IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

STACEY P. PRICE,	:	
	:	
Plaintiff,	:	
	:	
v.	:	**CIVIL ACTION NO.**
	:	**1:17-CV-2399-SCJ**
BANK OF AMERICA, N.A.; MERSCORP HOLDINGS, INC., d/b/a Mortgage Electronic Registration Systems, Inc.;	:	
	:	
Defendants.	:	

ORDER

Plaintiff took out a loan for $112,918 and, in order to secure repayment of the loan, conveyed via security deed a residential property located at 1024 Cone Road, Forest Park, Georgia, to Defendant Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee for Aegis Wholesale Corporation ("Aegis") and its successors and assigns. Doc. No. [18], p. 4, ¶9; see also Doc. No. [18-1], pp. 2–11. This case is Plaintiff's latest effort to avoid repaying that loan.

Plaintiff's own complaint and the documents attached thereto demonstrate that MERS—the holder of the security deed—assigned it to Defendant Bank of America, N.A. ("BANA") in 2011. Doc. No. [18], p. 4, ¶9; see also Doc. No. [18-1], p. 13. She argues that this assignment "is invalid and ineffective as MERS had no authority in

2011" due to Aegis declaring bankruptcy in 2007. See Doc. No. [36], pp. 1–4. The problem with this argument is that Plaintiff is not a party to the assignment, and thus lacks standing to challenge it. Douglas v. Merscorp Holdings, Inc., 2017 WL 8186814, at *2 (N.D. Ga. Dec. 4, 2017), adopted by 2018 WL 1230590, at *1 (N.D. Ga. Jan. 2, 2018) ("It is now well-settled under Georgia law that a debtor generally does not have standing to challenge the assignment of her security deed.") (citing Bank of Am., N.A. v. Johnson, 792 S.E.2d 704, 706 (Ga. 2016); Ames v. JP Morgan Chase Bank, N.A., 783 S.E.2d 614, 616-22 (Ga. 2016)); see also Montgomery v. Bank of Am., 740 S.E.2d 434, 438 (Ga. Ct. App. 2013).

What's more, Plaintiff herself recognizes that "courts have repeatedly rejected [her] position." Doc. No. [36], p. 3. Indeed, it is precisely **because** Plaintiff raised these arguments in two other lawsuits that resulted in a final judgment in favor of BANA that the Magistrate Judge Russell G. Vineyard recommended that the case be dismissed with prejudice. Doc. No. [34], pp. 12–20. This matter is barred by res judicata. Plaintiff now appears to argue that res judicata does not apply. See Doc. No. [36], p. 16. But in her response to the Motion to Dismiss, she did not address Defendants' "argument that this action is barred by res judicata." Doc. No. [34], p. 12; see also Doc. No. [27]. Permitting Plaintiff to now respond to Defendants' argument

when she did not do so before Judge Vineyard "would be fundamentally unfair" and "would frustrate the purpose of the Magistrates Act." Williams v. McNeil, 557 F.3d 1287, 1292 (11th Cir. 2009). Thus, the Court, in its discretion, deems Plaintiff's arguments regarding the res judicata issue to be waived. See id.

Even if the Court were to address the arguments, they would fail. Plaintiff appears to argue that this case does not involve the "same parties," but ignores the fact that MERS, as nominee of Aegis and assignor to BANA, stands in privity with BANA. See Doc. No. [36], p. 16; Doc. No. [34], p. 19; see also ALR Oglethorpe, LLC v. Henderson, 336 Ga. App. 739, 743–45, 783 S.E.2d 187, 192–93 (2016) (holding that, regardless of whether the defendants "could conceivably be opposing parties in a contract dispute between each other," they stood in privity because their interests were "aligned in both the prior litigation and the current one").

Plaintiff next argues that the prior judgments were "procured by fraud." Doc. No. [36], p. 16. But the Georgia Supreme Court has explained that the common-law "fraud" exception to res judicata requires a showing that **jurisdiction** in the prior case was obtained by fraud. Wood v. Wood, 200 Ga. 796, 799–800, 38 S.E.2d 545, 548 (1946). "While a judgment procured by fraud may be set aside for the fraud in a direct proceeding, still, if the judgment is rendered by a court of competent jurisdiction, the

parties are concluded by it until it is set aside." Id. at 800. Plaintiff does not argue that the prior judgments were rendered by courts without jurisdiction, she simply contends that they mistakenly rejected her fraud argument. See Doc. No. [36], p. 16.

Plaintiff's argument that the assignment was fraudulent was rejected in the very first case she filed against BANA. See Doc. No. [34], pp. 5–6. She had her opportunity to appeal that decision, and her argument was again rejected—this time by the Georgia Supreme Court. See id. At that point, Plaintiff's only appeal would have been to the United States Supreme Court "to the extent that [the Georgia Supreme Court] incorrectly adjudge[d] federal rights." See Herb v. Pitcairn, 324 U.S. 117, 125–26, 65 S. Ct. 459, 463, 89 L. Ed. 789 (1945). What Plaintiff is not allowed to do is file suit (Doc. No. [34], pp. 6–7), after suit (id. p. 7), after suit (id. pp. 7–8) simply because she is unhappy she lost the first case. That is precisely what res judicata is designed to prevent.

Magistrate Judge Vineyard correctly concluded that this action is barred by res judicata. As such, his Report and Recommendation (Doc. No. [34]) is **ADOPTED** as the Order of this Court. Plaintiff's objections (Doc. No. [36]) are **OVERRULED**. Defendants' Motion to Dismiss (Doc. No. [26]) is **GRANTED**, and this case is

DISMISSED WITH PREJUDICE. Plaintiff's Motion to Set Aside the Assignment is **DENIED as moot**.

Ordinarily, this would be enough. But Plaintiff's repeated lawsuits demonstrate an intent to abuse the legal system. "Access to the courts is unquestionably a right of considerable constitutional significance," but it "is neither absolute nor unconditional." Miller v. Donald, 541 F.3d 1091, 1096 (11th Cir. 2008) (quoting Cofield v. Ala. Pub. Serv. Comm'n, 936 F.2d 512, 516 (11th Cir. 1991)). Where a plaintiff files incessant, frivolous lawsuits, "[c]onditions and restrictions on [that] person's access are necessary to preserve the judicial resource for all other persons." Id. "Frivolous and vexatious law suits threaten the availability of a well-functioning judiciary to all litigants." Id. The Court warns Plaintiff that if she continues to file suits such as the one at bar, the Court may have no choice but to sanction her.

IT IS SO ORDERED, this 31st day of July, 2018.

s/Steve C. Jones
HONORABLE STEVE C. JONES
UNITED STATES DISTRICT JUDGE