

MTGLQ Inv'r v. Walden

Decided Jul 20, 2021

20-50944

07-20-2021

MTGLQ Investors, L.P., Plaintiff-Appellee, v. Jerry K. Walden, Jr., also known as Jerry K. Walden; Tamatha Walden, Defendants-Appellants.

Per Curiam

Appeal from the United States District Court for the Western District of Texas USDC No. 1:19-CV-992

Before Jolly, Elrod, and Graves, Circuit Judges.

Per Curiam [*]

Jerry and Tamatha Walden appeal the district court's grant of MTGLQ Investors' motion for summary judgment. Because we hold that the district court did not err in its determination, we AFFIRM.

The Waldens argue that the district court erred in granting MTGLQ's motion for summary judgment because they had not had an opportunity to conduct discovery. However, the Waldens did not provide enough specific, factual information in response to MTGLQ's motion for summary judgment to justify delaying consideration of the motion or denying the motion in order to allow discovery per [Federal Rule of Civil Procedure 56\(d\)](#). "[N]on-moving parties requesting [Rule 56\(d\)](#) relief 'may not simply rely on vague assertions that additional discovery will produce needed, but unspecified, facts.'" *Am. Fam. Life Assurance Co. of Columbus v. Biles*, [714 F.3d 887, 894](#) (5th Cir. 2013) (quoting *Raby v. Livingston*, [600 F.3d 552, 561](#) (5th Cir. 2010)). We therefore reject this argument.

In addition, the Waldens assert that the district court erred in granting the motion for summary judgment because MTGLQ was simultaneously pursuing an expedited order for foreclosure in state court. But this argument fails because a state court action for foreclosure under [Texas Rule of Civil Procedure 736](#) is not a parallel proceeding. It "has no res judicata, collateral estoppel, estoppel by judgment, or other effect in any other judicial proceeding." *Tex.R.Civ.P. 736.9*; accord *Burciaga v. Deutsche Bank Nat'l Tr. Co.*, [871 F.3d 380, 387](#) (5th Cir. 2017) (noting that Texas law states that a Rule 736 action has no preclusive effect and is subject to "collateral attack" in other courts).

Finally, the Waldens argue that the district court improperly admitted testimony from MTGLQ's representative. This argument is forfeited because they failed to raise this argument to the district court. We will not consider arguments that are raised for the first time on appeal and will only consider arguments which have been presented to the district court. *Hardman v. Colvin*, [820 F.3d 142, 152](#) (5th Cir. 2016).

Because we conclude that the district court did not err in granting MTGLQ's motion for summary judgment, we
8 AFFIRM. *8 [*] Pursuant to 5th Circuit Rule 47.5, the court has determined that this opinion should not be
published and is not precedent except under the limited circumstances set forth in 5th Circuit Rule 47.5.4.
