

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: KEHINDE ELEBUTE	§	
Debtor and Appellant	§	Case No. 4:23-cv-02674
v.	§	
VILLAGE CAPITAL & INVESTMENT LLC,	§	
MICHAEL WEEMS	§	
Appellees	§	

APPELLEES' MOTION TO DISMISS

COMES NOW Defendant/Appellees Village Capital & Investment LLC (“Village Capital”) and Michael Weems (“Weems”) (collectively “Appellees”), and files their Motion to Dismiss and shows as follows:

1. Appellant Kehinde Elebute filed this Appeal July 21, 2023 through former attorney Diogu Diogu. **DK# 1.**
2. On August 24, 2024, Appellees filed their Joint Motion to Dismiss. **DK# 2.**
3. The Parties fully briefed the issues on appeal which was pending with the Court for consideration along with Appellees Motion to Dismiss. **See DK#'s 10, 14.** There was no reply brief to Appellee’s Brief.
4. A status conference was held in the case December 19, 2023 in which the Court advised it would carry Appellee’s motion to dismiss with its consideration of the brief. **DK# 15.**
5. On January 18, 2024, Appellant amended the appeal. **DK# 16.** Appellant ordered the transcript from the Bankruptcy Court the same day. **See Bankr.S.D.Tex. 23-3110, DK# 39.**
6. On January 30, 2024, Appellant’s former attorney Diogu Diogu was disbarred by the State of Texas. **DK# 18.**
7. On February 7, 2024, the Bankruptcy Court for the Southern District of Texas barred Mr. Diogu from practicing in the bankruptcy courts. **See Case 4:00-mc-27734, DK #9.**

8. The pending appeal arises from a prior bankruptcy court order.
9. The Appellant is currently pro se and has taken no action to continue this frivolous appeal since his prior attorney was disbarred.
10. Appellee's have incurred unreasonably delay. The entirety of the underlying adversary proceeding and appeal revolve around a 2016 foreclosure Appellant is yet again attacking.
11. Appellant already sued Village Capital for wrongful foreclosure in 2017. See Bankr.S.D.Tex. 17-03148.
12. The prior 2017 case was dismissed for failure to state a claim upon which relief could be granted. *Id.*
13. Appellant appealed to the District Court November 26, 2018. **Id., DK# 52.**
14. The District Court dismissed the appeal by minute entry May 3, 2019 and by order June 11, 2019. **4:18-cv-04504, DK# 16.**
15. Appellant appealed to the Fifth Circuit May 8, 2019. **Id, DK# 13.**
16. The Fifth Circuit affirmed the District Court's order of dismissal on February 28, 2020. **Id, DK# 32.**
17. Appellant then sued Appellees for the same wrongful foreclosure action in October 2020. Appellant did not serve Defendants until 2023. The case was then removed back to the Bankruptcy Court which issued the initial 2017 ruling and Appellant is appealing the order reopening the Bankruptcy Case to remove the case back to its Court.
18. This appeal is frivolous and the 2020 lawsuit is barred by res judicata for Village Capital and by Attorney Immunity for attorney Michael Weems.

19. Appellant's failure to move this frivolous appeal forward is undue delay to Appellees. The appeal is meritless and the entirety of the legal action barred by res judicata and immunity. The Fifth Circuit already affirmed the District Court which dismissed the appeal from the wrongful foreclosure lawsuit Appellant filed in 2017. This appeal should be dismissed for undue delay and frivolity.

Wherefore, premises considered, Appellees pray the Court dismiss this appeal and grant Appellees such further and other relief as the Court deems just.

Respectfully Submitted,

/s/ Damian Abreo

Damian Abreo

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served this 19 day of February, 2024 on the below parties by either electronic notification from the Court or by first class mail, postage pre-paid.

Pro Se Appellant
Kehinde Elebute
1206 Turtle Creek
Missouri City, TX 77489

Courtesy notice to former attorney
Diogu Diogu
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Brookshire, TX 77423

/s/ Damian Abreo
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**ORDER GRANTING
APPELLEES' MOTION TO DISMISS**

Defendant/Appellees Village Capital & Investment LLC (“Village Capital”) and Michael Weems (“Weems”) (collectively “Appellees”), filed their Motion to Dismiss this appeal February 19, 2024. Upon review, the Court finds cause to grant the Motion.

This appeal is dismissed.

Honorable George C Hanks, Jr
U.S. District Judge