UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

REED KIRK MCDONALD,

Plaintiff - Appellant,

v.

ARAPAHOE COUNTY, a quasimunicipal corporation and political subdivision of the State of Colorado,

Defendant - Appellee.

No. 18-1070
(D.C. No. 1:17-CV-01701-CMA-MJW)
(D. Colo.)

ORDER AND JUDGMENT*

(Filed Nov. 28, 2018)

Before **HOLMES**, **O'BRIEN**, and **CARSON**, Circuit Judges.

---

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Reed Kirk McDonald, proceeding pro se, appeals the district court's dismissal of his complaint. Exercising jurisdiction pursuant to 28 U.S.C. § 1291, we affirm.

I. Background

This appeal arises out of Mr. McDonald's eviction from his residential property. Citibank initiated foreclosure proceedings on Mr. McDonald's residential property in September 2012. The Arapahoe County Public Trustee sold the property in October 2012, and Citibank was the winning bidder. The sale was approved by the Arapahoe County District Court. Mr. McDonald, however, refused to vacate the premises.

In 2014, Citibank brought a forcible entry and detainer action (FED) against Mr. McDonald in Arapahoe County District Court pursuant to Colo. Rev. Stat. § 13-40-104(1)(f). After trial on Citibank's unlawful detainer claim, the state district court entered a judgment for possession in favor of Citibank. Mr. McDonald appealed.

On October 8, 2015, while the appeal was pending, Citibank filed a request for issuance of a writ of restitution because there was no stay of the FED judgment and Mr. McDonald had not posted a bond to stay execution.[1] The Colorado Court of Appeals affirmed the

[1] "Upon the trial of any action under this article . . . and if the court finds that the defendant has committed an unlawful detainer, the court shall enter judgment for the plaintiff to have

state district court's judgment in the FED action on October 15 and issued the writ of restitution on October 27. The writ of restitution automatically expired on December 15.[2] After denying Mr. McDonald's petition for rehearing, the Court of Appeals issued its mandate on December 23.

Although the Colorado Court of Appeals had affirmed the judgment of possession in favor of Citibank and issued its mandate, Mr. McDonald continued to seek relief related to the FED action in the Colorado Court of Appeals and the Colorado Supreme Court. During this time, Citibank moved for and was granted the reissuance of the expired writ of restitution in September 2016, and again in January 2017. Mr. McDonald was evicted from the property on January 30, 2017. The Colorado Supreme Court denied Mr. McDonald's petition for a writ of certiorari in November 2017.

Mr. McDonald filed the underlying complaint for declaratory judgment in federal court against Arapahoe County in July 2017. In the complaint, he alleged that "[o]n January 30, 2017 Plaintiff encountered Arapahoe County at his front door and requested proof of service and evidence of lawful writ. Arapahoe County refused to provide both and yanked Plaintiff off the Property." R. at 12. He further alleged that the

---

restitution of the premises *and shall issue a writ of restitution.*" Colo. Rev. Stat. § 13-40-115(1) (emphasis added).

[2] "A writ of restitution that is issued by the court pursuant to subsection (1) or (2) of this section shall remain in effect for forty-nine days after issuance and shall automatically expire thereafter." Colo. Rev. Stat. § 13-40-115(3).

Arapahoe County District Court was without jurisdiction to issue the writ of restitution while he was appealing his case, the state court accepted *ex parte* motions from the banks without requiring them to confer with him, and the state court concealed the writ from him in violation of state law. Mr. McDonald therefore asserted that the writ was unlawful and that Arapahoe County took his property without due process in violation of his federal and state constitutional rights.

Arapahoe County filed a motion to dismiss. The County argued that Mr. McDonald's claims were barred by the *Younger* abstention doctrine and/or the *Rooker-Feldman* doctrine and should be dismissed for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1). The County also argued that Mr. McDonald's complaint failed to state a claim for relief against the County and should be dismissed under Fed. R. Civ. P. 12(b)(6). The magistrate judge recommended dismissal for lack of subject matter jurisdiction because the *Rooker-Feldman* doctrine barred Mr. McDonald's lawsuit.[3] The magistrate judge also recommended dismissal under Rule 12(b)(6) because Mr. McDonald failed to state any claims against Arapahoe County upon which relief could be granted.

The district court agreed with the magistrate judge's recommendation that the motion to dismiss

[3] The magistrate judge determined that *Younger* abstention was inappropriate because there were no longer any pending state court proceedings after the Colorado Supreme Court denied Mr. McDonald's petition for a writ of certiorari in November 2017.

should be granted based on the *Rooker-Feldman* doctrine; it did not address the County's Rule 12(b)(6) argument. The district court adopted the report and recommendation, granted the County's motion to dismiss, and dismissed the complaint. Mr. McDonald now appeals from that dismissal.

II. Discussion

We review de novo the district court's dismissal for lack of subject matter jurisdiction. *Erlandson v. Northglenn Mun. Court*, 528 F.3d 785, 788 (10th Cir. 2008). The *Rooker-Feldman* doctrine bars federal district courts from reviewing final state court judgments. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). More specifically, the doctrine bars review of "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Id.*

Much of what Mr. McDonald argues in his briefs on appeal is not relevant to the issue on appeal—whether the district court erred in dismissing the complaint based on the *Rooker-Feldman* doctrine. We limit our discussion to that issue. Mr. McDonald contends that he "sued Arapahoe County for Constitutional

Violations," and that he "did not attempt to overturn a state court's decision." Aplt. Br. at 17.[4]

Under Colorado law, once a court finds there has been an unlawful detainer, which the state court found in this case, the court must "enter judgment for the plaintiff to have restitution of the premises" and "issue a writ of restitution." Colo. Rev. Stat. § 13-40-115(1). Although Mr. McDonald alleged that Arapahoe County took his property without due process, it was the state court that entered the judgment of possession in favor of Citibank and issued the allegedly unlawful writ of restitution that caused the County to evict Mr. McDonald from the property. His complaint contains numerous allegations attacking the state-court proceedings related to the writ of restitution. *See, e.g.*, R. at 13 ¶ 55 ("The Lower-Court threw-out the rule book and authorized the national banks unlawful actions and their *ex-parte motions* which violated Colorado's Rules of Civil Procedure. . . . The Lower-Court was without jurisdiction to issue writ as the instant case was on appeal when it invited[,] accepted and granted the national banks *ex-parte motions*."[5]); *id.* at 15 ¶ 59 ("The Lower-Court's unlawful writ issued, it concealed the writ from Plaintiff, a violation of [Colorado law]."); *id.*

---

[4] He also has a section titled "Rooker-Feldman inapplicable" where he spends several pages discussing Tenth Circuit decisions that involved the *Rooker-Feldman* doctrine, but he fails to explain how those cases relate to his case or how they demonstrate that the district court erred in dismissing his complaint. *See* Aplt. Br. at 19-21.

[5] The complaint explains that Arapahoe County District Court will be referred to as the "Lower-Court." R. at 9 ¶ 21.

at 16 ¶ 61 ("Plaintiff was not served the Lower Court[']s unlawful writ for the obvious reason, it was unlawful, in violation of the Lower Court[']s jurisdiction, in violation of the rules of civil procedure and in violation of Colorado law.").

