U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 07-80057

Judgement - Summary Judgement

The relief set forth on the following pages, for a total of 2 pages including this page, is hereby ORDERED.

FILED BY THE COURT
01/17/2008

US Bankruptcy Court Judge
District of South Carolina

Entered: 01/17/2008

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

In re: Ernest Eugene Bobo, Debtor.	C/A No. 07-01120-HB Chapter 7
Ernest Eugene Bobo, Plaintiff, v. Vanderbilt Mortgage and Finance, Inc., CMH Homes Inc. dba Luv Homes, Defendants.	Adv. Pro. No. 07-80057-HB **JUDGMENT**

Based upon the Findings of Fact and Conclusions of Law set forth in the attached Order of the Court, the Court grants summary judgment for Defendants as to all of Plaintiff's claims.

IT IS SO ORDERED.

U.S. BANKRUPTCY COURT
District of South Carolina

Case Number: 07-80057

Order - Summary Judgement

The relief set forth on the following pages, for a total of 14 pages including this page, is hereby ORDERED.

FILED BY THE COURT
01/17/2008

US Bankruptcy Court Judge
District of South Carolina

Entered: 01/17/2008

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF SOUTH CAROLINA

In re: Ernest Eugene Bobo, Debtor.	C/A No. 07-01120-HB Chapter 7
Ernest Eugene Bobo, Plaintiff, v. Vanderbilt Mortgage and Finance, Inc., CMH Homes Inc. dba Luv Homes, Defendants.	Adv. Pro. No. 07-80057-HB **ORDER**

This matter comes before the Court upon Defendants' Motion to Dismiss pursuant to Federal Rule of Bankruptcy Procedure 7012(b)(6) and Federal Rule of Civil Procedure 12(b)(6).[1] The following facts are not in dispute:

FINDINGS OF FACT

1. On May 10, 2004 Robin A. McDaniel purchased a new mobile home from Defendant CMH Homes Inc., which does business in the name of Luv Homes. The sale was financed by a Retail Installment Sales Contract (RISC) assigned to Defendant Vanderbilt Mortgage and Finance, Inc. Under the terms of the RISC, Ms. McDaniel promised to pay Vanderbilt the sum of $46,238.00 with interest at the rate of 11.49%. A lien in favor of Vanderbilt was placed on the mobile home purchased by Ms. McDaniel.

[1] While Fed. R. Civ. P. 12(b)(6) provides for dismissal for "failure to state a claim upon which relief can be granted," a motion under this rule must be made before a responsive pleading. Defendants' Answer having been filed, a motion to dismiss for failure to state a claim is now inappropriate under Rule 12(b).

2. The Complaint in this adversary proceeding alleges the following regarding the relationship of the above captioned Defendants:

> 18. . . . Defendant CMH Inc does business in the name of Luv Homes, has a place of business in Spartanburg County, and was the selling merchant . . . and is the creditor of a consumer transaction.
>
> 19. Defendant Vanderbilt. . . is the assignee on the creditor transaction and is liable for all claims and defenses as against the selling merchant.

Defendants admitted these allegations of the Complaint. Plaintiff further asserts in Paragraph 20 of the Complaint that "the relation between Luv Homes and Vanderbilt is one of joint venturer or partner, and has common ownership."

3. The debt to Vanderbilt was further secured by a mortgage of real estate executed by Plaintiff Ernest Eugene Bobo. Mr. Bobo is Ms. McDaniel's father or grandfather. The Mortgage of Real Estate was executed on May 10, 2004 and involved real property located in Spartanburg County. The mortgage was recorded in the Office of Spartanburg County Register of Deeds on May 14, 2004.

4. The mobile home purchased by Ms. McDaniel was placed on the Spartanburg property owned by Mr. Bobo. Mr. Bobo's own manufactured home was also located on that property and has been his principal residence for several years.

5. On August 11, 2006 Vanderbilt filed a mortgage foreclosure action against the real property. Mr. Bobo was a named defendant in the foreclosure action and personal service was effected upon Mr. Bobo on August 19, 2006. Mr. Bobo did not appear or assert any defenses in the foreclosure action.

