APPENDIX INDEX

Other APPENDIX Important Exhibits

DOCUMENT A

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FILED AUG. 16 2018
MOLLY C DWYER, CLERK
U.S COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PENSCO TRUST COMPANY, FBO Jeffrey D. Hermann, IRA Account Number 20005343,	No. 17-35644
Plaintiff-Appellee,	D.C. No. 2:16 cv-01926-RSM Western District of Washington Seattle
v.	
LORINA DELFIERRO, Defendant-Appellant.	MANDATE

The judgment of this Court, entered April 19, 2018, takes effect this date. This constitute the formal mandate of this Court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:	By: Rhonda Roberts
MOLLY C. DWYER	Deputy Clerk
CLERK OF COURT	Ninth Circuit Rule 27-7

DOCUMENT B

ORDER.DOCUMENT 63
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FILED AUG 8 2018
MOLLY C DWYER, CLERK

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PENSCO TRUST COMPANY, FBO Jeffrey D. Hermann, IRA Account Number 20005343, Plaintiff-Appellee,	No. 17-35644
	D.C. No. 2:16 cv-01926-RSM Western District of Washington Seattle
v.	
LORINA DELFIERRO Defendant-Appellant.	ORDER

Before: SILVERMAN, PAEZ, and OWENS, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Delfierro's petition for panel rehearing and petition for rehearing en banc (Docket Entry No. 20) are denied.

No further filings will be entertained in this closed case

DOCUMENT C

MEMORANDUM.DOCUMENT 59
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NOT FOR PUBLICATION
FILED APR 19 2018
MOLLY C DWYER, CLERK
U.S COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PENSCO TRUST COMPANY, FBO Jeffrey D. Hermann, IRA Account Number 20005343,	No. 17-35644
	D.C. No. 2:16 cv-01926-RSM
Plaintiff-Appellee,	Western District of Washington
v.	Seattle
LORINA DELFIERRO,	MEMORANDUM*
Defendant-Appellant	

Appeal from the United States District Court
for the Western District of Washington
Ricardo S. Martinez, Chief Judge, Presiding
Submitted April 11, 2018**

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Before: SILVERMAN, PAEZ, and OWENS, Circuit Judges.

Lorina Delfierro appeals pro se from the district court's summary judgment in this diversity action stemming from judicial foreclosure proceed-ings. We have jurisdiction under 28 U.S.C. § 1291. We review de novo cross-motions for

summary judgment. *Guatay Christian Fellowship v. County of San Diego*, 670 F.3d 957, 970 (9th Cir. 2011). We affirm.

The district court properly granted summary judgment for PENSCO Trust Company, FBO Jeffrey D. Hermann, IRA Account Number 20005343 ("PENSCO") because Delfierro failed to raise a genuine dispute of material fact as to whether PENSCO was not entitled to seek judicial foreclose-ure. See Wash. Rev. Code 61.12.040 (requirements for judicial foreclosure); ***Deustche Bank Nat. Trust Co. v. Slotke,* 367 P.3d 600, 604 (Wash. App. 2016)** ("[I]t is the holder of the note who is entitled to enforce it.").

The district court properly dismissed Delfierro's counterclaims as barred by the doctrine of res judicata because **Delfierro's counterclaims were raised, or could have been raised**, in Delfierro's prior action between the same parties that resulted in a final judgment on the merits. See *Holcombe v. Hosmer,* 477 F.3d 1094, 1097 (9th Cir. 2007) (setting forth standard of review and stating that federal courts must apply state law regarding res judicata to state court judgments); *Kelly-Hansen v. Kelly-Hansen*, 941 P.2d 1108, 1112 (Wash. App. 1997) (doctrine of res judicata bars litigation of claims that could have been raised in the prior action).

The district court did not abuse its discretion by striking Delfierro's untimely

17-35644 response to PENSCO's motion to dismiss her counterclaims. See *Bias v.Moynihan*, 508 F.3d 1212, 1223 (9th Cir. 2007) (setting forth standard of review and explaining that "[b]road deference is given to a district court's interpretation of its local rules").