We have held that "*Rooker-Feldman* does not bar federal-court claims that would be identical even had there been no state-court judgment; that is, claims that do not rest on any allegation concerning the state-court proceedings or judgment." *Bolden v. City of Topeka*, 441 F.3d 1129, 1145 (10th Cir. 2006); *see also Mayotte v. U.S. Bank Nat'l Ass'n*, 880 F.3d 1169, 1176 (10th Cir. 2018) (explaining that plaintiff's claims should not have been dismissed on *Rooker-Feldman* grounds where her claims could be proved "without any reference to the state-court proceedings"). Here, Mr. McDonald's due process claim rests almost entirely on allegations concerning the state-court proceedings and he would not be able to prove his claim without reference to those proceedings. Arapahoe County did not act independently to evict Mr. McDonald; instead, the County acted based on the allegedly unlawful writ of restitution the state court issued in conjunction with the state-court judgment.

We agree with the district court that Mr. McDonald complains of an injury—the issuance of the writ of restitution and his eviction from the property—that arises out of the judgment for possession that the state court entered in Citibank's favor in the FED action. Although Mr. McDonald's complaint speaks in terms of the County violating his constitutional rights in taking

his property without due process, "the deprivation of property that was allegedly without . . . due process was the deprivation ordered by the state court," *Campbell v. City of Spencer*, 682 F.3d 1278, 1284 (10th Cir. 2012). Accordingly, his complaint falls within the parameters of the *Rooker-Feldman* doctrine outlined in *Exxon Mobil*; his "claim is one 'brought by a state-court loser complaining of an injury caused by a state-court judgment.'"[6] *Campbell*, 682 F.3d at 1284 (quoting *Exxon Mobil*, 544 U.S. at 284) (brackets omitted). We therefore conclude the district court properly dismissed Mr. McDonald's complaint based on the *Rooker-Feldman* doctrine.[7]

---

[6] Mr. McDonald argues in his reply brief that *Rooker-Feldman* is inapplicable because Arapahoe County was not a party to his action in state court, citing to *Lance v. Dennis*, 546 U.S. 459 (2006). In *Lance*, the Supreme Court reiterated its holding that "*Rooker-Feldman* [is] inapplicable where the party *against whom the doctrine is invoked* was not a party to the underlying state-court proceeding." *Id.* at 464 (emphasis added). Mr. McDonald is the party against whom the doctrine has been invoked and he was a party to the underlying state-court proceedings—he was the losing party in state court. Accordingly, *Lance* provides no basis on which to reverse the district court's decision.

[7] Mr. McDonald focuses much of his briefing on the applicability of *Rooker-Feldman* to foreclosure proceedings under Colo. R. Civ. P. 120. He seeks a ruling that "C.R.C.P. Rule 120 does not result in judgment and is therefore not subject to federal doctrine *Rooker-Feldman*." Reply Br. at 26. But the applicability of *Rooker-Feldman* to Rule 120 proceedings is not before us in this appeal. The state-court judgment for the purposes of the application of the *Rooker-Feldman* doctrine in this case is the judgment in favor of Citibank in the FED action. As the district court explained, "in the action now before the Court, [Mr. McDonald's] alleged injuries

III. Conclusion

For the foregoing reasons, we affirm the district court's judgment. We deny Mr. McDonald's "Motion for Certification of Question of Law Before the Colorado Supreme Court Pursuant to Colorado Appellate Rule 21.1."

Entered for the Court

Jerome A. Holmes
Circuit Judge

---

arise out of the state court's FED judgment." Supp. R. at 11 (emphasis omitted).

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO
Judge Christine M. Arguello

Civil Action No. 17-cv-01701-CMA-MJW

REED KIRK MCDONALD,

Plaintiff,

v.

ARAPAHOE COUNTY, a quasimunicipal corporation and political subdivision of the State of Colorado,

Defendant.

ORDER AFFIRMING AND ADOPTING THE JANUARY 26, 2018 RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This matter comes before the Court on Defendant Arapahoe County's Motion to Dismiss. (Doc. # 13.) The Court referred Defendant's Motion to Dismiss to United States Magistrate Judge Michael J. Watanabe. (Doc. # 18.) On January 26, 2018, Magistrate Judge Watanabe issued a Recommendation that this Court grant Defendant's Motion and dismiss Plaintiff Reed Kirk McDonald's case in its entirety. (Doc. # 24.) For the reason discussed below, the Court concludes that Magistrate Judge Watanabe's Recommendation is correct.

I. BACKGROUND AND PROCEDURAL HISTORY

The Magistrate Judge's Recommendation details the factual and procedural background of this case and of Plaintiff's copious related actions. *See* (Doc. # 24 at 1–3.) The Recommendation is incorporated herein by reference. *See* 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b). Accordingly, the factual background of this dispute will be reiterated only to the extent necessary to address Plaintiff's objections.

As Magistrate Judge Watanabe explained, this action is one in a series of lawsuits Plaintiff has filed regarding the foreclosure and sale of his house, the subsequent forcible entry and detainer ("FED") suit, and his eviction from the property. *See* (Doc. # 24 at 1–3.) In 2012, Citibank, NA ("Citibank") initiated foreclosure proceedings on Plaintiff's residential property in Littleton, Colorado. The Arapahoe County Public Trustee sold the property on October 17, 2012, but Plaintiff continued to reside on the property. In 2014, Citibank brought a FED action against Plaintiff in Arapahoe County District Court. *See Citibank N.A. v. McDonald*, No. 2014-cv-200074 (Arapahoe Cty. Dist. Court). The district court entered a judgment for possession in favor of Citibank and against Plaintiff. Plaintiff appealed. While the appeal was before the Colorado Court of Appeals, Citibank sought and was granted a Writ of Restitution from the district court on October 8, 2015. *See* (Doc. # 1-3 at 57–63.) The Colorado Court of Appeals affirmed the district court's judgment in the FED action on October 15, 2015. *Citibank, N.A. v.*

McDonald, Nos. 14CA0759, 14CA1359, 2015 WL 6121749, *1 (Colo. App. Oct. 15, 2015) (unpublished), *rehearing denied* (Nov. 12, 2015).

Plaintiff subsequently filed two petitions for writ of certiorari to the Colorado Supreme Court, a motion for emergency temporary restraining order, six motions for relief under Colorado Appellate Rule 21, and two more appeals. *See* (Doc. # 13 at 2–3.) The Colorado Court of Appeals and the Colorado Supreme Court denied or dismissed each of these filings between 2015 and 2017. As Plaintiff continued to litigate the FED action, Citibank moved for and was granted the reissuance of the expired Writ of Restitution on September 14, 2016, and again on January 5, 2017. (Doc. # 1-3 at 66–67, 72–75.) Plaintiff was evicted from his property on January 30, 2017. (Doc. # 13 at 4.)