6. A Master's Order and Judgment of Foreclosure and Sale was filed on January 2, 2007 in the case of Vanderbilt Mortgage and Finance, Inc. v. Ernest Eugene Bobo, Robin A. McDaniel and the United States of America, Case No. 06-CP-42-2612 in

the Court of Common Pleas for Spartanburg County. In the Master's Order, the master in equity held as follows:

> 7. For value received, Robin A. McDaniel made, executed and delivered a note, dated May 10, 2004, promising thereby to pay to the order of Vanderbilt Mortgage and Finance, Inc. the sum of $46,238.00, with interest at the rate of 11.49% per annum. . . .
>
> 8. To better secure the payment of said note and debt, a lien was placed upon the mobile home owned by the Defendant, Robin A. McDaniel, to wit: 2003 Clayton mobile home. . . .
>
> 9. To better secure the payment of the note described above, the said Ernest Eugene Bobo made, executed and delivered to Vanderbilt Mortgage and Finance, Inc. a mortgage, in writing, dated May 10, 2004, covering real property in Spartanburg County, which is the same as that described in the Complaint. . . .
>
> 10. This mortgage constitutes a first lien on the subject property.
>
> 11. The Plaintiff [Vanderbilt] in this action is the mortgagee and owner and holder of the note and mortgage it is seeking to foreclose.
>
> 12. The titleholders of record of the subject property as of the filing of the Lis Pendens in this action was [sic] Ernest Eugene Bobo and Robin A. McDaniel, who were the original mortgagors.
>
> 13. Payment due on the note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to accelerate payment of the entire indebtedness. . . .
>
> . . . .
>
> 15. The amount due and owing on the note and mortgage . . . secured by the note and mortgage, is as follows: . . . Total Debt secured by note and mortgage, including interest to date: $50,808.75.
>
> . . . .
>
> I, therefore, conclude as follows:
>
> 1. The Plaintiff should have judgment of foreclosure of its mortgage; and the mortgaged property should be ordered sold at public auction after due advertisement.

7. A sale of the real property was scheduled for March 5, 2007. Mr. Bobo filed his bankruptcy petition on March 3, and the sale was cancelled.

8. Mr. Bobo filed this Adversary Complaint on April 26, 2007 against the above named defendants alleging causes of action based on the South Carolina homestead exemption, the federal Truth In Lending Act, 15 U.S.C. §§ 1601-1667f (TILA) for failure to provide right of rescission (15 U.S.C. § 1635(a)), and under the state Consumer Protection Code, S.C. Code Ann. §§ 37-1-101 to 37-25-80, for "overreaching," unconscionability, and violation of the attorney preference provision.

9. As to the homestead exemption, Plaintiff/Debtor seeks the relief in the form of denial of the motion for relief from stay filed by Defendant Vanderbilt pursuant to 11 U.S.C. § 362 in Plaintiff's bankruptcy case and an award of costs and attorney's fees "in objecting to the Claim."

10. As to the TILA claim for relief, Plaintiff seeks rescission of the mortgage under 15 U.S.C. § 1635(a), based on the allegation that he was not provided with a three-day right to rescind the transaction as required by this section.

11. As to the state Consumer Protection Code claim, Plaintiff's Complaint seeks the following: a finding that the mortgage was unconscionable based on absence of disclosures, attorney preference and setting up of a mobile home on a lot already occupied by Plaintiff's home;[2] "to reform the financing, specifically to void the mortgage pursuant to § 37-10-102 [attorney preference] and 105";[3] actual and statutory damages pursuant to § 37-10-105 and "damages" pursuant to § 37-5-202(8) (which provides for an award of attorney's fees if a creditor is found to violate Title 37).

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[2] Though not cited by Plaintiff, S.C. Code Ann. § 37-5-108 address unconscionabilty of a consumer credit transaction and provides that the court may refuse to enforce all or part of the agreement and award actual damages if it finds as a matter of law that the transaction was unconscionable or was induced by unconscionable conduct. See S.C. Code Ann. §§ 37-5-108(1)(a) and (b) and 37-10-105(C).

[3] Section 37-10-105(A) provides for actual damages and a statutory penalty if the creditor violates a provision of Chapter 10, such as the attorney preference provision.