We do not consider matters not specifically and distinctly raised and argued in the opening brief, or arguments and allegations raised for the first time on appeal. *See Padgett v. Wright,* 587 F.3d 983, 985 n.2 (9th Cir. 2009).

We reject as meritless Delfierro's contention that the re-recorded instruments create a new cause of action.

AFFIRMED.

DOCUMENT D

JUDGMENT. DOCUMENT 56
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UNITED STATE DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PENSCO TRUST COMPANY, CUSTODIAN FBO JEFFREY D. HERMANN, IRA ACCOUNT NUMBER 20005343, Plaintiff	JUDGMENT IN A CIVIL CASE
v.	Case No. C-16 1926-RSM
LORINA DELFIERRO, *et al.,* Defendant,	

_**Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

X **Decision by Court.** This action came to consideration before the Court. The issues have been considered and a decision has been rendered.

THE COURT HAS ORDERED THAT: Plaintiff's Motion for Summary Judgment (Dkt. #44) is GRANTED. Defendant's Motion for Summary Judgment (Dkt. #45) is DENIED. This matter is now CLOSED.

Dated this 11th day of August 2017.

WILLIAM M. MCCOOL, Clerk /s/ Rhonda Stiles

DOCUMENT E

UNITED STATE DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PENSCO TRUST COMPANY, CUSTODIAN FBO JEFFREY D. HERMANN, IRA ACCOUNT NUMBER 20005343	Case No. C-16 1926-RSM
Plaintiff	ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY
v.	JUDGMENT AND DENYING
LORINA DELFIERRO, *et al.,*	DEFEBDANT'S MOTION FOR
Defendants,	SUMMARY JUDGMENT

I. INTRODUCTION

This matter comes before the Court on the parties' cross Motions for Summary Judgment.[1]

[1] Although Defendant also seems to conflate her Motion for Summary Judgment with a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), see Dkt. #45 at 2, the Court treats the motion as one for summary judgment and will review the full record before it.

Dkts.#44 and #45. Plaintiff argues that it is entitled to judgment as a matter of law because there are no genuine disputes as to any material fact, and the record definitively demonstrates that it is entitled to foreclose on Defendant Delfierro's property. Dkt. #44. Defendant Delfierro asserts that Plaintiff lacks standing to bring this action, and therefore the claims should be dismissed in their entirety. Dkt. #45. For the reasons set forth below, the Court now GRANTS Plaintiff's motion and DENIES Defendant's motion.

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II. BACKGROUND

Plaintiff filed the instant action in King County Superior Court on November 14, 2016, seeking a judicial foreclosure on Ms. Delfierro's residential property. Dkt. #4. On December 16, 2016, Defendant Delfierro removed the action to this Court on the basis of diversity jurisdiction. Dkt. #1. Defendant sub-sequently filed an Amended Answer in this matter and alleged four Counterclaims against Plaintiff for: 1) Wire Fraud under 18 U.S.C. § 1343; 2) violations of 18 U.S.C. § 152; 3) violations of Washington's Consumer Protection Act; and 4) False Claims. Dkt. #31 at Counterclaims ¶ ¶ 4.1-4.23. Although difficult to discern from the Amended Answer, Defendant alleges as the bases for her Counterclaims that there is no effective chain of title with respect to her property, that certain sums of money have not been accounted for and have been taken fraudulently, and that certain title documents have been improperly re-
sequenced. Id. Plaintiff moved to dismiss the Counterclaims as barred by the doctrine of res judicata, which this Court granted. Dkt. #48. The instant motions are now ripe for review.

III. DISCUSSION

A. Legal Standard

Summary judgment is appropriate where "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a), *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 247 (1986). In ruling on summary judgment, a court does not weigh evidence to determine the truth of the matter, but "only determine[s] whether there is a genuine issue for trial." *Crane v. Conoco, Inc.,* 41 F.3d
547, 549 (9th Cir. 1994) (citing *Federal Deposit Ins. Corp. v. O'Melveny & Meyers*, 969 F.2d 744, 747 (9th Cir. 1992)). Material facts are those which might affect the outcome of the suit under governing law. *Anderson*, 477 U.S. at 248.

