United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-5107 **September Term, 2018**

FILED ON: MARCH 1, 2019

MICHAEL A. WILLNER AND MARGUERITE EVANS WILLNER,
APPELLANTS

v.

JAMES DIMON, INDIVIDUALLY, AS PRESIDENT AND CEO OF JP MORGAN CHASE BANK, N.A., ET AL.,
APPELLEES

Appeal from the United States District Court
for the District of Columbia
(No. 1:15-cv-01840)

Before: TATEL and KATSAS, *Circuit Judges*, and SENTELLE, *Senior Circuit Judge*.

J U D G M E N T

This case was considered on the record from the United States District Court for the District of Columbia and the briefs and arguments of the parties. The Court has accorded the issues full consideration and has determined that they do not warrant a published opinion. *See* D.C. Cir. R. 36(d). It is

ORDERED AND ADJUDGED that the district court's decision be affirmed for the reasons set forth in the memorandum filed simultaneously herewith.

Pursuant to Rule 36 of this Court, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after the disposition of any timely petition for rehearing or petition for rehearing *en banc*. *See* Fed R. App. P. 41(b); D.C. Cir. R. 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk
BY: /s/
Ken Meadows
Deputy Clerk

M E M O R A N D U M

The Willners appeal the district court's dismissal order. The district court did not err, and we affirm.

Prior to this litigation, Michael A. Willner and Marguerite Evans Willner (the "Willners") filed a *pro se* lawsuit in the Eastern District of Virginia ("EDVA") against a collection of banks, alleging misconduct and seeking to prevent foreclosure on their real property. The EDVA dismissed that case, finding both that the Willners' claims were functionally against Washington Mutual Bank ("WMB")—a defunct bank with which the Willners had refinanced their loan, and which was not a party to the lawsuit—and thus subject to Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), which includes an exhaustion requirement that the Willners failed to satisfy. The Willners appealed that decision to the Fourth Circuit, which affirmed the EDVA decision on the bases of failure to exhaust administrative remedies and failure to state a claim. In 2015, while their appeal was pending, the Willners filed claims with the Federal Deposit Insurance Corporation ("FDIC"), which were disallowed as untimely.

On October 29, 2015, the Willners initiated the instant litigation in the District Court for the District of Columbia ("DDC"), with a six-count Complaint against the Banks, claiming fraudulent concealment, seeking damages for said concealment and the resulting unjust enrichment, and requesting declaratory relief to stay foreclosure, deem the deed of trust unenforceable, and grant quiet title (collectively, the "property claims"). On May 22, 2017, shortly after the Fourth Circuit

affirmed the EDVA's dismissal order, the Willners amended their DDC pleading to add three counts against the FDIC for violations of due process, their Seventh Amendment right to a jury trial, and their "constitutional right to have their claims adjudicated by a federal court pursuant to Article III of the U.S. Constitution" (the "constitutional claims"). Amended Complaint ¶¶ 313–333.

On January 4, 2018, the DDC dismissed (1) the property claims under Fed. R. Civ. P. 12(b)(1) for lack of jurisdiction since the dispositive issues were precluded by the Fourth Circuit decision, and (2) the constitutional claims under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. *See Willner v. Dimon*, No. CRC-15-cv-01840, 2018 WL 3067902 (D.D.C. Jan. 4, 2018). On February 15, 2018, the DDC denied the Willners' Motion to Alter or Amend Judgment.

This Court applies a *de novo* standard of review for a district court's issue preclusion determination and its dismissal under Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction. *See, e.g.*, *GSS Grp. Ltd. v. Nat'l Port Auth. of Liberia*, 822 F.3d 598, 604–05 (D.C. Cir. 2016). We also apply a *de novo* standard of review for a district court's dismissal under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. *See, e.g.*, *Moore v. Valder*, 65 F.3d 189, 192 (D.C. Cir. 1995).