12. Defendants filed a joint Answer to the Complaint in this adversary proceeding on May 22, 2007.

13. On September 5, 2007 Defendants filed a joint Motion to Dismiss pursuant to Fed. R. Bankr. P. 7012(b)(6) and Fed. R. Civ. P. 12(b)(6), asserting that the Complaint should be dismissed because all of Plaintiff's claims are barred by *res judicata* and collateral estoppel as a result of the Master's Order and Judgment of Foreclosure and Sale.

CONCLUSIONS OF LAW

Procedural Issues

According to Rule 12(b), "a motion asserting any of these defenses [12(b)(1) – (7)] must be made before pleading if a responsive pleading is allowed." Defendants' Answer having been filed previously, a motion to dismiss for failure to state a claim upon which relief can be granted is now inappropriate under Rule 12(b). Litwhiler v. Hidlay, 429 F. Supp. 984, 986 (D.C. Pa. 1977); Shabazz v. C. R. Odum, 591 F. Supp. 1513, 1514 n.1 (M.D. Pa. 1984). The typical solution is to treat the motion as a motion for summary judgment under Rule 56. Litwhiler, 429 F. Supp. at 986; Shabazz, 591 F. Supp. at 1514 n.1; Dickun v. United States, 490 F. Supp. 136, 137 (W.D. Pa. 1980).

For an additional reason, Rule 12(d) further dictates that this be done in the present case. Defendants attached to their Motion several documents, including a mortgage contract signed by Plaintiff and a Retail Installment Contract-Security Agreement signed by Ms. McDaniel. Rule 12(d) provides that "[i]f, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56." See also Dickun, 490 F. Supp. at 137 (where movant asked the court to consider an insurance release signed by the plaintiff,

motion must be treated as summary judgment motion); Peagler v. Peagler (In re Peagler), No. 01-80021-W, 2001 WL 1806976, at *5 n.8 (Bankr. D.S.C. June 1, 2001) (applying Rule 56 rather than Rule 12(b)(6) where parties relied on and court took into consideration documents outside the pleadings). The documents attached to the motion are "matters outside the pleadings" and they were not excluded by the Court. Accordingly, for the dual reasons that (1) the motion to dismiss was filed after a responsive pleading and (2) matters outside the pleadings were presented and not excluded, the Court will treat Defendants' motion as a motion for summary judgment under Rule 56. Dickun, 490 F. Supp. at 137; Litwhiler, 429 F. Supp. at 986. See also Bosiger v. U.S. Airways, No. 06-2085, 2007 WL 4357194, at *6 (4th Cir. Dec. 14, 2007) ("It is well settled that district courts may convert a Rule 12(b)(6) motion to dismiss into a Rule 56 motion for summary judgment.")

Summary Judgment Standard

Summary judgment under Rule 56(c) of the Federal Rules of Civil Procedure, made applicable to this adversary proceeding by to Rule 7056 of the Federal Rules of Bankruptcy Procedure, is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. See Fed. R. Bankr. P. 7056 (making Fed. R. Civ. P. 56 applicable to adversary proceedings in a bankruptcy case). The Court must construe any underlying facts in the light most favorable to the non-moving party. Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986). In determining whether to grant a motion for summary judgment, the Court does not weigh the evidence; instead, it determines if there is a genuine issue of material fact for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). A genuine issue of material fact exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Id.

The Court must view the facts and draw reasonable inferences in a light most favorable to the non-moving party. Shaw v. Stroud, 13 F.3d 791, 798 (4th Cir. 1994).

On a motion for summary judgment, the Court may apply the doctrines of *res judicata* and collateral estoppel to prohibit the re-litigation of the elements of an action decided by a prior state court order and prohibit a collateral attack on that order. See Konan v. Sengal, 239 Fed. Appx. 780, 2007 WL 1988534, at *1 (4th Cir. 2007) (noting that the court may take judicial notice of a state court disbarment and finding that the attorney could not challenge the constitutionality of the state court's disciplinary procedures in a lower federal court); Shumpert v. Ingram (In re Ingram), No. 03-80347-W, slip op. at 5 (Bankr. D.S.C. Dec. 15, 2003) (applying collateral estoppel on a motion for summary judgment of an action brought under 11 U.S.C. § 523(a)(4)).

