

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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LINDA S. ELAM, FREDERICK J. ELAM, )  
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 Plaintiffs, )  
 )  
 v. )  
 )  
 AURORA SERVICES LOAN, LLC, )  
 AURORA COMMERCIAL )  
 CORPORATION, HSBC BANK USA, )  
 N.A., LEHMAN BROTHERS, WEIL, )  
 SOTSALL AND MANGESS )  
 ATTORNEYS, COLLETTE FARLEY, )  
 NATIONSTAR MORTGAGE, LLC, )  
 MORTGAGE ELECTRONIC )  
 REGISTRATION SERVICES, REALTY )  
 MORTGAGE CORPORATION, FIRST )  
 BANK, )  
 )  
 Defendants. )

No. 2:17-cv-02188-TLP-tmp

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**ORDER DENYING PLAINTIFFS’ MOTION FOR RECONSIDERATION**

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Plaintiffs filed the instant Motion asking the Court to reconsider the Order Adopting the Magistrate Court’s Report and Recommendation which dismissed this case. (ECF No. 92.) Specifically, Plaintiffs seek reconsideration of the dismissal of their claim under the Racketeer Influenced and Corrupt Organizations Act (“RICO”). (*Id.*)

**A. Plaintiffs’ Statute-of-Limitations Argument Cites Nonbinding Precedent and Contradicts the Sixth Circuit Case Law.**

The statute of limitations for civil RICO claims are not statutorily defined. *See Rotella v. Wood*, 528 U.S. 549, 553 (2000). But, the Supreme Court holds that civil RICO claims have a four-year statute of limitations. *See Agency Holding Corp. v. Malley-Duff & Assocs.*,

*Inc.*, 483 U.S. 143, 156 (1987) (establishing a four-year statute of limitations for civil RICO claims). This period begins “when a plaintiff knew or should have known of his injury.” *Rotella v. Wood*, 528 U.S. 549, 554 (2000). In other words, “discovery of the injury, not discovery of the other elements of a claim, is what starts the clock.” *Guy v. Mercantile Bank Mort. Co.*, 711 F. App’x 250, 253 (6th Cir. 2017) (quoting *Rotella*, 528 U.S. at 555).

Plaintiffs argue that the Court wrongly barred their civil RICO claim because their claim is within the four-year statute of limitations under the “separate accrual rule.” (ECF No. 92.) According to Plaintiffs, the separate accrual rule holds that a civil RICO claim “accrues for each injury when the Plaintiff discovers or should have discovered that injury.” (*Id.*) (quoting *Banker’s Trust Co. v. Rhodes*, 859 F.2d 1096, 1102 (2d Cir. 1988)). As a result, when Defendant Nationstar “initiated foreclosure proceedings in or around February 2017” this proceeding constituted a separate injury, which began the statute-of-limitations clock anew. (ECF No. 92.) The Court disagrees.

*Rotella*, and subsequent Sixth Circuit case law, hold that the statute of limitations clock begins to run on the discovery of the injury. That “injury” occurred when Plaintiffs’ property was foreclosed on beginning in 2007. (ECF No. 74-1 at PageID 782.)<sup>1</sup> Defendant Nationstar’s foreclosure proceeding is not then, as Plaintiffs argue, a separate injury from which the limitations period begins again, but instead represents a subsequent act, part in parcel of the foreclosure proceedings brought against Plaintiffs going back to 2007. (ECF No.

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<sup>1</sup> Plaintiffs even conflate their own understanding of the case that they use to assert their separate accrual-argument. According to the Second Circuit’s decision in *In re Merrill Lynch Partnerships Litigation*, the separate accrual rule requires that the “injury” triggering the rule “ha[s] to be new and independent to be actionable.” See *In re Merrill Lynch Ltd. Partnerships Litig.*, 154 F.3d 56, 59 (2d Cir. 1998). Here the 2017 Nationstar foreclosure is still a foreclosure on Plaintiffs property, just like the foreclosures that began in 2007. Thus, there is no new and independent injury to trigger the separate accrual rule, if one even applies here.

74-1 at PageID 782.) The Plaintiffs knew or should have known about their alleged injury—the foreclosure—over four (4) years before they brought their lawsuit. Plaintiffs’ civil RICO claim is thus time-barred.<sup>2</sup>

**B. Plaintiffs’ Statute-of-Limitations Argument is Immaterial Because It Is Subject to Res Judicata.**

Plaintiffs argue that the Court wrongly barred their civil RICO claim under *res judicata* because “predicate acts of [RICO] violations have occurred within the [applicable] statutory period.” (ECF No. 92.) It appears that Plaintiff do not understand how, exactly, *res judicata* works. The doctrine of *res judicata* addresses previous adjudication. Under *res judicata*, a court will bar a claim if that claim was “definitively settled by [a prior] judicial decision” (a final judgment on the merits). *Res Judicata*, BLACK’S LAW DICTIONARY (10th ed. 2014); see *Taylor v. Sturgell*, 553 U.S. 880, 882 (2008); RESTATEMENT (SECOND) OF JUDGMENTS §§ 17, 24 (1982). Thus, it is the existence of a prior judicial decision addressing and settling the claim which bars subsequent claims. As noted in the Order Adopting the Report and Recommendation in this cause, the previous state court proceedings in *Nationstar Mort., LLC v. Elam*, No. 15895 (Tenn. Ch. Ct. May 8, 2015) addressed the civil RICO claims. Thus, the Court does not find any reason to reconsider its initial determination that Plaintiffs’ civil RICO claim is barred under *res judicata*.

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<sup>2</sup> Plaintiffs also mention a potential ten-year statute of limitations for civil RICO claims under 18 U.S.C. § 1961(5). But, Plaintiffs actually misunderstand § 1961(5). Section 1961(5) states that a “‘pattern of racketeering activity’ requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity.” § 1961(5). This merely lays out how far apart the “two acts of racketeering activity” necessary to form a RICO claim can occur. Once a RICO claim does form though, the four-year period for civil RICO claims begins to run. See *Agency Holding Corp.*, 483 U.S. at 156.

**CONCLUSION**

For the above-mentioned reasons, the Court DENIES Plaintiffs' Motion for Reconsideration.

**SO ORDERED**, this 18th day of June, 2018.

s/ Thomas L. Parker  
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THOMAS L. PARKER  
UNITED STATES DISTRICT JUDGE