Plaintiff initiated this action against Arapahoe County on July 13, 2017, alleging that the Arapahoe County District Court was without jurisdiction to issue the Writs of Restitution while Plaintiff was appealing his case. (Doc. # 1.) Magistrate Judge Watanabe summarized Plaintiff's "vague, scattershot, and replete with irrelevant tangents" Complaint as also arguing:

> Plaintiff argues that his constitutional due process rights were violated, and that this was especially unfair because Citibank filed the motions without conferring with him and without personally serving him. Plaintiff also argues that the state court should not have ordered the foreclosure and eviction based on a forged "conveyance instrument." Finally, he

> argues that Arapahoe County is liable for executing the state court's writs and evicting him from the property.

(Doc. # 24 at 2–3 (citing Doc. # 1)).

Defendant moved to dismiss the entire action on August 28, 2017, arguing that Plaintiff's claims are "barred by the *Younger* abstention doctrine and/or *Rooker-Feldman* doctrines, the court lacks subject matter jurisdiction . . . , and [Plaintiff] fails to state a plausible claim for relief against Arapahoe County." (Doc. # 13 at 4.) Plaintiff timely responded on September 18, 2017 (Doc. # 19), to which Defendant replied on October 2, 2017 (Doc. # 21). Without leave of the Court, Plaintiff also filed a surreply. (Doc. # 23.)

On January 26, 2018, Magistrate Judge Watanabe issued his Recommendation. (Doc. # 24.) He concluded that the *Rooker-Feldman* doctrine bars Plaintiff's suit and therefore recommended that Defendant's Motion to Dismiss be granted. (*Id.* at 8.) On February 15, 2018, Plaintiff belatedly filed objections to the Recommendation.[1] (Doc. # 28.)

---

[1] The Recommendation advised parties–in bold–that pursuant to 28 U.S.C § 636(b)(1)(c) and Federal Rule of Civil Procedure 72(b)(2), they had fourteen days after service of the Recommendation to serve and file specific objections to the Recommendation. (Doc. # 24 at 12–13.) Plaintiff filed his objections to the Recommendation twenty days after service of the Recommendation. The Court nonetheless considers Plaintiff's objections, given Plaintiff's *pro se* status.

II. STANDARD OF REVIEW

Plaintiff initiated this lawsuit as a *pro se* litigant. The Court, therefore, reviews his pleading "liberally and hold[s] [it] to a less stringent standard than those drafted by attorneys." *Trackwell v. United States*, 472 F.3d 1242, 1243 (10th Cir. 2007) (citations omitted). However, a *pro se* litigant's "conclusory allegations without supporting factual averments are insufficient to state a claim upon which relief can be based." *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). A court may not assume that a plaintiff can prove facts that have not been alleged, or that a defendant has violated laws in ways that a plaintiff has not alleged. *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983); *see also Whitney v. New Mexico*, 113 F.3d 1170, 1173–74 (10th Cir. 1997) (a court may not "supply additional factual allegations to round out a plaintiff's complaint"); *Drake v. City of Fort Collins*, 927 F.2d 1156, 1159 (10th Cir. 1991) (a court may not "construct arguments or theories for the plaintiff in the absence of any discussion of those issues"). Nor does *pro se* status entitle a litigant to an application of different rules. *See Montoya v. Chao*, 296 F.3d 952, 957 (10th Cir. 2002).

When a magistrate judge issues a recommendation on a dispositive manner, Fed. R. Civ. Pro. 72(b)(3) requires that the district judge "determine *de novo* any part of the magistrate judge's [recommended] disposition that has been properly objected to." In conducting its review, "[t]he district judge may accept, reject, or modify the recommended disposition; receive further

evidence; or return the matter to the magistrate judge with instructions." Fed. R. Civ. P. 72(b)(3).

The Court has conducted a *de novo* review of this matter, including reviewing all relevant pleadings, the Recommendation, and Plaintiff's objection thereto, and did so with Plaintiffs' *pro se* status in mind. Based on this review, the Court concludes that Magistrate Judge Watanabe's Recommendation is accurate.

III. ANALYSIS

A. THE *ROOKER-FELDMAN* DOCTRINE

The *Rooker-Feldman* doctrine states that federal district courts do not have subject matter jurisdiction to review final state court judgments. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 283 (2005). Specifically, the doctrine bars federal review of "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Id.*; *see also Bolden v. City of Topeka*, 441 F.3d 1129, 1138 (10th Cir. 2006). The doctrine "applies only to suits filed after state proceedings are final." *Guttman v. Khalsa*, 446 F.3d 1027, 1032 (10th Cir. 2006).

The *Rooker-Feldman* doctrine also bars federal district courts from considering "claims inextricably intertwined with a prior state-court judgment." *Tal v. Hogan*, 453 F. 3d 1244, 1256 (10th Cir. 2006); *see also Dist. of Columbia Ct. of App. v. Feldman*, 460 U.S. 462,

483 n.16 (1983). A claim is inextricably intertwined if "the state-court judgment **caused**, actually and proximately, the **injury** for which the federal-court plaintiff seeks **redress**." (*Id.*) (internal citations omitted).

The Magistrate Judge concluded that the Court does not have subject matter jurisdiction over this action because Plaintiff's claims are barred by the *Rooker-Feldman* doctrine. (Doc. # 24 at 8–11.) The Magistrate Judge first cited decisions from this jurisdiction in which the *Rooker-Feldman* doctrine was held to bar claims concerning a state court's foreclosure order and claims "inextricably intertwined" with that foreclosure order. (*Id.* at 9–10 (citing, e.g., *Dillard v. Bank of New York*, 476 F. App'x 690, 692 (10th Cir. 2012); *Garcia v. Aronowitz & Mecklenburg, LLP*, No. 13-cv-00241-RBJ, 2013 WL 3895044, *5 (D. Colo. July 26, 2013))).

Second, the Magistrate Judge applied the *Rooker-Feldman* doctrine to this case's facts. (*Id.* at 10–11.) He observed that the foreclosure and FED actions "were completed and final" because "Plaintiff does not seek to enjoin a pending foreclosure sale." (*Id.* at 10.) Rather, Magistrate Judge Watanabe characterized Plaintiff's action as an attack on "the underlying foreclosure proceedings" because Plaintiffs claims "that the state court relied on fraudulent and forged documents." (*Id.*) He noted that the Colorado Court of Appeals dismissed Plaintiff's appeals of the state court's FED judgment and that the Colorado Supreme Court denied Plaintiff's petitions for review. (*Id.*) The Magistrate Judge explained, "These forums provided Plaintiff adequate

opportunity to argue whether or not the state court could issue the Writs of Restitution while the FED judgment was appealed, which is the crux of Plaintiff's Complaint and 'inextricably intertwined' with the underlying FED action." (*Id.*) For these reasons, the Magistrate Judge Watanabe concluded that Plaintiff's lawsuit "is an attempt to relitigate state law claims that have been raised and decided on numerous occasions in various state and federal proceedings" and that the suit is therefore barred by the *Rooker-Feldman* doctrine. (*Id.* at 11.)

