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18CA1507 McDonald v Citibank 08-15-2019

COLORADO COURT OF APPEALS DATE FILED:
August 15, 2019

Court of Appeals No. 18CA1507
Arapahoe County District Court No. 15CV515
Honorable Elizabeth A. Weishaupl, Judge

R. Kirk McDonald,

Plaintiff-Appellant,

v.

Citibank N.A., Kelly Kilgore, and Mark C. Willis,
Defendants-Appellees.

JUDGMENT AFFIRMED AND CASE
REMANDED WITH DIRECTIONS

Division VI

Opinion by JUDGE WELLING
Fox and Freyre, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)

Announced August 15, 2019

R. Kirk McDonald, Pro Se

Bryan Cave Leighton Paisner LLP, Cynthia Lowery-
Graber, Denver, Colorado, for Defendant-Appellee,
Citibank, N.A.

Peters Law Firm LLC, Stephen C. Peters, Denver, Colorado, for Defendants-Appellees Kelly Kilgore and Mark C. Willis

¶ 1 Appellant R. Kirk McDonald submits this appeal following the district court's dismissal of his

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claims under C.R.C.P. 12(b)(5) and denial of his motion for rehearing under C.R.C.P. 59.

¶ 2 The dispute between the parties springs from the foreclosure of McDonald's home and his subsequent eviction. As a result, over the last seven years, McDonald has filed numerous actions in state court, seeking to undo the foreclosure, halt the eviction, and recover damages. Recently, McDonald twice appealed a district court ruling related to his foreclosure and eviction and twice failed to comply with the rules of appellate procedure. In both appeals, a division of this court dismissed the appeal without reaching the merits of his arguments, due to his numerous violations of the appellate rules.

¶ 3 Now on appeal for the third time, McDonald again fails to comply with the rules of appellate procedure. For that reason, we affirm the district court's orders and remand to the district court to award reasonable attorney fees and costs to CitiBank N.A., as trustee for Chase Funding Mortgage Loan Asset-Backed Certificates, Series 2002-4 (CitiBank).

I. Background

A. Relevant Prior Proceedings

¶ 4 CitiBank held a mortgage note on McDonald's residential property. In 2012, McDonald failed to make his mortgage payments. As a result, CitiBank foreclosed on the property. But McDonald did not

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immediately vacate the property following the foreclosure.

¶ 5 After McDonald refused to leave, CitiBank filed a forcible entry detainer action under section 13-40-115, C.R.S. 2018, to evict McDonald (Eviction Action). McDonald responded to the eviction by filing 484 counterclaims, seeking to set aside the foreclosure, halt the eviction, and recover damages. The district court dismissed McDonald's counterclaims in the Eviction Action under C.R.C.P. 12(b)(5) and granted CitiBank possession pursuant to section 13-40-115.

¶ 6 In 2014, McDonald filed two separate appeals in response to the district court's orders in the Eviction Action. These two appeals were later consolidated. *CitiBank v. McDonald*, (Colo. App. Nos. 14CA0759 & 14CA1359, Oct. 15, 2015) (not published pursuant to C.A.R. 35(f)) (*CitiBank I*). A division of this court affirmed the district court's orders based on McDonald's failure to comply with C.A.R. 28 and granted CitiBank its attorney fees.

¶ 7 After *CitiBank I* was announced, McDonald filed a motion in the Eviction Action pursuant to C.R.C.P. 60(b). The district court denied the motion. Following the denial of the motion, McDonald appealed. *CitiBank v. McDonald*, (Colo. App. No. 16CA0652, Apr. 27, 2017) (not published pursuant to C.A.R. 35(e)) (*CitiBank II*). A division of this court again declined to reach the merits of McDonald's appeal based on

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his failure to comply with C.A.R. 28, this time dismissing the appeal. *Id.*

B. Proceedings Underlying this Appeal in the District Court

¶ 8 In 2016, McDonald, filed the underlying complaint against CitiBank and two of its attorneys, Mark Willis and Kelly Kilgore. Again, McDonald sought relief from the foreclosure and eviction from his home, as well as damages. Defendants filed a motion to dismiss, contending that McDonald's claims should be dismissed based on (1) claim preclusion; (2) issue preclusion; and (3) failure to state a claim.

¶ 9 The district court granted the defendants' motion to dismiss with prejudice. The district court dismissed McDonald's claims on the third ground, concluding that McDonald "failed to plead sufficient facts to support his claims by alleging generalities and citing to case law without providing factual support for his, allegations."

¶ 10 In response to the dismissal, McDonald filed a motion for rehearing under C.R.C.P. 59. The district court denied the motion for rehearing, stating that McDonald failed to specifically allege how the court had erred in dismissing his first amended complaint.

