed and affirm the dismissal of that claim.

We therefore affirm the dismissal of the statutory claim, reverse the dismissal of the breach-of-contract claim, and remand for proceedings consistent with this opinion.

Affirmed in part; reversed in part; and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.