The Court must draw all reasonable inferences in favor of the non-moving party. See O'Melveny & Meyers, 969 F.2d at 747, rev'd on other grounds, 512 U.S. 79 (1994). However, the nonmoving party must make a "sufficient showing on an essential element of her case with respect to which she has the burden of proof" to survive summary judgment. Celotex Corp. v.
Catrett, 477 U.S. 317, 323 (1986). Further, "[t]he mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." Anderson, 477 U.S. at 251.

The parties have both moved for summary judgment. However, cross motions for summary judgment do not warrant the conclusion that one of the motions must be granted. The Court must still

determine whether summary judgment for either party is appropriate. See Fair Housing Council of Riverside County, Inc. v. Riverside Two, 249 F.3d 1132, 1136-1137 (9th Cir. 2001).

B. Plaintiff's Motion

Plaintiff moves for judgment as a matter of law on the bases that: 1) it has standing to foreclose on the subject property; 2) Defendant is in default on the mortgage loan; and 3) all preconditions to foreclosure have been met. Dkt. #44. The Court agrees that Plaintiff has provided sufficient evidence to satisfy these assertions.

First, in its prior Order dismissing Defendant's Counterclaims, the Court affirmed what the Washington state court had already determined – Plaintiff is the beneficial owner of the mortgage note, "with power and authority to enforce the same." Dkt. #48 at 5 (emphasis added). Further, the record is clear that shortly after loan origination, Defendant Delfierro defaulted on her obligation to make her mortgage payments, and Ms. Delfierro does not dispute that in her

response to summary judgment. Dkt. #34. Ex. E. As a result, Plaintiff is entitled to bring an action to foreclose on the subject property under the terms of the Note and the Deed of Trust.

In her own motion, and in response to Plaintiff's Motion for Summary Judgment, Defendant does not discuss her default on the mortgage loan, nor does she point to any evidence that would raise a genuine dispute as to the fact that she has defaulted on her payments. **See Dkts. #45 and #51. Instead, Defendant asserts that Plaintiff, as a mere "account,"**

does not have standing to bring this action. Id. She seems to argue that Jeffrey Hermann, as the beneficiary of the account, is the real party in interest, but that the account itself has no ability to bring the foreclosure claim. Dkt. #45 at 3-9. Federal Rule of Civil Procedure 17(a) states that "An action must be prosecuted in the name of the real party in interest." Thus, the question before this court is who the real party in interest is. To resolve this question, the Court must look at the structure of Plaintiff.

In recognizing Plaintiff as the beneficial owner of the mortgage note, the state court noted that PENSCO is the custodian of an IRA account. See Dkt. #34, Ex. A at ¶ 21. As such, Defendant asserts that it has no capacity to sue. Plaintiff provides little assistance to the Court in response. Rather than address the legal authority cited by Defendant, Plaintiff summarily points to the state court finding that Plaintiff is the beneficial owner of the note with power and authority to enforce the same. Dkt. #50 at 4. Plaintiff then states in conclusory manner that "[m]ortages are continually held in a variety of accounts and trusts, and to assert that this is not the correctly named party is unsupported by any authority." Id.

Contrary to Plaintiff's assertion, there is some authority, albeit limited, to support Defendant's assertion. Indeed, the District of Utah has addressed this issue, relying in part on

the same authority cited by Defendant. In Deem v. Baron, the United States District Court for the District of Utah explained:

> .....**At least two federal cases have found that an owner of a self-directed IRA has standing to sue on behalf of his or her own IRA.** In the

New Yorkcase of Vannest v. Sage, Rutty & Co., Inc., a plaintiff sued his securities broker for fraud and related activities. The broker argued that Plaintiff could not recover because it was not he who had purchased the securities, but his self-directed IRA. The court held that Plaintiff was the true purchaser and so he had standing: "Because Vannest controlled the investment decisions, he certainly was a purchaser/seller for all practical purposes. Investors in self-directed IRAs have standing as "purchasers/sellers" to assert claims under the securities laws."

