

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LOUIS McDUFFY, JR. and)
BRENDA McDUFFY,)
)
Plaintiffs,)
)
v.) Civil Action No. 99-142-SLR
)
DeGEORGE ALLIANCE, INC.,)
BAYARD ALLMOND, III, Esquire and)
JOHN BENGE, Esquire,)
)
Defendants.)

Louis McDuffy, Jr. and Brenda McDuffy, New Castle, Delaware.
Plaintiffs, pro se.

Bayard Allmond, III, Esquire of Allmond & Eastburn, Wilmington,
Delaware. Counsel for defendant DeGeorge Alliance, Inc.

Stephen F. Dryden, Esquire of Berkowitz, Chagrin, Cooper &
Dryden, Wilmington, Delaware. Counsel for defendant Bayard
Allmond, III.

John Benge, Esquire, Wilmington, Delaware. Counsel for defendant
John Benge.

MEMORANDUM OPINION

Dated: August 9, 2002
Wilmington, Delaware

ROBINSON, Chief Judge

I. INTRODUCTION

Plaintiffs Louis McDuffy, Jr. and Brenda McDuffy filed this action against defendants DeGeorge Alliance, Inc. ("DeGeorge"),¹ Bayard Allmond, Esquire, and John Bengel, Esquire. (D.I. 1) On March 11, 1999, plaintiffs filed a complaint asserting claims under 42 U.S.C. §§ 1981, 1982, 1983 and 1985, as well as misrepresentation, fraud and violations of state and federal RICO laws. (Id.) On March 31, 2000, the court dismissed several of plaintiffs' claims against Mr. Allmond, and stayed the action as to DeGeorge. (D.I. 26, 27) The court has jurisdiction over plaintiffs' remaining federal claims pursuant to 28 U.S.C. §§ 1331 and 1343. Currently before the court is defendant Allmond's motion for summary judgment. (D.I. 75) For the following reasons, the court shall grant defendant's motion.

II. BACKGROUND

A. The Bizarre Drive Property

The underlying matter centers on a residence owned by DeGeorge, located at 14 Bizarre Drive in New Castle, Delaware. DeGeorge engages in the business of selling housing and housing packages to consumers who might otherwise not be able to purchase homes, as well as providing construction financing to prospective homeowners and assisting them in obtaining permanent financing

¹DeGeorge was formerly known as Miles Homes Services, Inc. and Miles Homes, Inc.

upon completion of construction. (D.I. 52 at 8) On November 5, 1991, plaintiffs purchased the partly completed Bizarre Drive residence from DeGeorge, signing an "As-Is" agreement. (D.I. 40, Ex. E) In connection with the transaction, plaintiffs took out a purchase money mortgage in the amount of \$39,500 on November 5, 1991, made payable by May 5, 1993. (D.I. 5, Ex. 2) A second mortgage was taken out on May 15, 1992 in the amount of \$6,062, payable by September 30, 1992. (D.I. 40, Ex. X) Both mortgages were balloon obligations.

Plaintiffs subsequently defaulted on the mortgage payments. According to plaintiffs, they paid the agreed-upon amount during the 18-month loan period with respect to the initial mortgage, but were unable to secure a "residential mortgage company" to take over the balloon payments because they could not obtain an occupancy permit from the county. (D.I. 1 at ¶ 68) Before foreclosing on both obligations, Mr. Allmond, DeGeorge's attorney, informed plaintiffs of DeGeorge's intentions. (Id. at ¶ 69) Mr. Allmond indicated that DeGeorge was willing to accept the deed to the property in lieu of foreclosure. (D.I. 40, Ex. B) Plaintiffs' response to Mr. Allmond, dated February 1995, offered DeGeorge a \$20,000 cash settlement. (Id.)

