

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 20-11472
Non-Argument Calendar

D.C. Docket No. 1:19-cv-04863-MHC

TAWANA L. CARTER,

Plaintiff-Appellant,

versus

SELECT PORTFOLIO SERVICING, INC.,
WELLS FARGO BANK, N.A.,
As Trustee on Behalf of the Certificate Holders of
Securitized Asset Backed Receivables LLC 2005-FR3,
Mortgage Pass-Through Certificates, Series 2005-FR3,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(August 23, 2021)

Before NEWSOM, TJOFLAT, and ANDERSON, Circuit Judges.

PER CURIAM:

Tawana Carter, proceeding *pro se*, appeals the District Court's dismissal of her complaint as barred by *res judicata*. See *Carter v. Select Portfolio Servicing, Inc.*, No. 1:19-CV-4863-MHC-JSA, 2020 WL 9594360 (N.D. Ga. Mar. 16, 2020). She also argues that the District Court should have allowed her leave to amend, should have remanded the state law claims back to state court upon resolution of the federal claims rather than dismiss the case, and should have considered the effects of COVID-19 on her ability to access legal resources before dismissing the case. Because we hold that *res judicata* bars the present action, we need not address the other grounds Carter raised.

Federal courts apply state law to determine whether *res judicata* applies. *N.A.A.C.P. v. Hunt*, 891 F.2d 1555, 1560 (11th Cir. 1990). Georgia requires the following elements to establish *res judicata*: 1) there is a final judgment on the merits in the first cause of action; 2) a court of competent jurisdiction rendered the first decision; 3) the parties to both actions, or those in privity with them, are identical; and 4) the causes of action in both suits are identical, or the claims asserted in both suits arise out of the same events or the same nucleus of operative facts. See *Laskar v. Peterson*, 771 F.3d 1291, 1300 (11th Cir. 2014); *James v. Intown Ventures, LLC*, 290 Ga. 813, 816, 725 S.E.2d 213, 215 (2012). *Res*

judicata applies to all claims arising out of the same transactions or events that were raised or could have been raised in the prior suit. See *O'Connor v. PCA Family Health Plan, Inc.*, 200 F.3d 1349, 1355 (11th Cir. 2000). And a court may consider a *res judicata* defense at the motion to dismiss stage when the face of the complaint indicates the existence of the defense. *Starship Enter. of Atlanta, Inc. v. Coweta Cnty.*, 708 F.3d 1243, 1252 n.13 (11th Cir. 2013).

In this case, it is clear from the face of the complaint that *res judicata* applies to Carter's claims. First, there are two previous final judgments on the merits based on Carter's claims. See *Carter v. Select Portfolio Servicing, Inc.*, No. 1:15-CV-410-MHC-JSA, 2015 WL 13777335 (N.D. Ga. Dec. 23, 2015); *Carter v. Select Portfolio Servicing, Inc.*, 1:18-CV-3608-MHC, 2018 WL 5262058 (N.D. Ga. Sept. 20, 2018). Second, those decisions were issued by a court of competent jurisdiction. Third, the parties in those cases are the same as the parties in this case, with Carter as the plaintiff and Select Portfolio Servicing, Inc. and Wells Fargo Bank, N.A. as the defendants. Fourth, the claims in the present case arise from the exact same events as in the previous cases, all related to Carter's requests for a loan modification for her home. Thus, Carter's claims are barred by *res judicata*, and we affirm the District Court's dismissal of the case.

AFFIRMED.