The second federal case dealing with this issue, FBO David Sweet IRA tailor, has a similar fact situation to this case. Plaintiff Sweet was the sole decision maker on all investments and actions on behalf of his IRA. Equity Trust Company (ETC), an independent company which was the holding company/administrator for the IRA, did not provide investment advice or related services. The court in FBO David Sweet IRA determined that "a self-directed IRA, like the one at issue here, is unique in that the owner or beneficiary of the IRA acts as a trustee for all intent and purposes. While the RS and SEC require that all IRA's be placed with a holding company that serves as a trustee or custodian of the account, it is the owner of the self-directed IRA who manages, directs, and controls the investments." The court then found that for purposes of the case, "ETC served as merely a holding company while Sweet acted as trustee of his Self-Directed IRA. Accordingly, Sweet's suit on behalf of

> David Sweet IRA is proper." In the case before the court, the actual agreement between Plaintiff David Law, and the custodian, American Pension Services, clearly states that the owner, David Law, not the custodian, has sole responsibility for decisions. The custodian was to have "no responsibility." Following the logic of the Vannest case and the FBO David Sweet IRA case, which this court finds compelling, the Plaintiffs, not the holder or custodian of the IRA are the true parties in interest. Since the custodian/holder has not been involved in the decision-making process, it lacks the knowledge of the facts which would allow it to bring this action.
>
> Since the Plaintiffs named in this action are the true and real parties in interest on every contract which form the basis of this action and since they are the ones most knowledgeable of all of the facts and circumstances surrounding those contracts, and since they are also the ones for whose benefit all of the transactions were performed, they are the appropriate parties to prosecute the case.

]Page 6

2016 U.S. Dist. LEXIS 50681, *2-6 (D. Utah Apr. 14, 2016); see also *FBO David Sweet IRA v. Taylor*, 4 F. Supp.3d 1282, 1284-85 (M.D. Ala. 2014) ("While the Court can find no cases specifically addressing whether the beneficiary of a Self-Directed IRA, the IRA itself, or the IRA holding company is the proper party to bring suit, under Alabama law, a beneficiary may not typically bring an action against a third-party, even when adversely affected.

However, a Self-Directed IRA, like the one at issue here, is unique in that the owner or beneficiary of the IRA acts as a trustee for all intensive purposes. Moreover, sole management and control of the IRA rests with Sweet. It is Sweet alone who is "responsible for the selection, due diligence, management, review and retention of all investments in [his] account," (Doc. #23), likening Sweet's position with that of a trustee rather than a beneficiary. Thus, under the limited facts and circumstances surrounding this unique situation, the Court finds that for the purposes of this case, ETC served as merely a holding company while Sweet acted as trustee of his Self-Directed IRA. Accordingly, Sweet's suit on behalf of David Sweet IRA is proper.").

However, those cases are distinguishable from the instant matter. First, they can be factually distinguished. Indeed, those cases (which are not binding on this Court in any event) do not stand for the proposition that a custodian can never be a real party in interest. Rather, those cases focus on the relationships between the asserted parties in interest based on the specific facts of those cases. Here, Defendant makes no showing that the current Plaintiff does not have the capacity to sue. Indeed, she makes no effort to demonstrate the relationship between Mr. Hermann and PENSCO as the custodian of his IRA account, and provides no evidence of the type of account held by PENSCO for the benefit of Mr. Hermann. Moreover, as noted above, the state court found, and this Court has affirmed, that PENSCO is the beneficial owner of the mortgage note and has the authority to enforce the note. Defendant cites no Washington cases

or other legal authority that would preclude Plaintiff from pursuing this action to enforce its interests.