It is unclear from the record when the appraisals on the property were conducted, but they both indicated that the "As-Is" value was approximately \$48,000 to \$50,000 maximum. (D.I. 40,

Exs. P, Q) DeGeorge ultimately rejected plaintiffs' offer of \$20,000, based upon the appraised value. (D.I. 1 at ¶¶ 27-30) On August 11, 1995, Mr. Allmond determined that the mortgages lacked "seals," and started foreclosure procedures scire facias sur in Delaware Superior Court, and equitable foreclosure in the Delaware Court of Chancery. (D.I. 5, Ex. 2)

B. Delaware Chancery Court Proceedings

The foreclosure action in the Delaware Court of Chancery was assigned to Vice Chancellor Jack B. Jacobs.² (Id.) Plaintiffs filed a counterclaim alleging "acts of forgery, misrepresentation and fraud" in response to the action. (D.I. 1 at ¶ 74) On March 25, 1997, DeGeorge filed a motion for partial summary judgment on its right to foreclose the two mortgages at issue. (D.I. 13 at A-6) According to plaintiffs, attached to DeGeorge's motion was an agreement to the sale of the property in "As-Is" condition. (D.I. 1 at ¶ 56) On October 3, 1997, a hearing was held on the matter, during which plaintiffs argued that they were victims of fraud because their copy of the "As-Is" document was not signed by DeGeorge, thereby invalidating the contract. (D.I. 1 at ¶¶ 56, 61) At the close of the hearing, Vice Chancellor Jacobs ruled in favor of DeGeorge, due to plaintiffs' lack of substantial evidence to support their allegations. (D.I. 13) An

²Although plaintiffs initially appeared pro se, they eventually retained counsel to represent them. (D.I. 13 at A-6)

order was then issued dismissing the case on December 15, 1997. (Id. at A-1, A-2) Plaintiffs subsequently filed a motion for reargument. (Id. at A-7) The Delaware Supreme Court affirmed the lower court's decision on August 26, 1998. (Id. at A-9) On December 9, 1998, Vice Chancellor Jacobs signed an order denying the counterclaim, and later denied plaintiffs' motion for reargument. (D.I. 83, Ex. 3; D.I. 13 at A-8) On April 29, 1999, the Delaware Supreme Court affirmed the Court of Chancery's decision denying plaintiffs' motion for reargument. (D.I. 17)

C. Bankruptcy Proceedings

On May 7, 1999, DeGeorge and its parent company filed voluntary petitions for Chapter 7 liquidation in the United States Bankruptcy Court for the District of Delaware. (D.I. 65) On May 27, 1999, the bankruptcy court entered an order transferring the cases to the United States Bankruptcy Court for the District of Connecticut ("Connecticut bankruptcy court"), which then entered orders to consolidate the cases and convert them to a Chapter 11 proceeding. (Id.) On May 18, 1999, DeGeorge notified this court of the bankruptcy petitions and the instant action was stayed pursuant to an order issued on March 31, 2000. (Id.; D.I. 27)

On February 28, 2000, plaintiffs filed a proof of claim in DeGeorge's bankruptcy proceedings, and they were granted an opportunity to argue their claim in a hearing before the

Connecticut bankruptcy court. (D.I. 52 at 4) Plaintiffs initially asserted a claim of approximately \$20 million of a mixed secured and unsecured priority nature, and subsequently amended their claim value to \$62 million dollars in losses. (Id. at 10-11) In the proof of claim, plaintiffs asserted the same claims as filed in this action, alleging violations under 42 U.S.C. §§ 1981, 1983, 1985 and RICO laws. (Id. at 21) Upon hearing all of the evidence presented, the Connecticut bankruptcy court found that plaintiffs' claim was not sustainable and assigned to it a value of zero dollars for bankruptcy voting purposes. (D.I. 52) Upon approving DeGeorge's reorganization plan on February 26, 2001, the Connecticut bankruptcy court disallowed plaintiffs' claim in its entirety. (D.I. 65) On July 15, 2002, the United States District Court for the District of Connecticut affirmed the Connecticut bankruptcy court's rulings. (D.I. 86)

III. STANDARD OF REVIEW

A court shall grant summary judgment only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the burden to demonstrate that no genuine issue as to any material fact is present. See Matsushita

Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." Horowitz v. Fed. Kemper Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995) (internal citations omitted). If the moving party has demonstrated an absence of material fact, the nonmoving party then "must come forward with 'specific facts showing that there is a genuine issue for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The court will "view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." Pa. Coal Ass'n v. Babbitt, 63 F.3d 231, 236 (3d Cir. 1995). However, this standard provides that the mere existence of some alleged factual dispute between the parties will not defeat a properly supported motion for summary judgment; the function of this motion is to weigh the evidence and determine if a genuine issue is present for trial. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-49 (1986). If the nonmoving party fails to make a sufficient showing on an essential element of its case with respect to which it has the burden of proof, the moving party is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

IV. DISCUSSION

A. § 1981 Claim Against Defendant Allmond

To establish a claim under § 1981, plaintiffs must show

(1) that [plaintiffs are] a member of a racial minority; (2) defendant's intent to discriminate on the basis of race; and (3) discrimination concerning one or more of the activities enumerated in the statute.