Plaintiff objects to that conclusion, arguing that the *Rooker-Feldman* doctrine is inapplicable. (Doc. # 28.) Plaintiff's primary argument is that this action is independent of the foreclosure and FED actions and instead "is about Arapahoe Counties [sic] violations of federal law." (*Id.* at 4–5.) He does not seek "to overturn Arapahoe Counties [sic] Rule 120 statement in error" and is not suing the state court judge in the foreclosure and FED actions, he explains, but asks this Court "for redress upon Arapahoe Counties [sic] violations" of his civil rights. (*Id.* at 9.) As best this Court can piece together, these alleged "violations" are that "the Arapahoe County Clerk of Court thinking it held jurisdiction issued a secret [W]rit" of Restitution "and then concealed that writ from Plaintiff" while Plaintiff was appealing and seeking certiorari review of the FED judgment against him. *See* (*id.* at 16.) Plaintiff also attempts to analogize to cases in which courts held that the *Rooker-Feldman* doctrine did not bar the plaintiffs' claims because they were independent of the state

court judgment, such as *In re Miller*, 666 F.3d 1255 (10th Cir. 2012), and *Bolden v. City of Topeka*, 441 F.3d 1129 (10th Cir. 2006). (Doc. # 28 at 5–8.) The Court rejects this objection.

Plaintiff's claim—that the state court was without jurisdiction to issue Writs of Restitution during Plaintiff's numerous appeals of the FED judgment—is "inextricably intertwined" with the FED action; it is *not* independent of it. Plaintiff misapprehends established case law concerning the causal link between a state court judgment and alleged injuries. In *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*, the Supreme Court clarified that the *Rooker-Feldman* doctrine does not bar a federal district court's jurisdiction "simply because a party attempts to litigate in federal court a matter previously litigated in state court. If a federal plaintiff 'present[s] **some independent claim** . . . , then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion.'" 544 U.S. at 293 (emphasis added) (quoting *GASH Assocs. v. Rosemont*, 995 F.2d 726, 728 (7th Cir. 1993)).

GASH is instructive in clarifying the difference between a claim inextricably intertwined with a state court judgment and a truly independent claim. In *GASH*, the plaintiff owned an office building and decided to foreclose on its interest. The building was sold at auction for a price far lower than the plaintiff expected, and a state court confirmed the sale above the plaintiff's objections. 995 F.2d at 727. The plaintiff commenced a federal action against the winning

bidder (a village), arguing that the defendant "winkled it out of full value for the property by commencing a condemnation action in state court while the foreclosure action was pending." *Id.* The Seventh Circuit held that that the federal district court lacked subject matter jurisdiction under the *Rooker-Feldman* doctrine because the plaintiff's alleged injury was caused by the state court judgment approving the foreclosure sale—not by the actions of the defendant. *Id.* at 727–28. The Seventh Circuit explained, "the plaintiff is attacking the judgment itself. . . . [The plaintiff] did not suffer an injury out of court and then fail to get relief from state court; its injury came from the judgment confirming the sale." *Id.* at 728–29.

The *GASH* plaintiff is similar to Plaintiff in the instant action. Despite alleging injury by the clerk of the court, Plaintiff complains of an injury—the issuance of the Writs of Restitution—that "came from the judgment confirming the sale" of his property. *See id.* In *GASH* and in this case, "[the plaintiff] did not suffer an injury out of court and then fail to get relief from state court." *See id.* The GASH plaintiff and Plaintiff in this action thus did not present truly independent claims.

The cases Plaintiff relies on, *In re Miller* and *Bolden*, also distinguish Plaintiff's action from one concerning a truly independent claim to which the *Rooker-Feldman* doctrine does not apply. *See* (Doc. # 28 at 5–8.) For example, in *Bolden*, the plaintiff lost his action in state court to enjoin the City of Topeka's demolition of two commercial properties he owned. 441

F.3d at 1131. The plaintiff later brought another action in federal court, claiming numerous civil rights violations by the City arising from the destruction of his buildings. *Id.* at 1145. The Tenth Circuit held that the *Rooker-Feldman* doctrine did not bar the plaintiff's federal claims because the injuries he complained of in federal courts (the civil rights violations) were independent of the state court judgment denying injunctive relief. *Id.* at 1142–45. The Tenth Circuit explained that the plaintiff "did not ask [the federal court] to overturn the state-court judgment. Indeed, all the state-court judgment did was **permit** the City to demolish [the plaintiff's] buildings—it did not **require** their demolition." *Id.* at 1145.

By contrast, in the action now before the Court, Plaintiff's alleged injuries **arise out of** the state court's FED judgment. As the Magistrate Judge explained, "[f]or the Court to [hold in favor of Plaintiff] would plainly invalidate the state law findings, orders, and judgment." (Doc. # 24 at 10–11.) Such a holding would, in effect, nullify the state court's FED judgment. These claims "are barred by the Rooker-Feldman doctrine." *See Dillard*, 476 F. App'x. at 692 n.3 (holding that where the plaintiff was "attempting to completely undo the . . . eviction proceedings," the *Rooker-Feldman* doctrine barred her claims).

This Court has carefully reviewed *de novo* applicable case law and considered Plaintiff's objections. For the foregoing reasons, the Court finds Magistrate Judge Watanabe's conclusions that Plaintiffs' claims are inextricably intertwined with the state foreclosure

action and that the claims are barred by the *Rooker-Feldman* doctrine to be sound. Thus, the Court does not have subject matter jurisdiction over Plaintiffs' claims. The Court affirms the Magistrate Judge's recommendation that this case be dismissed in its entirety pursuant to Fed. R. Civ. P. 12(b)(1). *See* (Doc. # 24 at 11.)

Because this Court lacks subject matter jurisdiction over this action, it need not address Plaintiff's objections to Magistrate Judge Watanabe's analysis of additional grounds for dismissal.

IV. CONCLUSION

For the foregoing reasons, it is hereby ORDERED that Plaintiff's objection (Doc. # 28) is OVERRULED. It is

FURTHER ORDERED that the recommendation of United States Magistrate Judge Watanabe (Doc. # 24) that Defendant's Motion to Dismiss all claims be GRANTED is AFFIRMED and ADOPTED as an order of this Court.

DATED: February 22, 2018

BY THE COURT:

/s/ Christine M. Arguello
CHRISTINE M. ARGUELLO
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 17-cv-01701-CMA-MJW

REED KIRK MCDONALD,

Plaintiff,

v.

ARAPAHOE COUNTY, a quasimunicipal corporation and political subdivision of the State of Colorado,

Defendant.

REPORT AND RECOMMENDATION ON DEFENDANT'S MOTION TO DISMISS (DOCKET NO. 13)

Entered by Magistrate Judge Michael J. Watanabe

This case is before the Court pursuant to an Order (Docket No. 15) referring the subject motion (Docket No. 13) issued by Judge Christine M. Arguello on August 29, 2017. Now before the Court is Defendant Arapahoe County's ("Defendant") Motion to Dismiss. (Docket No. 13.) The Court has carefully considered the motion, the Response (Docket No. 19), the Reply (Docket No. 21), and the Sur-reply (filed without leave of Court) (Docket No. 23). The Court has taken judicial notice of the Court's file and has considered the applicable Federal Rules of Civil Procedure and case law. The Court now being fully informed makes the

following findings of fact, conclusions of law, and recommendation.