Homestead Exemption Claim

The Court cannot discern any legal or equitable basis for Plaintiff's assertion of the homestead exemption as a cause of action in the manner attempted in the Complaint. The Complaint states:

> 39. The Motion for Relief seeks relief from stay not allowed as a homestead exemption.
>
> 40. Plaintiff seeks recovery of attorney's fees and costs in objecting to the Claim.

At the hearing on the motion, counsel for Defendants argued that under South Carolina law, no homestead exemption arises to defeat a mortgage; if one mortgages land, he may not claim homestead against it, counsel argued, citing People's Bank of Campobello v. O'Shields, 167 S.C. 296, 166 S.E. 351 (1932) (state constitution and homestead statute are in accord and forbid the waiver of homestead "except by deed of conveyance, or by mortgage, and only as against the mortgage debt.") There are other early cases which

support the Defendants' position. See Rosenberg v. Lewi, 7 S.C. 344, 1876 WL 5971, at *4 (1876) ("as to [a mortgage] there can be no right of homestead as against the claim of a mortgagee"); Homestead Assoc. v. Enslow, 7 S.C. 1, 1876 WL 5938, at *8 ("homestead cannot be claimed in mortgaged property until the mortgage is satisfied by payment.") While the Court cannot find any modern affirmation of this proposition, it may be that the proposition is so obvious that it no longer requires citation. After all, the current homestead exemption protects "the *debtor's aggregate interest* . . . in real property . . . ." S.C. Code Ann. § 15-41-30(1) (emphasis added). As a result of the Mortgage of Real Estate signed by Plaintiff, his "interest" in the property which he claims as his homestead is subject to the terms of the mortgage. To the extent that Plaintiff's interest in the real property exceeds the amount owed to Vanderbilt, the Court assumes that by operation of Rule 71 of the South Carolina Rules of Civil Procedure which governs foreclosure, that Plaintiff will receive any surplus claimed, subject to any other superior valid claims (such as tax claims). Thus, the current homestead statute has the same effect as these early cases: the Plaintiff is entitled to his homestead exemption, but only after the mortgage and other valid liens are satisfied.

Therefore, as to this cause of action the Court grants summary judgment in favor of the Defendants.

Res Judicata[4]

As this Court recognized in In re Ford, "the preclusive effect of a state court judgment in federal court depends upon state law." No. 05-44958-jw, slip op. at 5 (Bankr. D.S.C. Mar. 10, 2006) (citing Levine v. McLeskey, 164 F.3d 210, 213 (4th Cir. 1998) and In re Swilley, 295 B.R. 839, 846 (Bankr. D.S.C. 2003)). In South Carolina, "[r]es judicata requires three elements: (1) the judgment must be final, valid and on the merits; (2) the parties in the subsequent action must be identical [to the parties] in the first; (3) the second action must involve matters properly included in the first action." Latimer v. Farmer, 360 S.C. 375, 385, 602 S.E. 2d 32, 37 (2004) (citing Plum Creek Dev. Co. v. City of Conway, 334 S.C. 30, 512 S.E.2d 106 (1999)).

In Ford, a foreclosure judgment was issued by the state court which was "a final determination that [creditor's] note and mortgage are valid and that [d]ebtor owes [creditor] approximately $105,920.12." Slip op. at 5. Similarly, in the present case, the Master's Order and Judgment of Foreclosure and Sale is a final valid judgment that the mortgage on Plaintiff's property is valid and that the amount due to Vanderbilt is approximately $50,808. The order has not been appealed or challenged by a motion for relief from judgment or order[5] and even though a default judgment, it constitutes a final judgment on the merits. 18