C. Proceedings in this Court

¶ 11 McDonald filed this appeal following the district court's Rule 12(b)(5) dismissal of his complaint and the denial of his Rule 59 motion for rehearing.

¶ 12 In his opening brief, McDonald asserts a litany of allegations against CitiBank and the individual defendants. McDonald's narrative spans more than twenty pages without a single citation to the record. While McDonald asserts numerous ways in which he believes he was wronged by defendants (and others), he fails to tie any of the alleged wrongdoing to any error committed by the district court. As we explain below, because McDonald has failed to comply with C.A.R. 28, we do not address his contentions on appeal.

II. Analysis

¶ 13 As a threshold matter, we must consider whether to reach the merits of this appeal where an appellant fails to comply with the Colorado Rules of Appellate Procedure. Due to McDonald's pervasive noncompliance with C.A.R. 28, we decline to review his contentions.

¶ 14 The rules of appellate procedure "are not mere technicalities," but rather facilitate appellate review. *O'Quinn v. Baca*, 250 P.3d 629, 631 (Colo. App. 2010). Where a party, even a pro se party, fails to comply with the appellate rules, we may dismiss the appeal or decline to consider the merits of the party's

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contentions. C.A.R. 38(a); *Martin v. Essrig*, 277 P.3d 857, 861 (Colo. App. 2011); *Madison Capital Co. v. Star Acquisition VIII*, 214 P.3d 557, 561 (Colo. App. 2009) (declining to consider arguments not supported by the record or by legal argument, as required by C.A.R. 28); *see also Finegold v. Clarke*, 713 P.2d 401, 403 (Colo. App. 1985) (“[A] *pro se* litigant is bound by the same procedural rules as those who are licensed to practice law and must be prepared to accept the consequences of his mistakes and errors.”).

¶ 15 McDonald doesn’t comply with the appellate rules in four major ways.

¶ 16 First, C.A.R. 28(a)(5) requires that an appellant’s Opening brief must include “[a] concise statement identifying . . . the ruling, judgment, or order presented for review, with appropriate references to the record.” McDonald doesn’t identify the underlying court order that he is appealing. It is the appellant’s task to inform us “both as to the specific errors relied on and the grounds and supporting facts and authorities.” *Castillo v. Koppes-Conway*, 148 P.3d 289, 291 (Colo. App. 2006) (quoting *Mauldin v. Lowery*, 127 Colo. 234, 236, 255 P.2d 976, 977 (1953)) (the courts will not play “archaeologist with the record” and excavate it to unearth facts and argument support on appeal (quoting *DeSilva v. DiLeonardi*, 181 F.3d 865, 867 (7th Cir. 1999))). McDonald doesn’t do this.

¶ 17 Second, C.A.R. 28(a)(7)(A) requires that an appellant’s opening brief include the “applicable standard

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of review with citation to authority.” McDonald doesn’t state the applicable standard of review for any of his contentions.

¶ 18 Third, C.A.R. 28(a)(7)(A) also requires an appellant’s opening brief to state whether the contended issue was preserved and “the precise location in the record where the issue was raised and where the court ruled.” McDonald doesn’t cite even a single time to the precise location in the record where his issues were raised and where the district court ruled. *Vallagio at Inverness Residential Condo. Ass’n, Inc. v. Metro. Homes, Inc.*, 2017 CO 69, ¶ 40 (declining to consider claims based on generalizations).

¶ 19 Fourth, C.A.R. 28(a)(7)(B) requires that an appellant’s opening brief include “appellant’s contentions and reasoning, with citations to the authorities and parts of the record on which the appellant relies.” McDonald generally alleges violations of due process, fraud, theft, forgery, extortion, civil procedure, and jurisdictional defects but he doesn’t support any of these numerous claims with cogent arguments or citations to the record.

¶ 20 The fact that McDonald is pro se does not excuse him from compliance with C.A.R. 28. *Negron v. Golder*, 111 P.3d 538, 541 (Colo. App. 2004) (asserting that “pro se litigants are bound by the same rules” as attorneys licensed to practice law in Colorado). As demonstrated by the rejection of his previous appeals, McDonald was well aware of the consequences of noncompliance with C.A.R. 28. See *CitiBank II*

(declining to consider McDonald's contentions for failure to comply with C.A.R. 28); *Citibank I* (same). A pro se litigant "must be prepared to accept the consequences" if he chooses to represent himself. *Dyrkopp v. Indus. Claim Appeals Office*, 30 P.3d 821, 823 (Colo. App. 2001).