I. BACKGROUND

Plaintiff Reed Kirk McDonald's ("Plaintiff") Complaint for Declaratory Judgment (the "Complaint") (Docket 1) is another in a series of lawsuits Plaintiff has filed stemming from the foreclosure and sale of his house and the subsequent forcible entry and detainer lawsuit ("FED") that ultimately led to his eviction from the property. The Complaint and Plaintiff's Response (Docket No. 19) to the Motion to Dismiss suffer from similar deficiencies in that both are vague, scattershot, and replete with irrelevant tangents. However, construing the pleadings liberally, and reviewing the state court filings attached to Plaintiff's Complaint, Plaintiff's claims can be summarized as follows.

Plaintiff alleges that "national banks" conspired to foreclose on Plaintiff's property in retaliation for Plaintiff exposing instances of securities fraud and tax evasion. (Docket No. 1 at ¶¶ 9-11.) In 2012, Citibank, NA ("Citibank") initiated foreclosure proceedings (Arapahoe County District Court Case No. 2012CV202099) and the property was sold by the Arapahoe County Public Trustee. Plaintiff continued to reside on the property and in 2014, Citibank brought an FED action (Arapahoe County District Court Case No. 2014CV200074) against Plaintiff, which eventually resulted in judgment for possession being entered in favor of Citibank and against

Plaintiff. Plaintiff appealed the FED judgment. While the case was on appeal, Citibank sought and was granted a Writ of Restitution. (Docket No. 1-3 at pp. 57-63.) The Colorado Court of Appeals affirmed the district court's judgment on October 15, 2015. *See Citibank, N.A. v. McDonald*, No. 14CA0759, 2015 WL 6121749, at *1 (Colo. App. Oct. 15, 2015) (unpublished). On September 16, 2016, and again on January 5, 2017, Citibank moved for the reissuance of the expired Writ of Restitution. (Docket No. 1-3 at pp. 66-67, 69-75.) The last motion was presumably granted, given that Plaintiff was finally evicted in January 2017.

Plaintiff alleges that the Arapahoe County District Court unlawfully issued the Writs of Restitution while the FED case was on appeal. Plaintiff argues that his constitutional due process rights were violated, and that this was especially unfair because Citibank filed the motions without conferring with him and without personally serving him. (Docket No. 1 at ¶¶ 55-71.) Plaintiff also agues that the state court should not have ordered the foreclosure and eviction based on a forged "conveyance instrument." Finally, he apparently argues that Arapahoe County is liable for executing the state court's writs and evicting him from the property.

II. LEGAL STANDARD

a. Pro Se Plaintiff

Plaintiff is proceeding *pro se*. The Court, therefore, "review[s] his pleadings and other papers liberally and

hold[s] them to a less stringent standard than those drafted by attorneys." *Trackwell v. United States*, 472 F.3d 1242, 1243 (10th Cir. 2007) (citations omitted). However, a *pro se* litigant's "conclusory allegations without supporting factual averments are insufficient to state a claim upon which relief can be based." *Hall v. Bellmon,* 935 F.2d 1106, 1110 (10th Cir. 1991). A court may not assume that a plaintiff can prove facts that have not been alleged, or that a defendant has violated laws in ways that a plaintiff has not alleged. *Associated Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983). *See also Whitney v. New Mexico*, 113 F.3d 1170, 1173–74 (10th Cir. 1997) (court may not "supply additional factual allegations to round out a plaintiff's complaint"); *Drake v. City of Fort Collins*, 927 F.2d 1156, 1159 (10th Cir. 1991) (the court may not "construct arguments or theories for the plaintiff in the absence of any discussion of those issues"). The plaintiff's *pro se* status does not entitle him to an application of different rules. *See Montoya v. Chao*, 296 F.3d 952, 957 (10th Cir. 2002).

b. Lack of Subject Matter Jurisdiction

Federal Rule of Civil Procedure Rule 12(b)(1) empowers a court to dismiss a complaint for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). Dismissal under Rule 12(b)(1) is not a judgment on the merits of a plaintiff's case. Rather, it calls for a determination that the court lacks authority to adjudicate the matter, attacking the existence of jurisdiction rather than the allegations of the complaint. *See Castaneda v.*

INS, 23 F.3d 1576, 1580 (10th Cir. 1994) (recognizing federal courts are courts of limited jurisdiction and may only exercise jurisdiction when specifically authorized to do so). The burden of establishing subject matter jurisdiction is on the party asserting jurisdiction. *Basso v. Utah Power & Light Co.*, 495 F.2d 906, 909 (10th Cir. 1974). A court lacking jurisdiction "must dismiss the case at any stage of the proceedings in which it becomes apparent that jurisdiction is lacking." *See Basso*, 495 F.2d at 909. The dismissal is without prejudice. *Brereton v. Bountiful City Corp.*, 434 F.3d 1213, 1218 (10th Cir. 2006)

A Rule 12(b)(1) motion to dismiss "must be determined from the allegations of fact in the complaint, without regard to mere conclusionary allegations of jurisdiction." *Groundhog v. Keeler*, 442 F.2d 674, 677 (10th Cir. 1971). When considering a Rule 12(b)(1) motion, however, the Court may consider matters outside the pleadings without transforming the motion into one for summary judgment. *Holt v. United States*, 46 F.3d 1000, 1003 (10th Cir. 1995). Where a party challenges the facts upon which subject matter jurisdiction depends, a district court may not presume the truthfulness of the complaint's "factual allegations . . . [and] has wide discretion to allow affidavits, other documents, and [may even hold] a limited evidentiary hearing to resolve disputed jurisdictional facts under Rule 12(b)(1)." *Id.*

c. Failure to State a Claim Upon Which Relief Can Be Granted

Federal Rule of Civil Procedure 12(b)(6) provides that a defendant may move to dismiss a claim for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "The court's function on a Rule 12(b)(6) motion is not to weigh potential evidence that the parties might present at trial, but to assess whether the plaintiff's complaint alone is legally sufficient to state a claim for which relief may be granted." *Dubbs v. Head Start, Inc.*, 336 F.3d 1194, 1201 (10th Cir. 2003) (citations and quotation marks omitted).

"A court reviewing the sufficiency of a complaint presumes all of plaintiff's factual allegations are true and construes them in the light most favorable to the plaintiff." *Hall*, 935 F.2d at1198. "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Plausibility, in the context of a motion to dismiss, means that the plaintiff pleaded facts which allow "the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* The *Iqbal* evaluation requires two prongs of analysis. First, the court identifies "the allegations in the complaint that are not entitled to the assumption of truth," that is, those allegations which are legal conclusion, bare assertions, or merely conclusory. *Id.* at 679–81. Second, the Court considers the factual allegations "to determine if they plausibly suggest an

entitlement to relief." *Id.* at 681. If the allegations state a plausible claim for relief, such claim survives the motion to dismiss. *Id.* at 679.