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[4] Defendants also argue that collateral estoppel bars Plaintiff's claims in this case. South Carolina's law of collateral estoppel applies to this proceeding, and requires that the "issue of fact or law [must be] actually litigated and determined by a valid and final judgment . . . ." Malone Constr. v. Hewett (In re Hewett), No. 03-80246-jw, slip op. at 6 (Bankr. D.S.C. Oct. 3, 2003) (quoting State v. Bacote, 331 S.C. 328, 330, 503 S.E.2d 161, 162 (1998)). The issues raised by Plaintiff's claims for homestead exemption, TILA and the state Consumer Protection Code were not actually litigated or determined in the state court foreclosure action in which Plaintiff defaulted: "In the context of a default judgment, collateral estoppel or issue preclusion does not apply because an essential element of that doctrine requires that the claim sought to be precluded actually have been litigated in the earlier litigation." Bacote, 331 S.C. at 331, 503 S.E.2d at 163. Accordingly, collateral estoppel does not apply in this case.

[5] While S.C. Code Ann. § 37-5-115 appears to offer consumers relief from default judgments in consumer credit transactions under certain conditions, that relief is only available from the court which rendered the initial judgment, and no evidence has been offered indicating that such relief has been requested by any party to the state court foreclosure action.

C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4442 (1981). As in Ford, the first element of *res judicata* is accordingly present. See also The Roof Doctor, No. 97-01648-jw, 1998 WL 2016785, at *4 (Bankr. D.S.C. Aug. 25, 1998) (default judgment in state court action to collect a debt barred debtor, on *res judicata* grounds, from asserting same defense to proof of claim which could have been asserted in state court collection action).

As to identity of the parties, Plaintiff and Defendant Vanderbilt were parties in the state court action, along with Ms. McDaniel. Neither party contends that the presence of Ms. McDaniel in that action defeats this element. "A prior judgment may operate as an estoppel even though the action in which it was rendered included additional parties not joined in the subsequent suit." 50 C.J.S. Judgments § 848 (database update Dec. 2007).[6]

Finally the Court must decide whether a state law Consumer Protection Code claim and a Federal TILA claim would properly have been included in the foreclosure action. Defendants argue that these claims are based upon the same mortgage transaction at issue in the foreclosure and that Plaintiff's claims are mandatory counterclaims which could have been raised in the foreclosure. Plaintiff argues that the new claims are "permissive counterclaims in nature."

The issue hinges on whether Plaintiff's claims are compulsory or permissive counterclaims as to the state foreclosure action:

> The application of claim preclusion turns on whether a counterclaim is permissive or compulsory. If a counterclaim is permissive, but not raised in the first case, a defendant is not precluded from asserting the claim in a later action. On the other

[6] As noted in the Findings of Fact, Plaintiff's Complaint asserts common ownership between the two Defendants, although CMH Homes was not a defendant in the foreclosure action. Plaintiff did not argue contrary to this allegation nor assert any distinction between the parties in defense of Defendants' *res judicata* claims.

> hand, if a counterclaim is compulsory, but not raised in the first action, a defendant is precluded from asserting the claim in a subsequent action.

Crestwood Golf Club, Inc. v. Potter, 328 S.C. 201, 217, 493 S.E.2d 826, 835 (1997) (citations omitted). Under S.C.R.C.P. 13(b) a "permissive counterclaim" is defined as "any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim." A "compulsory counterclaim" is defined as "any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim." S.C.R.C.P. 13(a). The South Carolina Supreme Court has adopted the "logical relationship test" to determine whether a counterclaim is compulsory under the Rule 13(a) definition. N.C. Fed. Sav. & Loan Ass'n v. DAV Corp., 298 S.C. 514, 518-19, 381 S.E.2d 903, 905 (1989); Beach Co. v. Twillman Ltd., 351 S.C. 56, 61, 566 S.E.2d 863, 865 (S.C. App. 2002). In this test the court looks at whether there is a logical relationship between the claims. DAV Corp., 298 S.C. at 518, 381 S.E.2d at 905. "Whether a counterclaim is logically related to the initial claim depends upon the facts of each case." Beach Co., 351 S.C. at 61, 566 S.E.2d at 865.