Ms. Delfierro also argues that summary judgment is not appropriate because PENSCO has improperly re-recorded certain documents to correct errors with the chain of title. Dkt. #51 at 10. The Court has already ruled that claims regarding Plaintiff's ownership have been litigated and resolved in Plaintiff's favor. Dkts #48 at 5 (citing Dkt. #34, Exhibit E at sub-exhibit H). As the Court previously explained:

> After hearing evidence and argument in a bench trial, state court Judge Carol A. Schapira concluded that "PENSCO is the beneficial owner of the Note and Deed of Trust with power and authority to enforce the same." Id. While the record reflects that multiple Assignments of Deeds of Trust were rerecorded in 2015 to "correct recording sequence," dkt. #34, Ex. E at sub-exhibits D, E and G, Judge Schapira noted that the documents had not been recorded at the time of her decision, but reached the same conclusion with respect to PENSCO's interest in the Note. Id. ("Although this particular Assignment of Deed of Trust has not yet been recorded, it remains valid between the signatories," . . . . "The Court finds Plaintiff has not proven there is any other claimant other than PENSCO to the beneficial interest in her Note and Deed of Trust.").

Dkt. #48_at 5. This Court concluded that Defendant Delfierro's claim that recording errors preclude foreclosure of her property is barred by the doctrine of res judicata. For the same reasons, Defendant is

barred from raising the claim as a defense to foreclosure on summary judgment.

For all of these reasons, the Court agrees with Plaintiff that summary judgment in its favoris appropriate.

C. Defendant Delfierro's Motion

In her motion for summary judgment, Ms. Delfierro raises only the standing issue addressed above. Dkt. #45. Because the Court has rejected that argument, Defendant's Motion for Summary Judgment must be denied.

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IV. CONCLUSION

Having reviewed the parties' cross Motions for Summary Judgment, the documents in support thereof and in opposition thereto, and the remainder of the record, the Court hereby
ORDERS:

1. Plaintiff's Motion for Summary Judgment (Dkt. #44) is GRANTED.
2. Defendant's Motion for Summary Judgment (Dkt. #45) is DENIED.
3. This matter is now CLOSED.

DATED this 11th day of August 2017.

s/
RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE

DOCUMENT F

ORDER. DOCUMENT 48
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Filed 6/21/2017 Page 1

UNITED STATE DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PENSCO TRUST COMPANY, CUSTODIAN FBO JEFFREY D. HERMANN, IRA ACCOUNT NUMBER 20005343 Plaintiff v. LORINA DELFIERRO, *et al.,* Defendants,	CASE NO. C-16 1926 RSM ORDER GRANTING PLAINTIFF'S MOTION TO DISMISS COUNTERCLAIMS

I. INTRODUCTION

This matter comes before the Court on Plaintiff's Motion to Dismiss Defendant Delfierro's Counterclaims in this action. Dkt. #33. Plaintiff argues that Defendant's Counterclaims are barred by the doctrine of res judicata. Id. Defendant filed a Response, but the Court has stricken it as untimely. Dkts. #38, #39 and #42. For the reasons set forth below, the Court now GRANTS Plaintiff's motion.

II. BACKGROUND

Plaintiff filed the instant action in King County Superior Court on November 14, 2016, seeking a judicial foreclosure on Ms. Delfierro's resi-dential property. Dkt. #4. On December 16, 2016, Defendant Delfierro removed the action to this Court on the basis of diversity jurisdiction. Dkt. #1. Defendant subse-quently filed an Amended Answer in this matter and

alleged four Counterclaims against Plaintiff for: 1) Wire Fraud under 18 U.S.C. § 1343; 2) violations of 18 U.S.C. § 152; 3) violations of Washington's Consumer Protection Act; and 4) False Claims. Dkt. #31 at Counterclaims ¶ ¶ 4.1-4.23. Although difficult to discern from the Amended Answer, Defendant alleges as the bases for her Counterclaims that there is no effective chain of title with respect to her prop-erty, that certain sums of money have not been accounted for and have been taken fraudulently, and that certain title documents have been improperly re-sequenced. Id. Plaintiff now moves to dismiss the Counterclaims as barred by the doctrine of res judicata.