¶ 21 In sum, because McDonald fails to identify the specific ruling he is appealing, support his appeal with applicable citations to the record, or develop an argument that the district court committed error, we will not review his contentions. *Barnett v. Elite Props. of Am., Inc.*, 252 P.3d 14, 19 (Colo. App. 2010) ("We will not consider a bald legal proposition presented without argument or development"). Accordingly, we affirm the district court's orders dismissing McDonald's first amended complaint and denying his motion for rehearing.

III. Attorney Fees

A. McDonald's Request

¶ 22 McDonald's opening brief makes a general request for fees and costs. However, C.A.R. 39.1 requires that the party claiming fees "include a specific request, and explain the legal and factual basis, for an award of attorney fees" in the party's principal brief. McDonald has cited to no law supporting his request for appellate fees and costs, so we deny his request.

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B. Appellees' Request

¶ 23 Appellees request attorney fees pursuant to C.A.R. 39.1. In support of their request, appellees assert three grounds (1) the deed of trust between McDonald and CitiBank requires the award of attorney fees incurred, in, protecting CitiBank's property rights; (2) section 13-40-123, C.R.S. 2018, allows a party to recover fees as damages if the party prevails in a forcible entry detainer action; and (3) section 13-17-102, C.R.S. 2018, allows the court to assess attorney fees if it finds that a party's appeal lacked significant justification.

¶ 24 We agree with appellees on the second ground. Specifically, we conclude that, given the relief sought by McDonald, this action is integrally related to the forcible entry and detainer, and, therefore, appellees are entitled to attorney fees as damages pursuant to section 13-40-123. *See Integra Fin., Inc. v. Grynberg Petroleum Co.*, 74 P.3d 347 (Colo. App. 2002). Because we award on this ground, we need not address the other two grounds asserted by appellees.

¶ 25 Accordingly, we remand to the district court to award appellees their reasonable appellate attorney fees and costs. *Keith v. Kinney*, 140 P.3d 141, 159 (Colo. App. 2005).

IV. Conclusion

¶ 26 The judgment is affirmed and the case is remanded to the district court to award the appellees their reasonable appellate attorney fees and costs.

JUDGE FOX and JUDGE FREYRE concur.

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO 7325 South Potomac Street Centennial, Colorado 80112	DATE FILED: June 19, 2018
Plaintiff: Reed Kirk McDonald v. Defendants: Citibank, N.A. Mark C. Willis Kelly Kilgore	▲COURT USE ONLY▲
	Case Number: 15CV515 Division: 402
ORDER DENYING PLAINTIFF'S RULE 59 MOTION FOR REHEARING	

THIS MATTER comes before the Court on Plaintiff's Motion for Rule 59 Rehearing. The Court, having reviewed the Motion, the Response thereto, the Reply and the Court file and applicable law, hereby DENIES the Motion.

This case arises from a Complaint filed by the Plaintiff on December 1, 2015 alleging various claims against the Defendants related to the foreclosure Plaintiff's property and his subsequent eviction.

The foreclosure was based on Plaintiff's failure to make monthly payments under the mortgage on the property. Following the foreclosure of the Plaintiff's

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property, Citibank N.A. initiated a forcible entry and detainer action on March 24, 2014. That matter was filed in the Arapahoe County Courts under the designation of Arapahoe County Court Case No. 2014C35153. Upon the filing of counterclaims in that matter by Plaintiff, the case was transferred to the Arapahoe County District Court into Case No. 2014CV200074.

In the 2014CV200074 action, Plaintiff brought 484 counterclaims against Citibank and other parties seeking, in essence, relief to set aside the foreclosure and stop the eviction. These counterclaims were similar, if not identical, to the claims brought by Plaintiff in the instant action. The Arapahoe County District Court dismissed the Plaintiff's counterclaims and granted Citibank's request for possession of the Property. This did not deter Plaintiff. He has filed a multitude of matters in either the Colorado Court of Appeals or the Colorado Supreme Court related to Case No. 2014CV200074. They are: 2014CA759 the Court of Appeals affirmed the order for possession and granted Citibank its attorneys' fees. The Court of Appeals denied the petition for rehearing and the mandate issued on December 23, 2015; 2014SC763 – the Colorado Supreme Court denied the Plaintiff's C.A.R. 50 Petition for Writ of Certiorari on February 9, 2015; 2014CA1359 – the Colorado Court of Appeals consolidated the appeal into 2014CA000759 on October 30, 2014 and closed the matter; 2015SA305 – the Colorado Supreme Court denied Plaintiff's ex parte motion for temporary restraining order on November 19, 2015; 2015SA307 – the Colorado Supreme Court denied Plaintiff's C.A.R. 21 Motion under 42

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U.S.C. 1983 and Ex-Parte Motion for Emergency TRO on December 1, 2015; 2015SA313 – the Colorado Supreme Court denied Plaintiff's C.A.R. 21 Motion under 42 U.S.C. 1983 for Court's Violation of the U.S. Supremacy Clause with Ex-Parte Motion for Emergency TRO on December 3, 2015; 2016SA130 – the Colorado Supreme Court denied Plaintiff's Notice of Appeal and Petition for By-Pass Review on May 12, 2016. The Court notes that all of the Plaintiff's appeals have been denied and dismissed in Colorado state court.