Although research has revealed no South Carolina case involving a whether a federal TILA or state Consumer Protection Code counterclaim is compulsory as to a foreclosure action,[7] two other courts have addressed the issue as to a TILA claim. In In re Garcia, 340 B.R. 680 (Bankr. D. P.R. 2006) a bankruptcy court found specifically that since the foreclosure action was based on the same events from which the TILA claims arose, the

[7] The South Carolina case with the closest facts appears to be N.C. Fed. Sav. & Loan Ass'n v. DAV Corp., 298 S.C. 514, 381 S.E.2d 903 (1989). In that case the court found a logical relationship between a foreclosure on a note and mortgage in a commercial property transaction and counterclaims alleging breach of an oral agreement and Unfair Trade Practices Act violations. The court held that these particular counterclaims were compulsory: "there is a logical relationship between the enforceability of the note . . . and the validity of the purported oral agreement which, if performed, would have avoided default on the note by the joint venture." Id. at 518, 381 S.E.2d at 905.

TILA claims should have been raised as compulsory counterclaims in the foreclosure proceeding and were therefore barred by *res judicata*. Id. at 688. In R.G. Financial v. Vergara-Nunez, 446 F.3d 178 (1st Cir. 2006) the court held that a final judgment precludes assertion of any counterclaim, whether permissive or compulsory, that would nullify the initial judgment. The defendant's TILA counterclaim for rescission was precluded because it would nullify the plaintiff's "court-sanctioned right to foreclose the mortgage" which was established by a default judgment. Id. at 185. "Fairly read, the TILA contains no hint of a legislative intent to preempt normally applicable state-law preclusion rules or otherwise to undercut Congress's general directive that federal courts should afford state-court judgments the same preclusive effect they would receive in the courts of the rendering state." Id. at 188, citing 28 U.S.C. § 1738. See also Albano v. Norwest Financial Hawaii, Inc., 244 F.3d 1061, 1064 (9th Cir. 2001) (upholding a summary judgment determination that *res judicata* barred a TILA claim because it could have been raised in the state court foreclosure action in which the plaintiffs defaulted.)[8]

The Court concludes that the TILA claim and the state Consumer Protection Code claims bear a logical relationship to the foreclosure action. Vanderbilt's foreclosure action concerned whether it was entitled to foreclose on Plaintiff's mortgage under the terms of the

[8] Bankruptcy courts in other states have reached differing results, depending on state law, when applying *res judicata* to TILA claims following a state court foreclosure order. In Equity Mortgage, Inc. v. Johnson, 149 B.R. 284 (Bankr. D. Conn. 1993) a default judgment of foreclosure was entered against the debtor, but a bankruptcy petition was filed prior to debtor's day to redeem. Id. at 286. In response to creditor's motion for relief from stay, debtor sought to assert set off based on violations of TILA, federal Real Estate Settlement Procedures Act, state unfair trade practices act and the doctrine of unconscionability. Id. at 287. The court, applying Connecticut law which "recognizes a default judgment as a final one," held that *res judicata* applied and barred the debtor and trustee from collaterally attacking the state court judgment. Id. In contrast, see In re Apaydin, 201 B.R. 716, 720-21 (Bankr. E.D. Pa. 1996). Because Pennsylvania state courts have ruled that a TILA counterclaim (which was *in personam* in nature) could not be raised in a foreclosure action (which was *in rem*), *res judicata* did not bar a TILA claim in a separate, subsequent lawsuit. (In South Carolina, a foreclosure of a mortgage on real property is both *in rem* and *in personam.* Bartles v. Livingston, 282 S.C. 448, 454, 319 S.E.2d 707, 711 (S.C. App. 1984)). See generally cases cited in 1 Fed. Reg. Real Estate & Mortgage Lending § 10.81 n.2 (4th ed. Dec. 2007 update).

contract. Plaintiff's claims concern whether Plaintiff is entitled rescind that very contract under TILA and whether Plaintiff is entitled to void the mortgage or recover damages due to violation of the co-signer notice, attorney preference and unconscionabilty provisions of the state Consumer Protection Code. Plaintiff's claims were matters properly included in the foreclosure action. Thus, the third element of *res judicata* is met. Accordingly, summary judgment is granted in favor of Defendants as to the TILA and state Consumer Protection Code claims.

Conclusion

For the foregoing reasons, the Court grants summary judgment to Defendants on all of Plaintiff's Claims for Relief.