However, the court need not accept conclusory allegations without supporting factual averments. *Southern Disposal, Inc., v. Texas Waste*, 161 F.3d 1259, 1262 (10th Cir. 1998). "[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal*, 556 U.S. at 678. Moreover, "[a] pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.' Nor does the complaint suffice if it tenders 'naked assertion[s]' devoid of 'further factual enhancement.'" *Id.* (citation omitted). "Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Id.* (citation omitted).

In assessing a motion to dismiss under Rule 12(b)(6), the usual rule is that a court should consider no evidence beyond the pleadings. *See Alvarado v. KOB–TV, L.L.C.*, 493 F.3d 1210, 1216 (10th Cir.2007). "If, on a motion under Rule 12(b)(6) . . . , matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56." Fed. R. Civ. P. 12(d). However, "the district court may consider documents referred to in the complaint if the documents are central to the plaintiff's claim and the parties do

not dispute the documents' authenticity." *Alvarado*, 493 F.3d at 1216 (quoting *Jacobsen v. Deseret Book Co.*, 287 F.3d 936, 941 (10th Cir. 2002)); *see also GFF Corp. v. Associated Wholesale Grocers, Inc.*, 130 F.3d 1381, 1384 (10th Cir.1997) ("[i]f a document is referenced in and central to a complaint, a court need not convert the motion but may consider that document on a motion to dismiss.). In addition, "facts subject to judicial notice may be considered in a Rule 12(b)(6) motion without converting the motion to dismiss into a motion for summary judgment." *Tal v. Hogan*, 453 F.3d 1244, 1264 n. 24 (10th Cir.2006).

III. ANALYSIS

Defendant argues that Plaintiff's Complaint should be dismissed for several reasons, which the Court shall address in turn.

a. *Younger* Abstention

First, Defendant claims that *Younger v. Harris*, 401 U.S. 37 (1971), requires the Court to abstain from interfering with pending state court proceedings. Citing the three *Younger* factors, Defendant argues that abstention is appropriate here because: (1) there are ongoing state civil proceedings (namely, Arapahoe County District Court Case No. 2014CV200074 and its associated Petition for Writ of Certiorari in Colorado Supreme Court Case No. 2017SC465); (2) at which Plaintiff has raised his concerns regarding the foreclosure and eviction proceedings; and (3) state courts

have jurisdiction over such claims. However, since Defendant's motion was filed, the Colorado Supreme Court has denied Plaintiff's Petition for Writ of Certiorari. *See McDonald v. CitiBank N.A. for Chase Funding Mortg. Loan Asset-Backed Certificates, Series 2002-4*, No. 17SC465, 2017 WL 5477384 (Colo. Nov. 13, 2017). Thus, there are no pending state court proceedings, and *Younger* does not deprive the Court of jurisdiction.

b. The *Rooker-Feldman* Doctrine

Next, Defendant argues that the *Rooker-Feldman* doctrine bars Plaintiff's suit. The Court agrees.

Under 28 U.S.C. § 1257(a), "federal review of state court judgments can be obtained only in the United States Supreme Court." *Kiowa Indian Tribe of Okla. v. Hoover*, 150 F.3d 1163, 1169 (10th Cir. 1998). The *Rooker–Feldman* doctrine stems from two United States Supreme Court cases which interpret this limitation on the review of state court judgments. *See D.C. Court of Appeals v. Feldman*, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). "The *Rooker–Feldman* doctrine precludes 'cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments.'" *Tal*, 453 F.3d at 1255–56 (10th Cir. 2006) (quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005)). Accordingly, the doctrine forecloses

"appellate review of [a] state judgment in a United States district court, based on the losing party's claim that the state judgment itself violates the loser's federal rights." *Johnson v. De Grandy*, 512 U.S. 997, 1005–06 (1994). The doctrine "applies only to suits filed after state proceedings are final." *Guttman v. G.T.S. Khalsa*, 446 F.3d 1027, 1173 (10th Cir. 2006). Challenges brought pursuant to the *Rooker–Feldman* doctrine are challenges to a federal district court's subject matter jurisdiction. *Crutchfield v. Countrywide Home Loans*, 389 F.3d 1144, 1147 (10th Cir. 2004).

The *Rooker–Feldman* doctrine is not limited to the preclusion of claims actually litigated and decided on the merits by the state court, it also precludes claims which are inextricably intertwined with the state court judgment. *Tal*, 453 F.3d at 1256. "A claim is inextricably intertwined if 'the state-court judgment caused, actually and proximately, the injury for which the federal-court plaintiff seeks redress.'" *Id.* (quoting *Kenmen Eng'g v. City of Union*, 314 F.3d 468, 478 (10th Cir.2002)). "[I]f a favorable resolution of a claim would upset a [state court] judgment, the claim is [barred under the *Rooker–Feldman* doctrine] if it is 'inextricably intertwined' with the judgment, even if the underlying judgment issue was not raised or addressed in the state court that handed down the judgment." *Bolden v. City of Topeka, Kan.*, 441 F.3d 1129, 1140 (10th Cir. 2006). However, if the plaintiff presents an independent claim, even if it denies a legal conclusion that a state court has reached, the federal district court has

jurisdiction. *Id.* at 1143 (citing *Exxon*, 544 U.S. at 1527).

The Tenth Circuit Court has recognized that a state foreclosure action is final and subject to application of the *Rooker–Feldman* doctrine where the state court had entered an order approving the sale of the property to the bank; the Public Trustee had issued a deed to the bank; the state court had entered an order in an eviction action for judgement for possession of the property in favor of the bank; and the plaintiff was not seeking to enjoin foreclosure of the property, but was instead attempting to completely undo the foreclosure. *Garcia v. Aronowitz & Mecklenburg, LLP*, No. 13-cv-00241-RBJ-MJW, 2013 WL 3895044, at *4 (D. Colo. July 26, 2013). *See also Dillard v. Bank of New York*, 2012 WL 1094833, at *2, n. 3 (10th Cir. April 3, 2012); *Moore v. One West/Indy Mac Bank*, No. 10–cv–01455–REB–CBS, 2010 WL 3398855, at *5 (D. Colo. Jul. 12, 2010) (finding the *Rooker–Feldman* doctrine is "applicable both to claims at issue in a state court order authorizing foreclosure sale and to claims that are 'inextricably intertwined' with such an order").

Here, contrary to Plaintiff's assertions, the foreclosure and FED proceedings were completed and final for the purposes of the *Rooker-Feldman* doctrine. It is obvious from the record that Plaintiff does not seek to enjoin a pending foreclosure sale. Plaintiff's current lawsuit was filed years after the foreclosure sale took place, years after sale was approved by the Arapahoe County District Court, and years after judgment was entered in the FED action. Instead, Plaintiff attacks

the underlying foreclosure proceedings, claiming that the state court relied on fraudulent and forged documents. The Court has no jurisdiction to second-guess or review the state court's findings and orders on the foreclosure.

