

222 Fed.Appx. 184

This case was not selected for publication in West's Federal Reporter.

See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also U.S.Ct. of Appeals 3rd Cir. App. I, IOP 5.1, 5.3, and 5.7. United States Court of Appeals, Third Circuit.

Kurt H. KRAMER; Maria E. Kramer, Appellants

v.

Thomas KUBICKA; Bonnie Kubicka.

No. 06–3355.

Submitted Under Third Circuit

LAR 34.1(a) Jan. 30, 2007.

Filed: March 13, 2007.

#### Synopsis

**Background:** Borrowers sued lenders, alleging violations of New Jersey and Pennsylvania usury laws, the federal Truth in Lending Act (TILA), and Racketeer Influenced and Corrupt Organizations Act (RICO). The United States District Court for the District of New Jersey, [William J. Martini, J.](#), 2006 WL 1644825, entered summary judgment in favor of lenders. Borrowers appealed.

**Holdings:** The Court of Appeals held that:

borrowers' TILA claims were subject to a one-year limitations period;

four-year limitations period on RICO claim for alleged collection of an “unlawful debt” accrued when borrowers made last payment; and

default judgment entered by court of competent jurisdiction against borrowers was not an “unlawful debt,” under RICO.

Affirmed.

**\*184** On Appeal From the United States District Court For the District of New Jersey, (D.C.Civ. No. 05–cv–02621), District Judge: Honorable [William J. Martini](#).

#### Attorneys and Law Firms

Kurt H. Kramer, Bloomingdale, NJ, pro se.

Maria E. Kramer, Bloomingdale, NJ, pro se.

[Perry S. Warren](#), Maselli Warren, Princeton, NJ, for Thomas Kubicka.

BEFORE: [SLOVITER](#), [McKEE](#) and [AMBRO](#), Circuit Judges.

#### OPINION

PER CURIAM.

**\*\*1** Appellants Kurt and Maria Kramer, proceeding *pro se*, appeal the District **\*185** Court's entry of summary judgment in favor of Appellees, Thomas and Bonnie Kubicka. For the reasons that follow, we will affirm.

Appellants are a married couple who had a longstanding personal relationship with Appellees, also a married couple. Between 1978 and 1993, Appellees made periodic loans to Appellants, totaling \$28,700. Appellants signed a note for each of the loans, which were made at a range of interest rates. Appellants made interest-only payments on these notes until March 1994, at which point they stopped making payments entirely. In February 1998, they instituted a bankruptcy action, which was dismissed in May 1999 for failure to present a workable plan. The following month, Appellees filed an action against Appellants in the Court of Common Pleas in Bucks County, Pennsylvania demanding the total outstanding on the notes plus interest, for a sum of \$53,187.20. According to Appellants, after their attorney failed to file an answer, default judgment was entered against them on September 3, 2000. On May 16, 2001, Appellants wrote a check to Appellees for \$59,500. The check was cashed on May 18, 2001. Satisfaction was entered in Pennsylvania on July 3, 2001 and in New Jersey on August 7, 2001.

On May 18, 2005, Appellants initiated this lawsuit in the United States District Court for the District of New Jersey. In their complaint, Appellants allege

violations of New Jersey and Pennsylvania usury laws, the federal Truth in Lending Act (“TILA”), 15 U.S.C. § 1601 *et seq.*, and the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. § 1961 *et seq.* Appellees moved to dismiss the complaint on a number of grounds, including expiration of the statute of limitations. Appellants moved for summary judgment. The District Court converted Appellees' motion to dismiss to one for summary judgment and granted it, holding that Appellants' state law claims were barred by *res judicata*, and that their federal claims, to the extent they were not also barred by *res judicata*, were time-barred. Appellants filed the instant appeal.

We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. We review a district court's grant of summary judgment *de novo*. *Pennsylvania Coal Ass'n v. Babbitt*, 63 F.3d 231, 236 (3d Cir.1995). Summary judgment is proper only if it appears “that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Fed.R.Civ.P. 56(c); *Carrasca v. Pomeroy*, 313 F.3d 828, 832–33 (3d Cir.2002).

The District Court held that both Appellants' RICO and TILA claims were time-barred. We agree. As the District Court noted, TILA claims are subject to a one-year limitations period, 15 U.S.C. § 1640(e), and RICO claims to a four-year limitations period. See *Agency Holding Corp. v. Malley-Duff & Assocs., Inc.*, 483 U.S. 143, 156, 107 S.Ct. 2759, 97 L.Ed.2d 121 (1987). We have held that a RICO claim accrues when a plaintiff knew or should have known of the injury alleged. See *Prudential Ins. Co. of Am. v. U.S. Gypsum Co.*, 359 F.3d 226, 233 (3d Cir.2004). The injury Appellants complain of is the alleged collection of an “unlawful debt” as defined by

18 U.S.C. § 1961(6). We agree with the District Court that the last payment that could so qualify was made by Appellants in 1994, and therefore does not satisfy the four-year limitations period.

\*\*2 Appellants contest this conclusion, relying on their argument that the default judgment is void ab initio due to Appellees' failure to serve them personally, in addition \*186 to serving their attorney, as required by Pa. R. Civ. P. 237.1(a)(2)(ii). See *Erie Ins. Co. v. Bullard*, 839 A.2d 383, 387 (Pa.Super.Ct.2003). Because they claim that the default judgment is therefore a nullity, they maintain that their payment of \$59,500 should also be considered a predicate act. We disagree. A judgment entered by a court of competent jurisdiction does not fall within the definition of an “unlawful debt” as defined by the RICO statute. See 18 U.S.C. § 1961(6). As no court has declared the default judgment null, we continue to consider it valid.

With respect to Appellants' state law claims, because we affirm the District Court's dismissal of Appellants' federal claims, we conclude that the District Court could have declined to exercise supplemental jurisdiction over these claims. See 28 U.S.C. § 1367(c)(3); see also *Growth Horizons, Inc. v. Delaware County, Pennsylvania*, 983 F.2d 1277, 1284–85 (3d Cir.1993).

Accordingly, we conclude that the District Court properly entered summary judgment in favor of Appellees and will affirm its order.

#### All Citations

222 Fed.Appx. 184, 2007 WL 749723, RICO Bus.Disp.Guide 11,243