This C.R.C.P. Rule 59 Motion concerns the dismissal of Plaintiff's First Amended Complaint in 15CV 515 again seeking relief for the foreclosure and eviction. In this action Plaintiff generally alleged violations of his due process rights under both the Federal and State Constitutions, violations of Judicial Canons, violation of federal law, including the Fair Debt Collection Practices Act. Section 15 U.S.C. 1692, violation of the Colorado Fair Debt Collections Practices Act, section 12-14-107, et seq. and fraud. See Complaint. Plaintiff filed his First Amended Complaint in the instant matter on February 16, 2016¹. On March 15, 2016, Citibank filed its Motion to Dismiss the First Amended Complaint in its entirety. On March 22, 2016, co-defendants Kelly Kilgore and Mark C. Willis filed their Motion to Dismiss the First Amended Complaint in its entirety.

¹ The Amended Complaint was 40 pages in length and added claims for slander of title, civil conspiracy, abuse of process, malicious prosecution, extreme and outrageous conduct and emotional distress.

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On April 26, 2017, the Court held a hearing on all outstanding motions in this matter. On April 28, 2017, the Court issued an Order regarding the pending motions. All motions except for the dispositive Motions to Dismiss by Defendants were ruled on. The Court advised that the pending Motions to Dismiss would be ruled on after consideration of the parties' oral arguments presented at the April 26, 2017 hearing. The Court was also aware that the underlying 14CV20074 was wending its way through the appellate courts and did not want to issue any orders in this companion case until that litigation had been resolved. The petition for certiorari was denied in that matter on November 17, 2017, but no party brought that to the Court's attention until March of 2018.

Thus, on April 2, 2018, after consideration of the motion to dismiss and the response thereto, evidence, testimony, and argument obtained at the hearing, the Court granted the Defendant's Motion to Dismiss the Plaintiff's Amended Complaint. The Order dismissed all of McDonald's claims with prejudice under C.R.C.P. 12(b)(5) for failure to state a plausible claim for relief. Dismissal Order at 2. The Court tried to make the reasons for the dismissal transparent. It found that McDonald's First Amended Complaint failed to meet the pleading standards required by the Colorado Rules of Civil Procedure, specifically C.R.C.P. 8(a). The court also found that McDonald failed to plead specific facts to support his claims by "alleging generalities and citing to case law without providing factual support for his allegations." *Id.* The Court also found that each of

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McDonald's claims as alleged in the amended complaint failed to state a claim upon which relief can be granted. Mr. McDonald seeks to have the Court review its order pursuant to C.R.C.P. 59.

A. C.R.C.P. 59

C.R.C.P. 59 permits a party to move for post-trial relief within 14 days of entry of judgment or such greater time as the court may allow. C.R.C.P. 59. The party may seek "(1) a new trial of all or part of the issues; (2) judgment notwithstanding the verdict; (3) amendment of findings or amendment of judgment." *Id.* The Rule also provides that "on motion for post-trial relief in an action tried without a jury the court may, if a ground exists, open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law, or make new findings and conclusions and direct entry of new judgment." C.R.C.P. 59(f). The purpose of a motion for new trial is to give the trial court an opportunity to correct alleged errors. *See Harriman v. Cabela's Inc.*, 371 P.3d 758, 761 – 62 (Colo. App. 2016) (citing *Danielson v. Kerbs AG, Inc.*, 646 P.2d 363, 367 (Colo. 1982); *See also In re Marriage of Jones*, 668 P.2d 980, 981 (Colo.App.1983)).

The Colorado Supreme Court has stated that:

A motion for new trial is not to be regarded as routine or perfunctory matter. Its obvious purpose is to direct the attention of the trial court with at least some degree of specificity to that which the losing litigant asserts to be error, all

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to the end that the trial court will be afforded a last look, and an intelligent last look at the controversy still before it.

Martin v. Opdyke Agency, Inc. 398 P.2d 971, 973 (Colo. 1965). Thus, it is incumbent upon the moving party to point out to the Court what errors should be considered and addressed.

