

**Dated: August 18, 2025**  
**The following is ORDERED:**



**Denise E. Barnett**  
**UNITED STATES BANKRUPTCY JUDGE**

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**UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

In re:

**Delores L. Brown,**

Debtor.

Case No.: 22-20924

Chapter 13 case.

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**Delores L. Brown,**

Plaintiff.

vs.

Adv. Proc. No.: 23-00021

**U.S. Bank, N.A., as Trustee for  
CB4B Grantor Trust 2016-1 and/or  
Bayview Opportunity Master Fund  
IVB Grantor Trust 2018-RN6  
Argolica, LLC, Limosa, LLC; and  
Land Home Financial Services, Inc.**

Defendants.  
\_\_\_\_\_

**OPINION AND ORDER DENYING  
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

This adversary proceeding came before the Court on U.S. Bank, N.A., as Trustee for  
CB4B Grantor Trust 2016, Bayview Opportunity Master Fund, IVB Grantor Trust 2018-RN6,

Argolica, LLC, Limosa, LLC, and Land Home Financial Services, Inc.’s (“Defendants” or “Movants”) motion for summary judgment and responses regarding the issues raised in the Amended Complaint, Answer to the Amended Complaint, Objection to Claim 3-2, and Responses to the Objection to Claim 3-2.<sup>1</sup> The underlying dispute in this proceeding and main case is the validity of a Disclosure Statement, Note, and Security Agreement (“Note”) and Deed of Trust (“2008 Deed of Trust”), both executed on April 2, 2008.<sup>2</sup> Defendants contend that they are entitled to summary judgment based on the doctrines of res judicata and judicial estoppel. Plaintiff contends that Defendants failed to satisfy the basic requirements needed to establish a ruling in Defendants’ favor under either doctrine. For the reasons explained in this Memorandum Opinion, the Court finds and concludes that the summary judgment motion is denied.

### **I. PROCEDURAL BACKGROUND**

On March 11, 2022, Delores L. Brown (“Mrs. Brown,” “Plaintiff,” or “Debtor”) filed a voluntary petition under Chapter 13 of the Bankruptcy Code.<sup>3</sup> On November 15, 2022, Mrs. Brown filed an amended Schedule A/B, which listed real property located on Windward Drive, Memphis, TN 38109 (“real property”) and no vehicles.<sup>4</sup> On Amended Schedule A/B, Mrs. Brown’s real property was valued at \$78,700.00 and listed as a single-family home that was owned as a joint tenancy.<sup>5</sup> On November 15, 2022, Mrs. Brown amended Schedule D and listed Land Home Financial Services, Inc. (“Land Home”) as the holder of a secured mortgage claim in

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<sup>1</sup> ECF Nos. 53, 59, and 63; Adv. Proc. ECF Nos. 69, 71, 76, 77, 81, 82, and 83.

<sup>2</sup> Adv. Proc. ECF Nos. 1, 35, 56, 69, 71, 76, 77, 81, 82, and 83.

<sup>3</sup> Voluntary Pet., ECF No. 1.

<sup>4</sup> Am. Schedule A/B, ECF No. 31.

<sup>5</sup> Am. Schedule A/B, ECF No. 31.

the amount of \$7,500.00.<sup>6</sup> On April 16, 2022, Mrs. Brown amended Schedule I and declared that she is retired and unemployed, showing \$779.00 in combined monthly income and no dependents.<sup>7</sup> On April 16, 2022, Mrs. Brown amended Schedule J and listed monthly expenses of \$430.00 and a monthly net income of \$349.00.<sup>8</sup>

On March 11, 2022, Mrs. Brown filed her initial chapter 13 plan.<sup>9</sup> On November 15, 2022, Mrs. Brown filed her fifth amended chapter 13 plan with monthly payments of \$300.00.<sup>10</sup> Also, on November 15, 2022, Mrs. Brown filed Proof of Claim 3-1 on behalf of Land Home in the amount of \$7,500.00.<sup>11</sup> In the fifth amended chapter 13 plan, Mrs. Brown listed an approximate arrearage of \$7,500.00 to be paid at \$210.00 monthly to Land Home.<sup>12</sup> On November 21, 2022, Mrs. Brown's chapter 13 plan was confirmed.<sup>13</sup>

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<sup>6</sup> Am. Schedule D, ECF No. 31. Debtor filed four amended schedules that reflected changes on Schedule D. On March 11, 2022, and April 14, 2022, Debtor's secured claim to Land Home was listed at \$122,571.92. (ECF Nos. 1 and 14). On April 16, 2022, and November 15, 2022, Debtor's secured claim was listed at \$7,500.00. (ECF Nos. 17 and 31).

<sup>7</sup> Am. Schedule I, ECF No. 17. On April 14, 2022, Debtor filed her first amended Schedule I, which listed \$1,179.00 in combined monthly income. (ECF No. 14). Debtor's original chapter 13 petition listed Debtor's combined monthly income at \$2,079.00. (ECF No. 1).

<sup>8</sup> Am. Schedule J, ECF No. 17. On April 14, 2022, Debtor filed her first amended Schedule J, which listed \$749.00 in monthly net income. Debtor's original chapter 13 petition listed Debtor's monthly net income at \$1,649.00. (ECF No. 1).

<sup>9</sup> Ch. 13 Plan, ECF No. 2.

<sup>10</sup> Fifth Am. Ch. 13 Plan, ECF No. 32.

<sup>11</sup> Proof of Claim No. 3-1.

<sup>12</sup> Fifth Am. Ch. 13 Plan, ECF No. 32. Debtor amended her chapter 13 plan five times. Debtor's original chapter 13 plan treated Land Home as a secured creditor at \$78,700.00 to be paid at \$600.00 monthly at 0.00% rate of interest. Debtor's proposed plan payment was \$1,650.00 monthly via Direct Pay. (ECF No. 2). Debtor's first amended plan stated that ongoing payments to Land Home were to begin on May 1, 2022, to be paid at \$600.00 monthly to be paid by the chapter 13 trustee to Land Home. The approximate arrearage was listed at \$600.00 to be paid at \$10.00 monthly. Debtor's proposed plan payment was \$740.00 monthly via Direct Pay. (ECF No. 15). Debtor's second amended chapter 13 plan listed that Debtor was to begin monthly payments to Land Home beginning on May 1, 2022, to be paid at \$210.00 monthly, with an approximate arrearage of \$7,500.00. Debtor's proposed plan payment was \$300.00 monthly via Direct Pay. (ECF No. 18). Debtor's third amended chapter 13 plan did not properly treat Land Home. (ECF No. 24). Debtor's fourth amended chapter 13 plan did not list Land Home. (ECF No. 29).

<sup>13</sup> Order Confirming Ch. 13 Plan, ECF No. 35.