III. DISCUSSION

A. Legal Standards

1. 12(b)(6) Motions

Plaintiff brings this motion pursuant to Federal Rule of Civil Procedure 12(b)(6) for Plaintiff's failure to state a claim upon which relief may be granted. On a motion to dismiss for failure to state a claim under Rule 12(b)(6), all allegations of material fact must be accepted as true and construed in the light most favorable to the nonmoving party. *Cahill v. Liberty Mut. Ins. Co.,* 80 F.3d 336, 337-38 (9th Cir. 1996). However, the Court is not required to accept as true

a legal conclusion couched as a factual allegation." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). The Complaint "must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Id. at 678. This requirement is met when the plaintiff "pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Id. Absent facial plausibility, a plaintiff's claims must be dismissed. *Twombly*, 550 U.S. at 570.

Though the Court typically limits its Rule 12(b)(6) review to allegations set forth in the Complaint (in this case, the Counter Complaint), the Court may also consider documents of which it has taken judicial notice. See F.R.E. 201; *Swartz v. KPMG LLP*, 476 F.3d 756, 763 (9th Cir. 2007). Here, the Court takes judicial notice of and considers herein the documents attached to Plaintiff's Request for Judicial Notice, which are documents from prior judicial proceedings directly affecting the instant matter. Dkt. #7 and Exhibits A-E thereto. The Court may properly take judicial notice of documents such as these whose authenticity is not contested, and which are proceedings in other courts so long as those proceedings have a direct relation to the matters at issue in the case before the Court. *Allen v. City of Los Angeles,* 92 F.3d 842 (9th Cir. 1992) (noting that a court "may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue." (quoting *United States ex rel. Robinson Rancheria Citizens Council v. Borneo*, 971 F.2d 244, 248 (9th Cir. 1992)), overruled in part on other

grounds by *Acri v. Varian Assocs.*, 114 F.3d 999, 1000 (9th Cir. 1997).

2. Res Judicata

The doctrine of res judicata "bar(s) all grounds for recovery which could have been asserted, whether they were or not, in a prior suit between the same parties . . . on the same cause of action." *Costantini v. Trans World Airlines*, 681 F.2d 1199, 1201 (9th Cir. 1982) (internal quotations omitted); see also *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001) ("The doctrine is applicable whenever there is (1) an identity of claims, (2) a final judgment on the merits, and (3) identity or privity between parties.") (internal quotations omitted). The doctrine serves the important public policy of providing "an end to litigation" and ensures that "matters once tried shall be considered forever settled as between the parties."

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Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394, 401-02, 101 S. Ct. 2424, 69 L. Ed. 2d 103 (1981).

To determine whether a subsequent lawsuit involves the same causes of action as a prior suit, the Court must consider the following four factors: (1) whether rights established by the prior judgment would be impaired by prosecution of the second action, (2) whether both actions present substantially the same evidence, (3) whether both actions involve infringement of the same right, and (4) whether both actions arise out of the same transactional nucleus of facts. *Costantini*, 681 F.2d at 1201-02. Of these four factors, the last is most important. Id. at 1202; see also Owens, 244 F.3d at 714 ("The central criterion in determining whether there is an identity of claims between the first and second adjudications is

whether the two suits arise out of the same transactional nucleus of facts.") (internal quotations omitted).

B. Defendant Delfierro's Counterclaims

Ms. Delfierro has made a number of Counterclaims arising from her allegation that Plaintiff/Counter-Defendant Pensco Trust has improperly re-recorded certain documents to correct errors with the chain of title. Dkt. #31 at Counterclaim Facts, ¶ ¶ 3.1-3.16. Although Ms. Delfierro recognizes that there has been prior litigation between the same parties involving the same property which included chain of title issues, it appears she is now claiming that the re-recording of documents after the prior litigation concluded has given rise to the instant Counterclaims. Id.