When assessing its own jurisdiction, the Fourth Circuit held that judicial review under FIRREA requires a claimant to first timely exhaust administrative remedies with the FDIC. *See Willner v. Dimon*, 849 F.3d 93, 102–03 (4th Cir. 2017) ("*Willner I*") (citing 12 U.S.C. §§ 1821(d)(3)(B)(i), 1821(d)(6)–(7), 1821(d)(13)(D)). By the time the EDVA litigation had commenced, six years had passed since the Bar Date, and the Willners had yet to file with the FDIC. The Fourth Circuit determined that equitable tolling did not, and could not apply, and therefore concluded that it lacked jurisdiction over the Willners' claims pursuant to FIRREA. *See Willner I*, 849 F.3d at 112.

The Willners now urge this Court to relitigate the issue of equitable tolling because the Fourth Circuit, when assessing whether FIRREA's administrative claims process applied, found that all claims were "functionally" against WMB. *See Willner I*, 849 F.3d at 104–05. Given this legal conclusion, the Willners argue that the EDVA and Fourth Circuit decisions have no preclusive effect because those courts lacked jurisdiction under FIRREA's mandatory venue provision, 12 U.S.C. § 1821(d)(6)(A), which confers jurisdiction only to the DDC and the district court collocated with WMB's principal place of business, the Western District of Washington. However, contrary to the Willners' assertions, preclusive effect can arise from a judgment when the originating court may have lacked subject matter jurisdiction. *See Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 n.9 (1982) ("A party that has had an opportunity to litigate the question of subject-matter jurisdiction may not, however, reopen that question in a collateral attack upon an adverse judgment. It has long been the rule that principles of res judicata apply to jurisdictional determinations—both subject matter and personal."); *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 152–54, 153 n.6 (2009).

Regardless, any Article III court "has jurisdiction to determine its own jurisdiction." *See United States v. United Mine Workers of Am.*, 330 U.S. 258, 292 n.57 (1947) ("[A]nd if it be contested and on due hearing it is upheld, the decision unreversed binds the parties as a thing adjudged. So in the matter of federal jurisdiction, which is often a close question, the federal court may either have to determine the facts. . . or the law. . . .") (internal citations omitted). It is of no moment whether the Fourth Circuit determined that it lacked subject matter jurisdiction based on failure to exhaust administrative remedies or based on a mandatory venue provision. This Court has no appellate authority over the Fourth Circuit, and thus, we cannot second guess the analytical

methodology of our sister circuit. The Fourth Circuit necessarily reviewed equitable tolling when assessing its jurisdiction under FIRREA, and the Willners are stuck with that result.

Accordingly, the district court properly assessed the elements of issue preclusion. Given the Willners' failure to timely file with the FDIC, equitable tolling was necessary for any valid property claim pursuant to FIRREA. That is precisely the issue the Fourth Circuit necessarily resolved when assessing its jurisdiction, and thus, relitigation of that issue is precluded. *Accord Martin v. Dep't of Justice*, 488 F.3d 446, 454 (D.C. Cir. 2007).

The district court also lacked jurisdiction over the Willners' constitutional claims. Section 1821(d)(6)(A) requires that all FIRREA claims must be filed in district court within sixty days of either the end of the 180-day window for the FDIC to determine the claims, or the date the claimant receives notice of a disallowance—whichever is earlier. 12 U.S.C. § 1821(d)(6)(A). Section 1821(d)(13)(D) makes clear that this filing deadline is jurisdictional. *Id.* § 1821(d)(13)(D) ("Except as otherwise provided in this subsection, no court shall have jurisdiction over ... any claim relating to any act or omission of such institution or the Corporation as receiver.").

The Willners' disallowance was issued on September 2, 2015, so they had until November 2, 2015 to file their claims in district court. Although the Willners filed a complaint on October 29, 2015, it included only the property claims against the banks, which arose from the Willners' 2006 loan agreement with WMB. The Willners did not file their constitutional claims against the FDIC, which arose from the FDIC's September 2015 disallowance of the Willners' claims, until May 22, 2017. They named the FDIC as a defendant only "in its capacity as Receiver of Washington Mutual Bank." Because these two sets of claims named different defendants and arose from different

transactions or occurrences, the constitutional claims do not relate back to the original filing date. *See* Fed. R. Civ. P. 15(c)(1)(B). Therefore, they are jurisdictionally time-barred.

Because the district court lacked jurisdiction over the constitutional claims, we do not reach the question whether it correctly concluded that those claims lack merit.

For the foregoing reasons, we affirm the district court's January 4, 2018 dismissal order.