On February 25, 2023, Plaintiff filed her *Complaint for Declaratory and Injunctive Relief* (“Complaint”).<sup>14</sup> On May 22, 2023, Land Home filed a motion to dismiss Plaintiff’s adversary proceeding for failure to state a claim.<sup>15</sup> On June 10, 2023, Plaintiff filed her response to Land Home’s motion to dismiss.<sup>16</sup> On June 12, 2023, Land Home and Argolica, LLC (“Argolica”) filed its reply to Plaintiff’s response, claiming insufficient service of process.<sup>17</sup> After conducting a hearing on June 13, 2023,<sup>18</sup> the Court entered the *Order Dismissing Complaint for Declaratory and Injunctive Relief Without Prejudice* on June 20, 2023, granting Plaintiff 28 days to file an amended complaint.<sup>19</sup>

On July 11, 2023, Plaintiff filed her *Amended Complaint for Declaratory and Injunctive Relief* (“Amended Complaint”).<sup>20</sup> On August 21, 2023, Defendants filed a motion to dismiss the amended complaint for failure to state a claim upon which relief can be granted.<sup>21</sup> On September 18, 2023, Plaintiff filed a response in opposition to Defendants’ motion to dismiss.<sup>22</sup> The Court denied Defendants’ motion to dismiss Plaintiff’s Amended Complaint because the Amended Complaint stated “enough facts to state a claim upon which relief could be granted.”<sup>23</sup>

On November 21, 2023, Limosa, LLC (“Limosa”) filed an amended Proof of Claim 3-2

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<sup>14</sup> Pl.’s Compl., Adv. Proc. ECF No. 1.

<sup>15</sup> Land Home’s Mot. to Dismiss, Adv. Proc. ECF No. 18.

<sup>16</sup> Pl.’s Resp., Adv. Proc. ECF No. 23.

<sup>17</sup> Land Home and Argolica’s Reply to Pl.’s Resp., Adv. Proc. ECF No. 27.

<sup>18</sup> Hearing on Land Home’s Mot. to Dismiss Pl.’s Compl. and Pl.’s Compl., June 13, 2023, at 12:35 p.m.

<sup>19</sup> Order Dismissing Pl.’s Compl., Adv. Proc. ECF No. 32.

<sup>20</sup> Am. Pl.’s Compl., Adv. Proc. ECF No. 35.

<sup>21</sup> Defs.’ Mot. to Dismiss Pl.’s Am. Compl., Adv. Proc. ECF No. 44.

<sup>22</sup> Pl.’s Resp. to Defs.’ Mot. to Dismiss, Adv. Proc. ECF No. 47.

<sup>23</sup> Order Denying Defs.’ Mot. to Dismiss Pl.’s Compl., ECF No. 62, entered on January 22, 2024.

in the amount of \$122,807.61 in secured claims and \$55,436.10 in prepetition arrears.<sup>24</sup> On November 30, 2023, an administrative order allowing the amended claim was issued giving Mrs. Brown and her attorney an opportunity to file a response to the administrative order.<sup>25</sup> On December 18, 2023, Mrs. Brown filed her *Objection to Amended Claim 3-2 Filed by Land Home Financial Services, Inc.* (“Objection to Amended Claim 3-2”).<sup>26</sup> On January 16, 2024, Land Home and Limosa filed their *Response to Debtor’s Objection to Claim* (“Response to Debtor’s Objection”).<sup>27</sup> On January 22, 2024, Limosa and Land Home filed their *Supplemental Response to Debtor’s Objection to Claim* (“Supplemental Response”).<sup>28</sup>

On January 23, 2024, at 10:00 a.m., the Court held a hearing on Debtor’s Objection to Amended Claim 3-2, and Land Home and Limosa’s Response to Debtor’s Objection, where the Court continued the matters to April 2, 2024, at 10:30 a.m.<sup>29</sup> On February 16, 2024, Defendants filed their Answer to Plaintiff’s Amended Complaint (“Answer”).<sup>30</sup> On April 16, 2024, the Court held a hearing on Plaintiff’s Amended Complaint, Defendants’ Answer, Debtor’s Objection to Amended Claim 3-2, and Land Home and Limosa’s Response to Debtor’s Objection. The matters were continued four times up to December 10, 2024,<sup>31</sup> when the Court ruled that it would issue a scheduling order for trial of the contested matters and adversary

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<sup>24</sup> Am. Proof of Claim No. 3-2.

<sup>25</sup> Admin. Order Allowing Am. Claim, ECF No. 51.

<sup>26</sup> Obj. to Am. Claim No. 3-2, ECF No. 53.

<sup>27</sup> Limosa and Land Home’s Resp. to Debtor’s Obj. to Claim. No. 3-2, ECF No. 59.

<sup>28</sup> Limosa and Land Home’s Supp. Resp. to Debtor’s Obj. to Claim No. 3-2, ECF No. 63.

<sup>29</sup> Hearing on Obj. to Am. Claim No. 3-2 and Resp., Jan. 23, 2024, at 11:02 a.m.

<sup>30</sup> Defs.’ Answer to Pl.’s Am. Compl., Adv. Proc. No. 56.

<sup>31</sup> Additional hearings were held on June 11, 2024, at 10:30 a.m.; August 6, 2024, at 10:00 a.m.; and October 10, 2024, at 10:00 a.m.

proceeding.<sup>32</sup> On January 10, 2025, the Court entered an Amended Order Scheduling Trial.<sup>33</sup>

On January 17, 2025, Defendants filed their motion for summary judgment.<sup>34</sup> On February 27, 2025, the Court entered an *Order Granting, In Part, Plaintiff's Motion to Extend Time to Respond to Defendants' Motion for Summary Judgment and Amending the Amended Order Scheduling Trial*, amending the trial date to June 26, 2025, at 9:30 a.m. and the pre-trial conference to June 10, 2025, at 9:30 a.m.<sup>35</sup> On February 26, 2025, Plaintiff filed her response opposing Defendants' motion for summary judgment.<sup>36</sup> That same day, Plaintiff filed a *Statement of Additional Material Facts* ("Additional Material Facts").<sup>37</sup> On March 3, 2025, Plaintiff filed a response in opposition to Defendants' motion for summary judgment.<sup>38</sup> On March 19, 2025, Defendants filed their response to Plaintiff's Additional Material Facts.<sup>39</sup> That same day, Defendants filed their reply to Plaintiff's response to Defendants' motion for summary judgment.<sup>40</sup> On July 14, 2025, the Court entered its *Fourth Amended Order Scheduling Trial Regarding Amended Complaint and Objection to Amended Proof of Claim No. 3-2* ("Fourth Amended Scheduling Order") rescheduling the continued pre-trial conference and trial date.<sup>41</sup>

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<sup>32</sup> Hearing on Defs.' Mot. to Dismiss Am. Compl. and Pl.'s Resp., Dec. 10, 2024, at 1:24 p.m.

<sup>33</sup> ECF No. 67 and Adv. Proc. ECF No. 67.

<sup>34</sup> Defs.' Mot. for Summ. J., Adv. Proc. ECF No. 69.

<sup>35</sup> Order Granting, In Part, Pl.'s Mot. to Extend Time, Adv. Proc. ECF No. 78.

<sup>36</sup> Pl.'s Resp. to Defs.' Mot. for Summ. J., Adv. Proc. ECF No. 76.

<sup>37</sup> Pl.'s Statement of Additional Material Facts, Adv. Proc. ECF No. 77.

<sup>38</sup> Pl.'s Resp. to Defs.' Mot. for Summ. J., Adv. Proc. ECF No. 81.

<sup>39</sup> Defs.' Resp. to Pl.'s Statement of Additional Material Facts, Adv. Proc. ECF No. 82.

<sup>40</sup> Defs.' Reply to Pl.'s Resp. to Defs.' Mot. for Summ. J., Adv. Proc. ECF No. 83.

<sup>41</sup> Fourth Am. Order Scheduling Trial, ECF No. 76 and Adv. Proc. ECF No. 89.