Defendant argues that all of the elements of res judicata are met with respect to these Counterclaims. Dkt. #33 at 6-9. First, it argues that the prior litigation involved substantially the same claims. The Court agrees. Indeed, Ms. Delfierro's Counterclaims in this litigation continue to attack Plaintiff's ownership of the mortgage note, and focus on alleged title defects.

Dkt. #31 at ¶ ¶ 3.6-3.14. Claims regarding Plaintiff's ownership have already been litigated and resolved in Plaintiff's favor. Dkt. #34, Exhibit E at sub-exhibit H. After hearing evidence and argument in a bench trial, state court Judge Carol A. Schapira concluded that "PENSCO is the beneficial owner of the Note and Deed of Trust with power and authority to enforce the same." Id. While the record reflects that multiple Assignments of Deeds of Trust were rerecorded in 2015 to "correct recording sequence,"

Dkt. #34, Ex. E at sub-exhibits D, E and G, Judge Schapira noted that the documents had not been recorded at the time of her decision, but reached the same conclusion with respect to PENSCO's interest in the Note. Id. ("Although this particular Assignment of Deed of Trust has not yet been recorded, it remains valid between the signatories,"

"The Court finds Plaintiff has not proven there is any other claimant other than PENSCO to the beneficial interest in her Note and Deed of Trust."). Thus, the Court finds that even though Ms. Delfierro focuses on the fact that some title documents were rerecorded after the prior litigation concluded, the Counterclaims are still aimed at attacking whether PENSCO is the beneficial owner of the Note. Further, the actions appear to present substantially the same evidence, and arise out of substantially the same nucleus of facts. Accordingly, the first element if the doctrine of res judicata – identity of claims – is met.

Moreover, there appears no dispute that the second and third elements – final judgment on the merits and identity or privity between parties – are also met. Accordingly, the Court agrees that the doctrine applies and Defendant Delfierro's Counterclaims are hereby dismissed.

IV. CONCLUSION

Having reviewed Plaintiff/Counter-Defendant's Motion to Dismiss (Dkt. #33), the documents in support thereof, and the remainder of the record, the Court hereby ORDERS:

1. Plaintiff/Counter-Defendant's Motion to Dismiss (Dkt. #33) is GRANTED.

2. Defendant/Counter-Plaintiff Delfierro's Counter-claims are DISMISSED in their entirety.
3. The parties' motions for summary judgment remain pending and will be resolved by separate Order in due course.

DATED this 21st day of June 2017.

s/
RICARDO S. MARTINEZ
CHIEF UNITED STATES DISTRICT JUDGE

DOCUMENT G

MINUTE ORDER. DOCUMENT 42
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Filed 06/02/17 Page 1

UNITED STATE DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CASE NO. C-161926 RSM
MINUTE ORDER GRANTING MOTION TO STRIKE

PENSCO TRUST COMPANY, CUSTODIAN FBO JEFFREY D. HERMANN, IRA ACCOUNT NUMBER 20005343
Plaintiff

v.

LORINA DELFIERRO, *et al.,*
Defendants,

The following MINUTE ORDER is made by the direction of the Court, the Honorable Ricardo S. Martinez, Chief United States District Judge:

On June 1, 2017, Plaintiff filed a Motion to Strike Defendant Delfierro's response to its Motion to Dismiss Counterclaims, on basis that such response was untimely. Dkt#41. Pursuant to this Court's Local Civil Rules, defendant Delfierro's response was due no later than May 30th, 2017. LCR 7(d)(3) and LCR 6(a). Defendant Delfiero did not file her Response until May 31,

2017. Dkt#38. At no time has Ms. Delfierro sought, nor has the Court granted, leave to file an untimely response. Accordingly, the Court GRANTS Plaintiffs Motion to and STRIKES Defendant Delfiero's Response as untimely. The Court will not consider the response when reviewing Plaintiff's Motion to Dismiss Counterclaims

MINUTE ORDER

PAGE 2

DATED this 2nd day of June 2017.

WILLIAM McCOOL, Clerk
By: Is/ Rhonda Stiles
Deputy Clerk

Additional material from this filing is available in the Clerk's Office.