Delliponti v. Borough of Norristown, No. 98-3837, 1999 WL 213370, at *2 (E.D. Pa. Apr. 9, 1999) (quoting Mian v. Donaldson, Lufkin & Jenrette Securities Corp., 7 F.3d 1085, 1087 (2d Cir. 1993)).

Plaintiffs believe that they have submitted "sufficient direct and indirect facts which support a claim of discriminatory intent." (D.I. 78 at 3) In their complaint, plaintiffs allege that Mr. Allmond denied them the right to a fair trial by submitting false statements and affidavits, and purposefully hiding and removing lost records submitted to the Court of Chancery. (D.I. 1 at ¶ 143-146) They also allege that defendant "advertised it for \$25000 for whites when it was worthless and used a fake certified report for African Americans, doubling the price to \$50000." (D.I. 1 at ¶ 112) Plaintiffs claim that Mr. Allmond "already admitted to the State Supreme Court . . . hearing that the "**as is**" document as sent out by him and Miles Homes had no signature . . ." (D.I. 78 at 8) (emphasis in the original) Plaintiffs also claim that Mr. Allmond took advantage of them and that "he had no fear of losing his practice, being

fined, sanctioned, or contempt of court **because we are african americans,**" and that "fraudulent issues brought up in the court of chancery and federal court were again investigated in the [Office of Disciplinary Committee]." (D.I. 1 at ¶ 77; Id. at 11) (emphasis in original) In support of their allegations, they submitted an "affidavit" by them, the disputed versions of the "As-Is" documents, the portion of the transcript of Mr. Allmond's testimony made in front of the Delaware Supreme Court hearing, as well as many other various court transcripts and personal letters. (D.I. 40, 78)

The court agrees that plaintiffs are members of a racial minority, but finds that plaintiffs have failed to create a genuine issue of material fact as to Mr. Allmond's intent to discriminate against them on the basis of race. In order to show intentional discrimination, plaintiffs "must point to facts of record which, if proved, would 'establish that defendant['s] actions were racially motivated and intentionally discriminatory,' or, at least, 'support an inference that [defendant] intentionally and purposefully discriminated' against [them] on the basis of [their] race." Ackaa v. Tommy Hilfiger Co., No. 96-8262, 1998 WL 136522, at *3 (E.D. Pa. Mar. 24, 1998) (internal citations omitted). Upon review of the entire record, the court finds no evidence indicating that Mr. Allmond's conduct suggest a purposeful, race-based discrimination towards either

plaintiffs or the African-American community. Thus, the court shall grant summary judgment in favor of defendant Allmond on plaintiffs' § 1981 claim.

B. § 1985 Claim Against Defendant Allmond

Section 1985 was enacted to combat conspiracies motivated by racial or class-based discrimination. The court considers that this claim pertains to the second clause of § 1985, which permits an injured party relief

if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce the right of any person, or class of person, to the equal protection of the laws . . .

42 U.S.C. § 1985(2). The essential elements necessary to state a claim under § 1985(2) are: (1) a conspiracy; (2) motivated by a racial or class-based discriminatory animus; (3) designed to deprive, either directly or indirectly, any person or class of persons the equal protection of the law; (4) an overt act in furtherance of the conspiracy; and (5) an injury to person or property or the deprivation of any right or privilege of a citizen of the United States. See Dover v. Marine Trans. Lines, No. 89-5600, 1991 WL 204032, at *1 n.1 (E.D. Pa. Oct. 4, 1991) (construing the second clause of § 1985(2) as requiring the same

elements for a cause of action as those required under § 1985(3)); see also Kush v. Rutledge, 460 U.S. 719, 722 (1983).