## **II. FACTUAL BACKGROUND AND POSITIONS OF THE PARTIES**

### **A. Factual Background**

#### **1. The Undisputed Facts**

Upon review of the record, the following facts are undisputed by the parties. Mrs. Brown and the late-Mr. Brown were a married couple who purchased the real property in September 1973.<sup>42</sup> The parties jointly owned the real property until the death of Mr. Brown sometime in 2022.<sup>43</sup> On April 2, 2008, Mr. Brown signed the Note with CitiFinancial Services, Inc., (“CitiFinancial”) for the stated loan amount of \$87,387.61 (“2008 Loan”) (including a service charge of \$2,255.34) secured by the real property.<sup>44</sup> A Deed of Trust was also executed on April 2, 2008, with T. Bowling, as Trustee for CitiFinancial.<sup>45</sup> This Deed of Trust was recorded in the Register’s Office of Shelby County, Tennessee (“Shelby County Register’s Office”) on April 3, 2008.<sup>46</sup> A prior Deed of Trust was also recorded on November 30, 2005, in the Shelby County Register’s Office (“2005 Deed of Trust”).<sup>47</sup> On April 2, 2008, Mr. Brown executed the U.S. Department of Housing and Urban Development Settlement Statement (“HUD-1 Settlement Statement”) and the Release of Mortgage/Deed of Trust (“DOT Release”) that stated the “recording requested and prepared by: HomeEq Servicing.”<sup>48</sup> The DOT Release was prepared

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<sup>42</sup> Am. Proof of Claim No. 3-2, p. 25.

<sup>43</sup> Am. Pl.’s Compl., Adv. Proc. ECF No. 35. Mrs. Brown is over 80 years-old and has executed a power of attorney to her adult daughter, Ms. Pamela Brown, who brought this action.

<sup>44</sup> Pl.’s Resp. to Limosa and Land Home’s Statement of Material Facts, ¶ 1-3, Adv. Proc. ECF No. 76 and Def.’s Resp. to Pl.’s Statement of Add’l Material Facts, ¶ 3, Adv. Proc. ECF No. 82.

<sup>45</sup> Pl.’s Resp. to Limosa and Land Home’s Statement of Material Facts, ¶ 4, Adv. Proc. ECF No. 76.

<sup>46</sup> Pl.’s Resp. to Limosa and Land Home’s Statement of Material Facts, ¶ 4, Adv. Proc. ECF No. 76 and Am. Proof of Claim No. 3-2, pp. 24-29.

<sup>47</sup> Pl.’s Resp. to Limosa and Land Home’s Statement of Material Facts, ¶ 5, Adv. Proc. ECF No. 76.

<sup>48</sup> Pl.’s Resp. to Limosa and Land Home’s Statement of Material Facts, ¶ 7 and 11, Adv. Proc. ECF No. 76.

by “the same entity that received \$66,413.17 from the closing of the 2008 Loan.”<sup>49</sup> The parties also agreed that \$66,413.17 of the 2008 Loan were paid to HomeEq for the 2005 Deed of Trust.<sup>50</sup>

The parties also agreed that the 2008 Loan was assigned “multiple times” since 2008.<sup>51</sup> In her Amended Complaint, Mrs. Brown stated CitiMortgage, Inc. (“CitiMortgage”) executed an Affidavit of Lost Note, which provided that the original Note had been lost and that CitiMortgage only possessed a copy of the original mortgage, which showed only Mr. Brown’s signature had been notarized.<sup>52</sup> In their Answer, Defendants admitted to this fact.<sup>53</sup>

On January 19, 2021, the 2008 Loan was assigned to Limosa and serviced by Land Home, and Land Home remained the servicer of the 2008 Loan.<sup>54</sup> On July 31, 2024, Limosa assigned the 2008 Deed of Trust to Millenium Trust Company, LLC (“Millenium Trust”) and the assignment was recorded in the Shelby County Register’s Office on August 30, 2024.<sup>55</sup> The Note was also endorsed in favor of Millenium Trust.<sup>56</sup>

Prior to his death, Mr. Brown filed three separate bankruptcy cases—Case No. 16-23258 on April 4, 2016 (“First Bankruptcy Case”); Case No. 17-21000 on February 1, 2017 (“Second Bankruptcy Case”); and Case No. 18-28255 on October 3, 2018 (“Third Bankruptcy Case”). In

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<sup>49</sup> Pl.’s Resp. to Limosa and Land Home’s Statement of Material Facts, ¶ 9, Adv. Proc. ECF No. 76.

<sup>50</sup> Def.’s Resp. to Pl.’s Statement of Add’l Material Facts, ¶ 5, Adv. Proc. ECF No. 82.

<sup>51</sup> Def.’s Resp. to Pl.’s Statement of Add’l Material Facts, ¶ 15, Adv. Proc. ECF No. 82. *See also* Defs.’ Mot. for Summ. J., Adv. Proc. ECF No. 69, Ex. A, pp. 64-97, and Am. Proof of Claim No. 3-2, p. 31-57.

<sup>52</sup> Am. Pl.’s Compl., ¶ 24, Adv. Proc. ECF No. 35.

<sup>53</sup> Defs.’ Answer to Pl.’s Am. Compl., ¶ 1-5, Adv. Proc. No. 56.

<sup>54</sup> Pl.’s Resp. to Limosa and Land Home’s Statement of Material Facts, ¶ 10, Adv. Proc. ECF No. 76; Am. Proof of Claim No. 3-2, p. 56; and Am. Pl.’s Compl., ¶ 38-39, Adv. Proc. ECF No. 35.

<sup>55</sup> Pl.’s Resp. to Limosa and Land Home’s Statement of Material Facts, ¶ 12, Adv. Proc. ECF No. 76.

<sup>56</sup> Pl.’s Resp. to Limosa and Land Home’s Statement of Material Facts, ¶ 11, Adv. Proc. ECF No. 76; Transfer of Claim Other Than for Security, ECF No. 71; and Notice of Filing of Evidence of Transfer or Assignment of Claim Combined with Related Notice, ECF No. 72.



the First Bankruptcy Case, Schedule D showed that Mr. Brown owed CitiFinancial \$84,883.00 in secured claims and CitiFinancial was treated on Mr. Brown's chapter 13 plan.<sup>57</sup> The First Bankruptcy Case was dismissed before the plan was confirmed.<sup>58</sup> In the Second Bankruptcy Case, CitiFinancial filed Proof of Claim 2-1 for a secured claim in the amount of \$102,013.63 and Proof of Claim 2-1 was based on the 2008 Loan.<sup>59</sup> On June 28, 2017, Proof of Claim 2-1 was transferred from CitiFinancial to Bayview Loan Servicing, LLC ("Bayview").<sup>60</sup> On April 27, 2017, Mr. Brown's chapter 13 plan was confirmed and listed CitiFinancial as a secured creditor with an approximate arrearage of \$26,458.62 and ongoing payments of \$810.38.<sup>61</sup> On July 31, 2017, Mr. Brown filed a motion to modify his chapter 13 plan.<sup>62</sup> Mr. Brown's chapter 13 plan also stated that unsecured creditors would be paid 10 percent of their claim amounts.<sup>63</sup> Mr. Brown's Second Bankruptcy Case was dismissed for failure to make plan payments.<sup>64</sup> Mr. Brown "never filed any schedules" in the Second Bankruptcy Case.<sup>65</sup> In the Third Bankruptcy Case, Mr. Brown's schedules showed that he owed Bayview \$63,100.00 in secured claims on the

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<sup>57</sup> ECF Nos. 1 and 2, Case No. 16-23258 and Pl.'s Resp. to Limosa and Land Home's Statement of Material Facts, ¶ 20-21, Adv. Proc. ECF No. 76.