Similarly, Plaintiff's appeal of the state court's FED judgment was dismissed by the Colorado Court of Appeals, and the Colorado Supreme Court denied Plaintiff's Petition for Writ of Certiorari. These forums provided Plaintiff adequate opportunity to argue whether or not the state court could issue the Writs of Restitution while the FED judgment was appealed, which is the crux Plaintiff's Complaint and "inextricably intertwined" with the underlying FED action. Indeed, Plaintiff expressly argued to the Colorado Supreme Court that his rights were violated when the state court "invited, accepted and granted writ while it was without jurisdiction." Neither state appellate court agreed with Plaintiff. For this Court to determine otherwise would plainly invalidate the state law findings, orders, and judgment.

Plaintiff's lawsuit is an attempt to relitigate state law claims that have been raised and decided on numerous occasions in various state and federal proceedings. His Complaint is therefore barred by the *Rooker–Feldman* doctrine.

c. Municipal Liability

Even if the Court did have subject matter jurisdiction over this case, Plaintiff's Complaint still fails as a

matter of law. Although Plaintiff identifies his Complaint as one for declaratory judgment, he actually asserts a 42 U.S.C. § 1983 claim for violations of his 4th, 5th, and 14th Amendment rights. "Local governing bodies . . . can be sued directly under § 1983 for monetary, declaratory, or injunctive relief where . . . the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Monell v. Dep't of Soc. Servs. of N.Y.*, 436 U.S. 658, 690 (1978) (footnote omitted). "[I]t is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." *Id.* at 694.

In order to state a § 1983 municipal liability claim, a party must allege sufficient facts to demonstrate that it is plausible (1) that the municipal employee committed a constitutional violation; and (2) that a municipal policy or custom was the moving force behind the constitutional deprivation. *Jiron v. City of Lakewood*, 392 F.3d 410, 419 (10th Cir. 2004). A municipal policy or custom can take the form of "(1) a formal regulation or policy statement; (2) an informal custom amoun[ting] to a widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well settled as to constitute a custom or usage with the force of law; (3) the decisions of employees with final policymaking authority; (4) the ratification by such final policymakers of the decisions – and

the basis for them – of subordinates to whom authority was delegated subject to these policymakers' review and approval; or (5) the failure to adequately train or supervise employees, so long as that failure results from 'deliberate indifference' to the injuries that may be caused." *Bryson v. City of Oklahoma City*, 627 F.3d 784, 788 (10th Cir. 2010) (citations omitted).

Here, Plaintiff's Complaint fails for two reasons. First, and most obviously, the actions of a district court judge cannot, by definition, give rise to a municipal liability claim against a county government because district court judges are state, not county, employees. In other words, Arapahoe County is not the proper defendant for claims against the Colorado Judicial Branch. Second, Plaintiff's Complaint is wholly devoid of any allegations that Arapahoe County itself had any policy or custom which led to the alleged constitutional violations. Accordingly, Plaintiff's Complaint fails to state any claims upon which relief can be granted and should be dismissed.

IV. RECOMMENDATION

WHEREFORE, for the foregoing reasons, it is hereby RECOMMENDED that Defendant's Motion to Dismiss (Docket No. 13) be GRANTED and that Plaintiff's) Complaint for Declaratory Judgment (Docket 1) be DISMISSED WITH PREJUDICE.

NOTICE: Pursuant to 28 U.S.C. § 636(b)(1)(c) and Fed. R. Civ. P. 72(b)(2), the parties have fourteen (14) days after service of this recommendation to

serve and file specific written objections to the above recommendation with the District Judge assigned to the case. A party may respond to another party's objections within fourteen (14) days after being served with a copy. The District Judge need not consider frivolous, conclusive, or general objections. A party's failure to file and serve such written, specific objections waives *de novo* review of the recommendation by the District Judge, *Thomas v. Arn*, 474 U.S. 140, 148-53 (1985), and also waives appellate review of both factual and legal questions. *Makin v. Colorado Dep't of Corrections*, 183 F.3d 1205, 1210 (10th Cir. 1999); *Talley v. Hesse*, 91 F.3d 1411, 1412-13 (10th Cir. 1996).

BY THE COURT:

Date: January 26, 2018
Denver, Colorado

s/ Michael J. Watanabe
Michael J. Watanabe
United States
Magistrate Judge

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

REED KIRK MCDONALD, Plaintiff - Appellant, v. ARAPAHOE COUNTY, a quasimunicipal corporation and political subdivision of the State of Colorado, Defendant - Appellee.	No. 18-1070

ORDER

(Filed Jan. 7, 2019)

Before **HOLMES, O'BRIEN,** and **CARSON,** Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge

in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court

/s/ Elisabeth A. Shumaker
ELISABETH A. SHUMAKER,
Clerk

Reception #:D2045242, 04/26/2012 at 02:11:57 PM, 1 OF 1, Rec Fee $11.00 Arapahoe County CO Nancy A. Doty, Clerk & Recorder

WHEN RECORDED RETURN TO:
JPMorgan Chase Bank, NA
C/O NTC 2100 Alt. 19 North
Palm Harbor, FL 34683

Loan #: 0015231095

[BAR CODE]

CORPORATE ASSIGNMENT OF DEED OF TRUST

– – Contact JPMORGAN CHASE BANK, N.A. for this Instrument 780 Kansas Lane, Suite A, Monroe, LA 71203, telephone # (866) 756-8747, which is responsible for receiving payments.

FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the undersigned, JPMORGAN CHASE BANK, NATIONAL ASSOCIATION SUCCESSOR BY MERGER TO CHASE HOME FINANCE LLC SUCCESSOR BY MERGER TO CHASE MANHATTAN MORTGAGE CORPORATION, WHOSE ADDRESS IS 700 Kansas Lane, MC 8000, MONROE, LA, 71203, (ASSIGNOR), by these presents does convey, grant, sell, assign, transfer and set over the described deed of trust described with all interest secured thereby, all liens, and any rights due or to become due thereon to CITIBANK, NA, AS TRUSTEE FOR CHASE FUNDING MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES

2002-4, WHOSE ADDRESS IS 700 KANSAS LANE, MC 8000, MONROE, LA 71203 (866)756-8747, ITS SUCCESSORS OR ASSIGNS, (ASSIGNEE).

Said Deed made by REED KIRK MCDONALD to CHASE MANHATTAN MORTGAGE CORP. dated 09/12/2002, and recorded in Book n/a, Page n/a, and or Instrument/Film # B2178295 in the office of the Recorder of ARAPAHOE County, Colorado.

Date: 04 / 06 /2012 (MM/DD/YYYY)

JPMORGAN CHASE BANK, NATIONAL ASSOCIATION SUCCESSOR BY MERGER TO CHASE HOME FINANCE LLC SUCCESSOR BY MERGER TO CHASE MANHATTAN MORTGAGE CORPORATION

By /s/ Pearl M. Burch
Pearl M. Burch
VICE PRESIDENT

STATE OF FLORIDA COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me on 04 / 06/2012 (MM/DD/YYYY), by Pearl M. Burch as VICE PRESIDENT for JPMORGAN CHASE BANK, NATIONAL ASSOCIATION SUCCESSOR BY MERGER TO CHASE HOME FINANCE LLC SUCCESSOR BY MERGER TO CHASE MANHATTAN, MORTGAGE CORPORATION, who, as such VICE PRESIDENT being authorized to do so, executed the

foregoing instrument for the purposes therein contained. He/she/they is (are) personally known to me.