In their complaint, plaintiffs allege that Mr. Allmond's actions demonstrate that he intentionally committed acts "for the purpose of showing that as African American Americans [sic] [plaintiffs] will not have or enjoy the right to litigate," and to "steal [plaintiffs'] property." (D.I. 1 at ¶¶ 144, 146) They further allege that Mr. Allmond conspired against them "when our lawyer explained to us that it was a prearranged presentation, a recitation, and a plan and scheme." (D.I. 40 at 6)

Because the court finds no evidence in the record suggesting that Mr. Allmond acted pursuant to a race- or class-based animus toward plaintiffs, the court concludes that plaintiffs have failed to create a genuine issue of material fact on this claim. Thus, the court shall grant summary judgment in favor of defendant Allmond on plaintiffs' § 1985 claim.

C. Claims Against Defendant DeGeorge

Under the doctrine of claim preclusion, a final judgment on the merits of an action that involves the same parties will bar any subsequent suits based on the same cause of action. See Eastern Minerals & Chemicals Co. v. Mahan, 225 F.3d 330, 336 (3d Cir. 2000); In re Monroe Park, 17 B.R. 934, 937 (D. Del. 1982).

Claim preclusion does not bar **all** unasserted claims that theoretically could have been raised, but only those based on the same cause of action that was actually asserted

previously. . . Claim preclusion doctrine must be properly tailored to the unique circumstances that arise when the previous litigation took place in the context of a bankruptcy case. [A] claim should not be barred unless the factual underpinnings, theory of the case, and relief sought against the parties to the proceeding are so close to a claim actually litigated in bankruptcy that it would be unreasonable not have brought them both at the same time in the bankruptcy forum.

Eastern Minerals, 225 F.3d at 336 (emphasis in original).

The court finds that plaintiffs have raised the merits of their instant claims against DeGeorge in the Connecticut bankruptcy court. As that court stated,

McDuffy Two [the current matter] was stayed as a result of the DeGeorge bankruptcy, and it is McDuffy Two, the so-called Title 7 claim or claims, that is the litigation which is the basis for the claim, that is Claim Number 186, which has been filed before this Court. . . Now, the complaint itself is described at some detail in the memorandum opinion of March 31st, 2000, by The Honorable Sue Robinson, United States District Judge for the District of Delaware, and this ruling assumes familiarity with that memorandum opinion in all respects, including specifically the description of the complaint, its allegation and the underlying elements.

(D.I. 52 at 12-14) Plaintiffs were given an opportunity to present evidence on their claims against DeGeorge to the Connecticut bankruptcy court, which denied them relief because their claims lacked merit. Accordingly, plaintiffs are barred

from relitigating those issues before this court. Thus, the court shall dismiss plaintiffs' claims against DeGeorge.

V. CONCLUSION

For the reasons stated, the court shall grant defendant Allmond's motion for summary judgment, and dismiss plaintiffs' claims against defendant DeGeorge. An appropriate order shall issue.³

³Defendant Bengé was named as a party in the case at bar because he represented defendant Allmond in previous litigation filed by plaintiffs in this court concerning the same underlying facts. (D.I. 1 at ¶ 8) See McDuffy v. Miles Homes Services, Inc., No. 96-090 (D. Del. May 3, 1999) (judgment entered for defendants Miles Homes Services, Inc. and Allmond); aff'd, No. 00-5142 (3d Cir. 2002). Given that defendant Bengé was not directly involved in the incidents giving rise to plaintiffs' claims and such claims have been decided on the merits against plaintiffs by several different courts, the court will dismiss the remaining pending claims against defendant Bengé.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

LOUIS McDUFFY, JR. and)
BRENDA McDUFFY,)
)
Plaintiffs,)
)
v.) Civil Action No. 99-142-SLR
)
DeGEORGE ALLIANCE, INC.,)
BAYARD ALLMOND, III, Esquire and)
JOHN BENGE, Esquire,)
)
Defendants.)

O R D E R

At Wilmington this 9th day of August, 2002, consistent with
the memorandum opinion issued this same day;

IT IS ORDERED that:

1. Defendant Bayard Allmond, III's motion for summary judgment (D.I. 75) is granted.
2. Plaintiffs' claims against defendant John Benge, Esquire are dismissed.
3. Plaintiffs' claims against defendant DeGeorge Alliance, Inc. are dismissed.

Sue L. Robinson
United States District Judge