<sup>58</sup> Pl.'s Resp. to Limosa and Land Home's Statement of Material Facts, ¶ 22, Adv. Proc. ECF No. 76.

<sup>59</sup> Case No. 17-21000, Proof of Claim No. 2-1 and Pl.'s Resp. to Limosa and Land Home's Statement of Material Facts, ¶ 10.

<sup>60</sup> Pl.'s Resp. to Limosa and Land Home's Statement of Material Facts, ¶ 32, Adv. Proc. ECF No. 76.

<sup>61</sup> Pl.'s Resp. to Limosa and Land Home's Statement of Material Facts, ¶¶ 28-30, Adv. Proc. ECF No. 76.

<sup>62</sup> Pl.'s Resp. to Limosa and Land Home's Statement of Material Facts, ¶ 33, Adv. Proc. ECF No. 76. The motion to modify plan stated that Mr. Brown would pay CitiFinancial a principal balance of \$84,883.76 to be paid at \$1,533.00 monthly and to pay the balance in full. Case No. 17-21000, ECF No. 47.

<sup>63</sup> Pl.'s Resp. to Limosa and Land Home's Statement of Material Facts, ¶ 31, Adv. Proc. ECF No. 76.

<sup>64</sup> Pl.'s Resp. to Limosa and Land Home's Statement of Material Facts, ¶ 34, Adv. Proc. ECF No. 76. The Second Bankruptcy Case was dismissed before Mr. Brown's motion to modify his chapter 13 plan was heard in Court.

<sup>65</sup> Pl.'s Resp. to Limosa and Land Home's Statement of Material Facts, ¶ 24, Adv. Proc. ECF No. 76.

real property.<sup>66</sup> On December 12, 2018, Anthium, LLC, (“Anthium”) filed Proof of Claim 8-1, which listed the total debt at \$91,066.41, including \$17,294.93 in prepetition arrears with monthly payments at \$810.38.<sup>67</sup> Proof of Claim 8-1 also stated that payments would be sent to Land Home.<sup>68</sup> On January 11, 2019, Mr. Brown’s chapter 13 plan was confirmed and the chapter 13 plan listed Land Home as a secured creditor with an approximate arrearage of \$17,294.93 to be paid at \$810.38 monthly.<sup>69</sup> The Third Bankruptcy Case was dismissed for failure to make plan payments.<sup>70</sup>

## 2. The Disputed Facts as Presented by Defendants

Based on the record, Defendants presented the following set of facts that Plaintiff disputed. First, Defendants alleged that the 2005 Deed of Trust evidenced a loan amount of \$65,600.00.<sup>71</sup> Mrs. Brown contended that she was “without information to acknowledge the authenticity or validity of the document.”<sup>72</sup>

Second, Defendants claimed that the HUD-1 Settlement Statement reflected a disbursement of \$66,413.17 towards the 2008 Loan to HomeEq and that Mr. Brown received \$7,904.23 of the 2008 Loan.<sup>73</sup> Mrs. Brown acknowledged the disbursement but claimed that

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<sup>66</sup> Pl.’s Resp. to Limosa and Land Home’s Statement of Material Facts, ¶ 36, Adv. Proc. ECF No. 76 and Case No. 18-28255, Voluntary Pet., ECF No. 1, Schedule D.

<sup>67</sup> Pl.’s Resp. to Limosa and Land Home’s Statement of Material Facts, ¶¶ 38-39, Adv. Proc. ECF No. 76 and Case No. 18-28255, Proof of Claim No. 8-1.

<sup>68</sup> Pl.’s Resp. to Limosa and Land Home’s Statement of Material Facts, ¶ 40, Adv. Proc. ECF No. 76 and Case No. 18-28255, Proof of Claim No. 8-1.

<sup>69</sup> Pl.’s Resp. to Limosa and Land Home’s Statement of Material Facts, ¶ 42-43, Adv. Proc. ECF No. 76 and Case No. 18-28255, Order Confirming Plan Combined with Related Orders, ECF No. 26.

<sup>70</sup> Pl.’s Resp. to Limosa and Land Home’s Statement of Material Facts, ¶ 44, Adv. Proc. ECF No. 76.

<sup>71</sup> Def.’s Statement of Material Facts, ¶ 6, Adv. Proc. ECF No. 69.

<sup>72</sup> Pl.’s Resp. to Limosa and Land Home’s Statement of Material Facts, ¶ 6, Adv. Proc. ECF No. 76.

<sup>73</sup> Def.’s Statement of Material Facts, ¶ 8-9, Adv. Proc. ECF No. 69.

she was “without information to acknowledge the authenticity or validity of the document.”<sup>74</sup>

Third, Defendants alleged that the 2005 Deed of Trust was released via the DOT Release on May 6, 2008, and recorded on May 13, 2008, at the Shelby County Register’s Office.<sup>75</sup> Mrs. Brown acknowledged that the DOT Release was executed and recorded but contended that she was “without information to acknowledge the authenticity or validity of the document.”<sup>76</sup>

Fourth, Defendants claimed that Proof of Claim 2-1 filed in Mr. Brown’s Second Bankruptcy Case contained a Mortgage Proof of Claim Attachment (“Mortgage Proof of Claim”), showing that Mr. Brown was making mortgage payments until April 6, 2015.<sup>77</sup> While Mrs. Brown admitted that the Mortgage Proof of Claim showed Mr. Brown was making prepetition payments, Mrs. Brown contended that the document was “inconsistent with other evidence on the record.”<sup>78</sup>

### 3. The Disputed Facts as Presented by Mrs. Brown

Mrs. Brown also submitted her own statement of additional material facts, which Defendants disputed. First, Mrs. Brown stated that both she and Mr. Brown purchased the real property in 1973 and lived in the home until Mr. Brown’s passing in 2022.<sup>79</sup> Defendants claimed that the alleged fact was “not properly supported” because the Declaration of Pamela Brown was “unsworn.”<sup>80</sup>

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<sup>74</sup> Pl.’s Resp. to Limosa and Land Home’s Statement of Material Facts, ¶ 8-9, Adv. Proc. ECF No. 76.

<sup>75</sup> Def.’s Statement of Material Facts, ¶ 10, Adv. Proc. ECF No. 69.

<sup>76</sup> Pl.’s Resp. to Limosa and Land Home’s Statement of Material Facts, ¶ 10, Adv. Proc. ECF No. 76.

<sup>77</sup> Def.’s Statement of Material Facts, ¶ 31, Adv. Proc. ECF No. 69. *See also* Case No. 17-21000, Proof of Claim No. 2-1, pp. 4-7.

<sup>78</sup> Pl.’s Resp. to Limosa and Land Home’s Statement of Material Facts, ¶ 27, Adv. Proc. ECF No. 76. Mrs. Brown did not elaborate on the evidence that she referred to.

<sup>79</sup> Pl.’s Statement of Add’l Material Facts, ¶ 1, Adv. Proc. ECF No. 81.

<sup>80</sup> Defs.’ Resp. to Pl.’s Statement Add’l Material Facts, ¶ 1, Adv. Proc. ECF No. 82. *See also* Pl.’s Resp. to Defs.’