/s/ MA
Miranda Avila
Notary Public –
State of FLORIDA
Commission expires:
08/22/2014

Miranda Avila
[SEAL] Notary Public
State of Florida
My Commission
#EE 019063
Expires August 22, 2014

Prepared By: E.Lance/NTC, 2100 Alt. 19 North, Palm Harbor, FL 34683 (800)346-9152

JPCAS 16066939 -@ CHASE CJ3689165
No FORMS\FRMC01

[BAR CODE]
16066939

[SEAL] CERTIFIED TO BE FULL, TRUE, AND CORRECT COPY OF THE RECORDED DOCUMENT IN MY CUSTODY, DATE JUN 05 2014 MATT CRANE, ARAPAHOE COUNTY CLERK & RECORDER

BY: [Illegible]

[SEAL]

17th Judicial District
IMPORTANT CONSIDERATIONS BEFORE FILING A RESPONSE TO A RULE 120 ACTION

There are only two defenses to a Rule 120 action:

1) The money is not due, or
2) the action is barred under the Service Member Civil Relief Act

Timeline for filing a Response:

The Response must be filed with the court and served on the Petitioner at least five days prior to the date set for the Rule 120 hearing.

Response fee: $158.00

If you attempt to file a Response less than five days prior to the hearing, the clerks are not permitted to accept your Response.

PLEASE READ THE ATTACHED PAGES FOR MORE SPECIFIC INFORMATION.

PLEASE NOTE: By law, the Court is not permitted to give you legal advice. This handout is intended to provide clarification and guidance to *pro se* litigants. If you require additional information, please contact an attorney.

updated 5/10

RECEIPTS

Web-Links Program Links Go-To Help

Colorado State Judicial

Receipt Information

Case Number: 2014-CV-200074 Transaction Date: 04/18/2014
Receipt Number: 2014-CV-200074-0001 Payment Type: CASH
User Id: 8031JEH

Payor
MCDONALD, REED KIRK

Transaction	Description	Amount
OTHR	Other Registry	7,000.00
	Total:	$7,000.00

Transaction.
4/18/2014 11.30 AM JEH TL180326
********** DUPLICATE RECEIPT **********
District Court, Arapahoe County
Arapahoe County Justice Center
7325 S Potomac St
Centennial, CO 80112
303-649-6355
Payor: MCDONALD, REED KIRK
Case #: 2014CV-200074
CITIBANK NA
vs
MCDONALD, REED KIRK
RCP #: 2014CV-200074-0001

Description	Amount
Other Registry	7,000.00
Receipt Total.	$7,000.00
Amount Tendered	$7,000.00
Change Due	$.00
Payment Type.	CASH
Account Receivable Due . .	$.00

CAsh bond posted per minc dated April 17, 2014

COMBINED COURT
STATE OF COLORADO } ss
ARAPAHOE COUNTY }
CERTIFIED to be a full, true and correct copy of the original in my custody.

APR - 1 2019

DATED _____ A.D.

SHANA KLOEK
Clerk of the County Court
By _____ Deputy

1 of 2 pgs.

District Court, Arapahoe County, Colorado Court Address: Arapahoe County Justice Center 7325 S. Potomac St. Centennial, CO 80112	DATE FILED: [January 5, 2017 11:27 AM]
Plaintiff: **CITIBANK, N.A., AS TRUSTEE FOR CHASE FUNDING MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES 2002-4** **v.** **Defendant:** **REED KIRK MCDONALD**	**▲ COURT USE ONLY ▲**
Attorneys for Plaintiff Mark C. Willis, #31025 Kelly Kilgore, #38097 KUTAK ROCK LLP 1801 California Street, Suite 3000 Denver, CO 80202-2626 Telephone: (303) 297-2400 Facsimile: (303) 292-7799 Email: mark.willis@kutakrock.com kelly.kilgore@kutakrock.com	Case Number: 2014cv 200074 Division: 15 Courtroom:

PLAINTIFF'S REQUEST FOR REISSUANCE OF WRIT OF RESTITUTION PURSUANT TO C.R.S. § 13-40-115

Plaintiff Citibank, N.A., as Trustee for Chase Funding Mortgage Loan Asset-Backed Certificates, Series 2002-4 ("Citi"), by and through its undersigned counsel, hereby submits the following Request for Reissuance of Writ of Restitution Pursuant to C.R.S. § 13-40-115 and, in support thereof, states as follows:

1. On April 17, 2014, this Court entered judgment in favor of Citi and against defendant Reed Kirk McDonald ("McDonald") for possession of the real property commonly known as 6214 South Datura St., Littleton, Colorado 80120 (the "Property") pursuant C.R.S. § 13-40-115 (the "FED Judgment"), which provides in pertinent part, that: "Upon the trial of any action under this article . . . and if the court finds that the defendant has committed an unlawful detainer, the court ***shall*** enter judgment for the plaintiff to have restitution of the premises and ***shall*** issue a writ of restitution," (emphasis added).

* * *

4816-0427-3984.2

ISSUED BY COURT
01/05/2017

/s/ S Kloek

Shana Kloek
Clerk of the Court

District Court, Arapahoe County, Colorado Court Address: Arapahoe County Justice Center 7325 S. Potomac St. Centennial, CO 80112	DATE FILED: [January 5, 2017 1:06 PM] CASE NUMBER: 2014CV200074
Plaintiff: **CITIBANK, N.A., AS TRUSTEE FOR CHASE FUNDING MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES 2002-4** **v.** **Defendant:** **REED KIRK MCDONALD**	**▲ COURT USE ONLY ▲**
	Case Number: 2014cv 200074 Division: 15 Courtroom:

WRIT OF RESTITUTION

To the People of the State of Colorado
To the Sheriff of Arapahoe County

Whereas, **CITIBANK, N.A., AS TRUSTEE FOR CHASE FUNDING MORTGAGE LOAN ASSET-BACKED CERTIFICATES, SERIES 2002-4**, Plaintiff, obtained a final judgment on April 25, 2014 against **REED KIRK MCDONALD**, Defendant, pursuant to the Colorado Forcible Entry and Detainer statutes, §13-40-101, *et seq.*, C.R.S. ordering possession of the premises located at:

Street Address: **6214 South Datura St.**
City: Littleton County: Arapahoe

You are hereby ordered to remove the Defendant and his property from the premises and restore the Plaintiff to the possession of the premises stated above and to make proper return according to law.

This Writ of Restitution shall remain in effect for 49 days after issuance and shall automatically expire thereafter.

☐ This Writ of Restitution requires the removal of a mobile home from the premises pursuant to §38-12-208, C.R.S.

Date: _____, 2017.

_____
District Court Judge

4844-6682-4512.1