Second, Mrs. Brown claimed that Mr. Brown went to CitiFinancial on Elvis Presley Boulevard in Memphis, Tennessee, regarding the 2008 loan.<sup>81</sup> However, Defendants claimed that this was “inadmissible hearsay,” citing the *Petition for Declaratory and Injunctive Relief* from the Chancery Court of Shelby County, Tennessee for the Thirtieth Judicial District from June 1, 2020, and that Mr. Brown was now deceased.<sup>82</sup>

Third, Mrs. Brown alleged that the HUD-1 Settlement Statement stated that CitiFinancial received \$12,209.71 of the 2008 Loan.<sup>83</sup> Defendants refuted this statement, claiming that the HUD-1 Settlement Statement showed that the loan origination fee was \$2,255.34 and the settlement charges were \$2,381.38.<sup>84</sup>

Fourth, Mrs. Brown contended that the HUD-1 Settlement Statement did not show that Mr. Brown received any loan proceeds in the transaction.<sup>85</sup> Defendants disputed this claim, stating that the HUD-1 Settlement Statement was “inadvertently cut off at the bottom.”<sup>86</sup>

Fifth, Mrs. Brown claimed that a security interest was granted in the real property.<sup>87</sup> While Defendants agreed that a security interest was granted in the real property, Defendants sought clarification of Mrs. Brown’s use of the term “the document.”<sup>88</sup>

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Mot. for Summ. J., Ex. A, Declaration of Pamela Brown, at 34-36, ECF No. 81.

<sup>81</sup> Pl.’s Statement of Add’l Material Facts, ¶ 2, Adv. Proc. ECF No. 81.

<sup>82</sup> Defs.’ Resp. to Pl.’s Statement Add’l Material Facts, ¶ 2, Adv. Proc. ECF No. 82. *See also* Pl.’s Resp. to Defs.’ Mot. for Summ. J., Ex. B, Pet. For Declaratory and Injunctive Relief, at 38-45, ECF No. 81.

<sup>83</sup> Pl.’s Statement of Add’l Material Facts, ¶ 4, Adv. Proc. ECF No. 81.

<sup>84</sup> Defs.’ Resp. to Pl.’s Statement Add’l Material Facts, ¶ 4, Adv. Proc. ECF No. 82. *See also* Defs.’ Mot. for Summ. J., Ex. A, pp. 42-44, Adv. Proc. ECF No. 69.

<sup>85</sup> Pl.’s Statement of Add’l Material Facts, ¶ 6, Adv. Proc. ECF No. 81.

<sup>86</sup> Defs.’ Resp. to Pl.’s Statement Add’l Material Facts, ¶ 6, Adv. Proc. ECF No. 82. *See also* Defs.’ Mot. for Summ. J., Ex. A, pp. 42-44, Adv. Proc. ECF No. 69.

<sup>87</sup> Pl.’s Statement of Add’l Material Facts, ¶ 7, Adv. Proc. ECF No. 81.

<sup>88</sup> Defs.’ Resp. to Pl.’s Statement Add’l Material Facts, ¶ 7, Adv. Proc. ECF No. 82. In Plaintiff’s Statement of

Sixth, Mrs. Brown contended that Mr. Brown told family members that he “refused to make payments” because Mr. Brown had “never received the loan proceeds.”<sup>89</sup> Defendants refuted this statement as inadmissible hearsay contained within the Declaration of Pamela Brown.<sup>90</sup>

Seventh, Mrs. Brown alleged that the 2008 Loan was “closed” at CitiFinancial by CitiFinancial employees, rather than by a closing attorney.<sup>91</sup> While Defendants did not dispute this fact, Defendants argued that this statement was an “irrelevant and immaterial” fact.<sup>92</sup>

Eighth, Mrs. Brown alleged a violation of the federal Truth in Lending Act, 15 U.S.C. §1601, *et seq.* (“Truth in Lending Act”) and Regulation Z, 12 C.F.R. § 226.39 (“Regulation Z”), stating that the 2008 Loan would have been subject to a three-day right of rescission under the laws because the 2008 Loan was not a purchase money mortgage loan and the 2008 Deed of Trust was filed with the Shelby County Register’s Office on April 3, 2008, which was one day after the 2008 Loan documents were executed.<sup>93</sup> Mrs. Brown further claimed that that the disclosures required by the Truth in Lending Act and Regulation Z were neither provided to her nor Mr. Brown, and that the couple were not given notice of the right to rescind the transaction within the three days of disclosure.<sup>94</sup> Defendants admitted that the 2008 Deed of Trust was filed on April 3, 2008. However, Defendants disputed both Plaintiff’s allegations, arguing that

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Additional Material Facts, Mrs. Brown cited the Disclosure Statement, however, this is not completely clear.

<sup>89</sup> Pl.’s Statement of Add’l Material Facts, ¶ 8, Adv. Proc. ECF No. 81.

<sup>90</sup> Defs.’ Resp. to Pl.’s Statement Add’l Material Facts, ¶ 8, Adv. Proc. ECF No. 82. *See also* Pl.’s Resp. to Defs.’ Mot. for Summ. J., Ex. A, Declaration of Pamela Brown, at 34-36, ECF No. 81.

<sup>91</sup> Pl.’s Statement of Add’l Material Facts, ¶ 9, Adv. Proc. ECF No. 81.

<sup>92</sup> Defs.’ Resp. to Pl.’s Statement Add’l Material Facts, ¶ 9, Adv. Proc. ECF No. 82.

<sup>93</sup> Pl.’s Statement of Add’l Material Facts, ¶ 10 and 12, Adv. Proc. ECF No. 81.

<sup>94</sup> Pl.’s Statement of Add’l Material Facts, ¶ 11, Adv. Proc. ECF No. 81.

Plaintiff's statements regarding the Truth in Lending Act and Regulation Z were a legal conclusion not supported in the record.<sup>95</sup>

Ninth, while Mrs. Brown admitted that both her and Mr. Brown's signature were on the 2008 Deed of Trust, only Mr. Brown's signature was notarized.<sup>96</sup> Mrs. Brown further pointed out that the 2008 Deed of Trust contained only four out of five pages.<sup>97</sup> Mrs. Brown also did not dispute that her signature was on the Note.<sup>98</sup> However, Mrs. Brown claimed that she signed the Note only as a "nonobligor" granting a security interest in the real property, and denied that the Note described the real property as "personal property."<sup>99</sup> Defendants admitted that only Mr. Brown's signature was notarized on the 2008 Deed of Trust, but disputed that the 2008 Deed of Trust was only four pages long.<sup>100</sup> Defendants also admitted that Mrs. Brown signed the Note as a "nonobligor."<sup>101</sup> However, Defendants denied Mrs. Brown's statement that the real property was not personal property because the Note stated that Mrs. Brown "grant[ed] to Lender a security interest in the personal property described as security for the loan."<sup>102</sup>

Tenth, Mrs. Brown alleged that both she and Mr. Brown filed bankruptcy cases when faced with the foreclosure sale of the real property.<sup>103</sup> Defendants denied this statement, arguing

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<sup>95</sup> Defs.' Resp. to Pl.'s Statement Add'l Material Facts, ¶ 10-12, Adv. Proc. ECF No. 82.

<sup>96</sup> Pl.'s Statement of Add'l Material Facts, ¶ 13, Adv. Proc. ECF No. 81.

<sup>97</sup> Pl.'s Statement of Add'l Material Facts, ¶ 13, Adv. Proc. ECF No. 81.

<sup>98</sup> Pl.'s Statement of Add'l Material Facts, ¶ 13, Adv. Proc. ECF No. 81.

<sup>99</sup> Pl.'s Statement of Add'l Material Facts, ¶ 14, Adv. Proc. ECF No. 81.

<sup>100</sup> Defs.' Resp. to Pl.'s Statement Add'l Material Facts, ¶ 13, Adv. Proc. ECF No. 82. *See also* Defs.' Mot. for Summ. J., Adv. Proc. ECF No. 69, Ex. A, pp. 57-62 and Am. Proof of Claim No. 3-2, pp. 25-29.

<sup>101</sup> Defs.' Resp. to Pl.'s Statement Add'l Material Facts, ¶ 14, Adv. Proc. ECF No. 82.

<sup>102</sup> Defs.' Resp. to Pl.'s Statement Add'l Material Facts, ¶ 14, Adv. Proc. ECF No. 82. *See also* Defs.' Mot. for Summ. J., Adv. Proc. ECF No. 69, Ex. A, pp. 42-44 and Am. Proof of Claim No. 3-2, p. 9.

<sup>103</sup> Pl.'s Statement of Add'l Material Facts, ¶ 16, Adv. Proc. ECF No. 81.

that the prior bankruptcy cases were filed only by Mr. Brown and refuted the statement that the bankruptcy cases were filed to prevent a foreclosure sale.<sup>104</sup>

Eleventh, Mrs. Brown claimed that her memory had been “diminished significantly” due to vascular dementia and that she may be unable to provide “credible, reliable testimony” about the case.<sup>105</sup> Defendants objected to this alleged fact, claiming that the statement was contained within the Declaration of Pamela Brown, which Defendants deemed an inadmissible unsworn declaration.<sup>106</sup>

## **B. Positions of the Parties**

### **1. Plaintiff's Amended Complaint and Defendants' Answer to Plaintiff's Amended Complaint**

In her Amended Complaint, Mrs. Brown sought declaratory relief under 28 U.S.C. § 2201 and Federal Rule of Civil Procedure 57 regarding the validity of the 2008 Loan and whether the Deed of Trust encumbered the real property, and injunctive relief under Federal Rule of Civil Procedure 65 to prohibit Defendants from foreclosing on the real property.<sup>107</sup> Mrs. Brown claimed that the 2008 Loan was not a purchase money mortgage loan and that it would have been subject to a rescission provided in the Truth in Lending Act and Regulation Z.<sup>108</sup>

In their Answer, Defendants raised the following affirmative defenses: (1) Plaintiff's claims were barred by the doctrine of res judicata and the doctrine of judicial estoppel, (2) Plaintiff failed to state a claim upon which relief could be granted, (3) Plaintiff's claims were

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<sup>104</sup> Defs.' Resp. to Pl.'s Statement Add'l Material Facts, ¶ 16, Adv. Proc. ECF No. 82.

<sup>105</sup> Pl.'s Statement of Add'l Material Facts, ¶ 18, Adv. Proc. ECF No. 81.

<sup>106</sup> Defs.' Resp. to Pl.'s Statement Add'l Material Facts, ¶ 18, Adv. Proc. ECF No. 82. *See also* Pl.'s Resp. to Defs.' Mot. for Summ. J., Ex. A, Declaration of Pamela Brown, at 34-36, ECF No. 81.

<sup>107</sup> Am. Pl.'s Compl., Adv. Proc. ECF No. 35.

<sup>108</sup> Am. Pl.'s Compl., ¶ 17-18, 21, Adv. Proc. ECF No. 35.

barred by the doctrine of ratification and acquiescence, (4) Plaintiff's claims that the 2008 Loan was not a purchase money mortgage loan in violation of the Truth in Lending Act and Regulation Z were barred by the statute of limitations, and (5) Argolica and Land Home were not "necessary and proper parties" to this action.<sup>109</sup>

## 2. Defendants' Motion for Summary Judgment

Defendants moved for summary judgment on the Amended Complaint.<sup>110</sup> Defendants' argument in support of summary judgment was three-fold: (1) Mr. Brown obtained the 2008 Loan and that the loan was valid, (2) Plaintiff's claims were barred by the doctrine of res judicata, and (3) Plaintiff's claims were barred by the doctrine of judicial estoppel.<sup>111</sup> Regarding the validity of the 2008 Loan, Defendants contended that Mr. Brown acknowledged the validity of the 2008 Loan when he made "continuous payments" on the loan until April 6, 2015, the loan was acknowledged in his Second Bankruptcy Case, and the HUD-1 Settlement Statement showed that Mr. Brown was given \$7,904.23 after disbursements to other entities.<sup>112</sup>

## 3. Plaintiff's Response to Defendants' Motion for Summary Judgment and Objection to Amended Proof of Claim

Mrs. Brown made three arguments: (1) The 2008 Loan was not valid because only Mr. Brown's signature was notarized on the 2008 Deed of Trust, and Mrs. Brown signed the Note only as a "nonobligor" granting a security interest on the real property; (2) her claims for declaratory relief and injunctive relief were not barred by the doctrine of res judicata because Defendants did not correctly analyze the elements of res judicata; and (3) her claims for

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<sup>109</sup> Defs.' Answer to Pl.'s Am. Compl., ¶ 1-5, Adv. Proc. No. 56.

<sup>110</sup> Defs.' Mot. for Summ. J., Adv. Proc. ECF No. 69.

<sup>111</sup> Defs.' Brief in Support of Defs.' Motion for Summary J., Adv. Proc. ECF No. 69.

<sup>112</sup> Defs.' Brief in Support of Defs.' Motion for Summary J., Adv. Proc. ECF No. 69.



declaratory relief and injunctive relief were not barred by the doctrine of judicial estoppel because Defendants misapplied judicial estoppel as applied in the Sixth Circuit.<sup>113</sup>

*4. Defendants' Reply to Plaintiff's Response  
to Defendants' Motion for Summary Judgment*

In their Reply to Plaintiff's Response to Defendants' Motion for Summary Judgment, Defendants reiterated that: (1) the 2008 Loan was a valid loan because Mr. Brown had already acknowledged the 2008 Loan in his Second Bankruptcy Case and Mrs. Brown's chapter 13 plan was confirmed; (2) Mrs. Brown's claims were barred by the doctrine of res judicata because Mrs. Brown's confirmed chapter 13 plan treated Land Home as a secured creditor; and (3) Mrs. Brown's claims were barred by the doctrine of judicial estoppel because Mrs. Brown had "repeatedly told this Court" that the claim was secured and that money was owed on the 2008 Loan to the creditors.<sup>114</sup>

**III. DISCUSSION**<sup>115</sup>

This Court is presented with the issue of whether the doctrines of res judicata and judicial estoppel supports Defendants' motion for summary judgment when there are disputed issues of material facts, and it is not clear that Defendants are entitled to summary judgment as a matter of law.<sup>116</sup>

**A. Standard of Review**

The Federal Rule of Bankruptcy Procedure 7056 incorporates Federal Rule of Civil

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<sup>113</sup> Pl.'s Resp. to Defs.' Mot. for Summ. J., ¶ 5-6, Adv. Proc. ECF No. 76.

<sup>114</sup> Defs.' Reply to Pl.'s Resp. to Defs.' Mot. for Summ. J., Adv. Proc. ECF No. 83.

<sup>115</sup> The Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1334. Venue is proper in this District. 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(K). This is an adversary proceeding under Fed. R. Bankr. P. 7001(d).

<sup>116</sup> Defs.' Brief in Support of Defs.' Motion for Summary J., Adv. Proc. ECF No. 69.

Procedure 56, which governs summary judgment.<sup>117</sup> Under Rule 56(a), after a movant shows there is “no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law,” the court must grant summary judgment.<sup>118</sup> The court must view all evidence in the “light most favorable” to the non-moving party.<sup>119</sup>

**B. Defendants Failed to Establish that the  
Doctrine of Res Judicata Supports Summary Judgment**

Defendants argued that Mrs. Brown’s claims for declaratory relief and injunctive relief were barred by the doctrine of res judicata.<sup>120</sup> Defendants claimed that Mrs. Brown admitted that there was a security interest in the real property when she filed Proof of Claim 3-1 on behalf of Land Home in the amount of \$7,500.00 and her chapter 13 plan treated Land Home as a secured creditor.<sup>121</sup> Defendants primarily focused their res judicata argument on the fact that Mrs. Brown’s chapter 13 plan was confirmed and Land Home was treated as a secured creditor in the confirmed chapter 13 plan (although Defendants disagreed with the amount of the secured claim).<sup>122</sup> To support its res judicata argument, Defendants cited to *In re White*, 370 B.R. 713 (Bankr. E.D. Mich. 2007), *Simmons v. Savell (In re Simmons)*, 765 F.2d 547 (5th Cir. 1998), and

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<sup>117</sup> Fed. R. of Bankr. P. 7056.

<sup>118</sup> Fed. R. Civ. P. 56(a).

<sup>119</sup> *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986) (quoting *U.S. v. Diebold, Inc.*, 369 U.S. 654, 655 (1962)) (discussing summary judgment standard).

<sup>120</sup> Defs.’ Brief in Support of Defs.’ Motion for Summary J., Adv. Proc. ECF No. 69.

<sup>121</sup> Defs.’ Brief in Support of Defs.’ Motion for Summary J., Adv. Proc. ECF No. 69.

<sup>122</sup> Defs.’ Brief in Support of Defs.’ Motion for Summary J., Adv. Proc. ECF No. 69.

*Celli v. First Nat'l Bank of N.N.Y. (In re Layo)*, 460 F.3d 289 (2d Cir. 2006).<sup>123</sup>

Mrs. Brown argued that Defendants did not correctly apply the doctrine of res judicata.<sup>124</sup>

Mrs. Brown reasoned that although *Celli* provided four elements of res judicata, those elements were not binding on this circuit.<sup>125</sup> The Court agrees.

In the Sixth Circuit, a claim is barred by the res judicata if each of the four elements are established:

(1) a final decision on the merits by a court of competent jurisdiction; (2) a subsequent action between the same parties or their 'privies'; (3) an issue in the subsequent action which was litigated or which should have been litigated in the prior action; and (4) an identity of the causes of action.<sup>126</sup>

The party asserting res judicata must prove each element.<sup>127</sup> The Court finds that Defendants failed to prove all four elements of res judicata.

Although Defendants cited Sixth Circuit case law that outlined the four elements of res judicata, *Micro-Time Management Systems, Inc.*, Nos. 91–2260, 91–2261, 983 F.2d 1067 (6th Cir. 1993), Defendants failed to show that the record before the Court satisfy the four elements of res judicata as presented in *Micro-Time Management Systems*. Rather, Defendants simply

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<sup>123</sup> See *In re White*, 370 B.R. 713, 718 (Bankr. E.D. Mich. 2007) (holding that language in the chapter 13 debtor's confirmed chapter 13 plan was res judicata on treatment of motor vehicle lessor's claim); *Simmons v. Savell (In re Simmons)*, 765 F.2d 547, 553 (5th Cir. 1998) (explaining that proof of a secured claim must be acted upon before confirmation of a chapter 13 plan or else the claim must be deemed allowed); *Celli v. First Nat'l Bank of N.N.Y. (In re Layo)*, 460 F.3d 289, 295-96 (2d Cir. 2006) (holding that the confirmation of a chapter 13 plan was res judicata); *Kimvall v. Orland Assocs. P.C.*, 651 F. App'x 477, 481 (6th Cir. 2016) (finding that res judicata barred the chapter 13 debtor's claims against the defendants where the defendants were in privity with the loan servicer).

<sup>124</sup> Pl.'s Resp. to Defs.' Mot. for Summ. J., ¶ 5-6, Adv. Proc. ECF No. 76.

<sup>125</sup> Pl.'s Resp. to Defs.' Mot. for Summ. J., ¶ 5-6, Adv. Proc. ECF No. 76.

<sup>126</sup> See *Winget v. JP Morgan Chase Bank, N.A.*, 537 F.3d 565, 572 (6th Cir. 2008) (citing *Browning v. Levy*, 283 F.3d 761, 771 (6th Cir.2002) (citing *Bittinger v. Tecumseh Prods. Co.*, 123 F.3d 877, 880 (6th Cir.1997)); see also *In re Micro-Time Mgt. Sys., Inc.*, Nos. 91–2260, 91–2261, 983 F.2d 1067, \*3 (6th Cir. January 12, 1993) (laying out the elements of res judicata).

<sup>127</sup> *Winget*, 537 F.3d at 572.

argued that res judicata applied to Mrs. Brown's confirmed chapter 13 plan.<sup>128</sup>

Here, based on the record on summary judgment, it is not clear that a final decision on the merits (based on the underlying issues raised in the Amended Complaint and Objection to Claim 3-2) was made upon confirmation of the chapter 13 plan. Defendants failed to show that this subsequent action (the Amended Complaint and Objection to Claim 3-2) is between the same parties or their 'privies' considering that the central issue that Mrs. Brown raises is that she is not an obligor on the Note. There is no showing that the central issues raised in the Amended Complaint and Objection to Claim 3-2 were litigated or should have been litigated at confirmation. Defendants did not file a proof of claim and did not object to the confirmation of the chapter 13 plan. Defendants are now seeking to use the doctrine of res judicata to have Mrs. Brown adhere to the "secured" treatment of the debt, but not as to the amount of the debt. Finally, it is not clear that the issues raised in the Amended Complaint and Objection to Claim 3-2 were raised at confirmation. Hence, Defendants failed to show that the elements of res judicata are sufficiently satisfied for the granting of summary judgment.

**C. Defendants Failed to Prove that  
the Doctrine of Judicial Estoppel Applies**

Defendants argued that Mrs. Brown's claims for declaratory relief and injunctive relief were barred by the doctrine of judicial estoppel.<sup>129</sup> Defendants cited *Coffelt v. Am. Frozen Foods, Inc.*, No. 1:10-CV-69, 2010 WL 4238005 (E.D. Tenn. October 21, 2010), which provided a two-prong test of judicial estoppel: "(1) asserting a position that is contrary to one that the party has asserted under oath in a prior proceeding where (2) the prior court adopted the contrary position

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<sup>128</sup> Defs.' Brief in Support of Defs.' Motion for Summ. J., Adv. Proc. ECF No. 69.

<sup>129</sup> Defs.' Brief in Support of Defs.' Mot. for Summ. J., Adv. Proc. ECF No. 69.

‘either as a matter or as part of a final disposition.’”<sup>130</sup> In her response to Defendants’ Motion for Summary Judgment, Mrs. Brown argued that Defendants misapplied the doctrine of judicial estoppel.<sup>131</sup> The Court agrees.

In a bankruptcy case, the “law of the regional circuit governs the analysis of judicial estoppel.”<sup>132</sup> In her response, Mrs. Brown cited two Sixth Circuit cases that laid out the elements of judicial estoppel: *White v. Wyndham Vacation Ownership, Inc.*, 617 F.3d 472 (6th Cir. 2010) and *Stephenson v. Malloy*, 700 F.3d 265 (6th Cir. 2012).<sup>133</sup> *White* outlined a three-prong test in determining applicability of judicial estoppel in the Sixth Circuit:

(1) debtor assumed a position that was contrary to the one that she asserted under oath in the bankruptcy proceedings; (2) the bankruptcy court adopted the contrary position either as a preliminary matter or as part of a final disposition; and (3) debtor’s omission did not result from mistake or inadvertence.<sup>134</sup>

*White* further expanded on the third prong in outlining two elements that must be met in determining whether a conduct resulted from a mistake or inadvertence: “(1) [a debtor] lacked knowledge of the factual basis of the undisclosed claims; (2) [a debtor] had a motive for concealment; and (3) the evidence indicates an absence of bad faith.”<sup>135</sup>

Defendants also relied on Sixth Circuit case law, *Shufeldt v. Baker, Donelson, Bearman,*

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<sup>130</sup> *Coffelt v. Am. Frozen Foods, Inc.*, No. 1:10-CV-69, 2010 WL 4238005, at \*2 (E.D. Tenn. October 21, 2010) (granting the defendants’ motion for summary judgment and agreed with the defendants that the plaintiff should be judicially estopped where the plaintiff failed to disclose his claims for damages to the bankruptcy court).

<sup>131</sup> Pl.’s Resp. to Defs.’ Mot. for Summ. J., Adv. Proc. ECF No. 76.

<sup>132</sup> *In re Huggins*, 658 B.R. 821, 847-48 (Bankr. D.S.C. 2024) (holding that judicial estoppel did not apply to the resident’s claims where the court found that the residents did not intentionally mislead the bankruptcy court to gain unfair advantage by her inadvertent omission of real property from her schedules in her prior bankruptcy).

<sup>133</sup> Pl.’s Resp. to Defs.’ Mot. for Summ. J., Adv. Proc. ECF No. 76.

<sup>134</sup> See *White v. Wyndham Vacation Ownership, Inc.*, 617 F.3d 472 (6th Cir. 2010) (outlining the three-prong test in determining judicial estoppel); see also *Stephenson v. Malloy*, 700 F.3d 265, 272-74 (6th Cir. 2012) (citing *White v. Wyndham Vacation Ownership, Inc.*, 617 F.3d 472 (6th Cir. 2010)).

<sup>135</sup> *White*, 617 F.3d at 478.

*Caldwell & Berkowitz, PC*, that outlined a two-prong test that ““the doctrine of judicial estoppel bars a party from (1) asserting a position that is contrary to one that the party has asserted under oath in a prior proceeding, where (2) the prior court adopted the contrary position “either as a preliminary matter or as part of a final disposition.””<sup>136</sup>

In *Shufeldt*, the Sixth Circuit explained that the purpose of the doctrine of judicial estoppel is to protect the integrity of the courts by barring parties from convincing courts to adopt contradictory positions.<sup>137</sup> *Shufeldt* further advised that judicial estoppel should be “applied with caution to avoid impinging on the truth-seeking function of the court because the doctrine precludes a contradictory position without examining the truth of either statement.”<sup>138</sup> To heed this warning, *Shufeldt* explained that, when applying the doctrine of judicial estoppel, courts should consider the following factors as outlined by the United States Supreme Court:

- (1) whether a party's later position [is] clearly inconsistent with its earlier position;
- (2) whether the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled; and
- (3) whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.<sup>139</sup>

In reconciling the Sixth Circuit and Supreme Court case law, the central theme throughout is whether the party (against whom the doctrine of judicial estoppel is being invoked) is now asserting a position that is clearly inconsistent with one previously asserted under oath, and a

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<sup>136</sup> *Shufeldt v. Baker, Donelson, Bearman, Caldwell & Berkowitz, PC*, 855 Fed. App'x 239, 243 (6th Cir. 2021) (holding that judicial estoppel did not apply where in a previous action, the trial court did not judicially accept the law firm client's position).

<sup>137</sup> *Shufeldt*, 855 Fed. App'x, at 243.

<sup>138</sup> *Id.* (citations omitted).

<sup>139</sup> See, e.g. *Shufeldt*, 855 Fed. App'x at 243 (citing *New Hampshire v. Maine*, 532 U.S. 742, 750-51 (2001)).

court adopting that prior contrary position as part of the court's preliminary or final disposition.

Defendants' motion for summary judgment under the doctrine of judicial estoppel fails because the record on summary judgment does not show that the requirements of judicial estoppel are satisfied. Defendants simply argued that the "under oath" requirement was "flexible and a representation does not need to technically be made 'under oath' to meet the requirements of judicial estoppel."<sup>140</sup> Defendants further contended that Mrs. Brown may be bound by her late husband's position in his previous chapter 13 cases.<sup>141</sup> To support their position that Mrs. Brown took prior contradictory positions under oath, Defendants turned to the three prior bankruptcy cases filed by Mr. Brown, arguing that Mr. Brown repeatedly took positions "under oath" in his chapter 13 cases that he owed money on the 2008 Loan.<sup>142</sup> Defendants further reasoned that because parties did not need privity of parties in a judicial estoppel analysis (as is required in a res judicata analysis) Mrs. Brown could be bound by Mr. Brown's prior three bankruptcy cases.<sup>143</sup> Defendants failed to show how any of the undisputed facts support the requirements of judicial estoppel. Thus, Defendants are not entitled to summary judgment based on the doctrine of judicial estoppel.

#### **IV. CONCLUSION AND ORDER**

For the reasons stated above, the Court finds and concludes Defendants' Motion for Summary Judgment should be denied because there are disputed material facts and Defendants

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<sup>140</sup> Defs.' Brief in Support of Defs.' Motion for Summ. J., Adv. Proc. ECF No. 69.

<sup>141</sup> Defs.' Brief in Support of Defs.' Mot. for Summ. J., Adv. Proc. ECF No. 69.

<sup>142</sup> Defs.' Brief in Support of Defs.' Motion for Summary J., Adv. Proc. ECF No. 69.

<sup>143</sup> Defs.' Brief in Support of Defs.' Motion for Summary J., Adv. Proc. ECF No. 69.

are not entitled to summary judgment as a matter of law. Accordingly, it is **ORDERED**:

Defendants' *Motion for Summary Judgment* is **DENIED**.

**Copies to be served on:**

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**Defendants:**

- U.S. BANK, Trustee for Bayview Opportunity, 190 South LaSalle Street, 7th Floor Chicago, IL 60603;
- Argolica, LLC, 2003 Western Avenue, Suite 340, Seattle, WA 98121; Land Home Financial Services, Inc., c.o Corporation Services Co., Agent, 2909 Poston Avenue, Nashville, TN 37203; and
- Limosa, LLC, c/o Natalie K. Brown, Esq., Rubin Lublin, LLC, 3145 Avalon Ridge Place, Suite 100, Peachtree Corners, GA 30071; [nbrown@rlselaw.com](mailto:nbrown@rlselaw.com) .

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**Attorney for Creditors Limosa, LLC and Millenium Trust Co Llc as Cust Fbo Prime Meridian NPL, LLC as serviced by Land Home Financial Services, Inc.:** Natalie K. Brown, Esq., Rubin Lublin, LLC, 3145 Avalon Ridge Place, Suite 100, Peachtree Corners, GA 30071; [nbrown@rlselaw.com](mailto:nbrown@rlselaw.com).

**Chapter 13 Trustee:** Sylvia F. Brown, 200 Jefferson Ave. Suite #1113, Memphis, TN 38103

**United States Trustee:** Office of the U.S. Trustee, One Memphis Place, 200 Jefferson Avenue, Suite 400, Memphis, TN 38103