In the Rule 59 Motion, Mr. McDonald expresses his general and vehement disagreement with the Court's order and generally alleges that his federal and state rights have been violated. However, he does not explain or state which of the findings of the court are in error. He does not allege that the court erred or factually how it erred in finding "(1) that the Complaint did not comply with the pleading standards required by the Colorado Rules of Civil Procedure"; or that the Court was wrong in finding or had no basis in finding "(2) that the Complaint failed to plead sufficient facts to support the claims"; or even that the Court was in error when it found the Complaint "(3) failed to plead claims upon which relief could be granted." See Order of Dismissal. Thus, the Court finds no basis in law or fact to reconsider the motion under C.R.C.P. 59 and DENIES the motion and reaffirms its dismissal.

SO ORDERED

Entered this 19 day of June.

[SEAL] /s/ Elizabeth A. Weishaupl
District Court Judge

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO 7325 South Potomac Centennial, Colorado 80112	DATE FILED: April 2, 2018 1:02 PM
Plaintiff(s): Reed Kirk McDonald v. Defendant(s): Citibank Na et al	
	▲COURT USE ONLY▲
Order re: Defendants' Motion to Dismiss Plaintiff's Amended Complaint	

THIS MATTER comes before the Court on Defendants Kelly Kilgore and Mark C. Wallis ("Defendants")' Motion to Dismiss Plaintiff Reed Kirk McDonald's ("Plaintiff") First Amended Complaint pursuant to Rule 12(b)(5) of the Colorado Rules of Civil Procedure. Defendants join in and adopt all arguments and restatements of facts advanced in co-defendant Citibank's Motion to Dismiss the First Amended Complaint. The Court rules as follows:

LEGAL STANDARD

The purpose of a motion to dismiss for failure to state a claim is to test the formal sufficiency of the complaint. *Dorman v. Petrol Aspen, Inc.*, 914 P.2d 909, 911 (Colo. 1996). To survive a Rule 12(b)(5) motion, the complaint must plead sufficient facts, taken as true and in the light most favorable to the plaintiff, to state a claim for relief that is plausible on its face. *Warne v. Hall*, 373 P.3d 588 (Colo. 2016) (embracing the plausibility standard in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)).

When analyzing a motion to dismiss, the court may consider only the facts alleged in the pleadings, documents attached as exhibits or incorporated by reference in the pleadings, and matters of which the court may take judicial notice. *Walker v. Van Laningham*, 148 P.3d 391, 397 (Colo. App. 2006). A motion to dismiss is properly granted when the plaintiff's factual allegations cannot support a claim as a matter of law. *BRW Inc. v. Dufficy & Sons, Inc.*, 99 P.3d 66, 71 (Colo. 2004).

DISCUSSION

As an initial matter, for the purposes of the Motion to Dismiss, the Court must take all allegations in the Complaint in the light most favorable to the Plaintiff. Defendants argue that the claims insufficiently identify the contracts at issue in this case. Under C.R.C.P. 8(a), a prayer for relief must contain a short and plain statement of the claims showing that the pleader is

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entitled to relief and a demand for judgment for the relied which the pleader claims to be entitled.

Plaintiff's First Amended Complaint does not conform to the pleading standards required by the Colorado Rules of Civil Procedure and *Warne*. 373 P.3d 588 (Colo. 2016). Plaintiff also alleges several constitutional claims, specifically seeking relief under the Federal Fair Debt and Collection Practices Act and pursuant to 42 U.S.C. 1983 for violations to his constitutional right to due process. The Court finds Plaintiff failed to plead sufficient facts to support his claims by alleging generalities and citing to case law without provided factual support for his allegations. Additionally, under all sixteen some odd claims, Plaintiff fails to state a claim upon which relief can be granted. Thus, the Court must dismiss the First Amended Complaint with Prejudice.

CONCLUSION

This Matter is dismissed with prejudice. Plaintiff's First Amended Complaint is dismissed for failing to plead sufficient facts upon which this Court could grant relief.

Dated: April 2, 2018.

BY THE COURT:

/s/ Elizabeth A. Weishaupl
Elizabeth A. Weishaupl
District Court Judge

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: December 23, 2019
Certiorari to the Court of Appeals, 2018CA1507 District Court, Arapahoe County, 2015CV515	
Petitioner: Reed Kirk McDonald v. Respondents: CitiBank N. A., Mark C. Willis, and Kelly Kilgore.	Supreme Court Case No: 2019SC754
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, DECEMBER 23, 2019.

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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

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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 Re-
corder of ARAPAHOE County, Colorado.

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

JPMORGAN CHASE BANK, NATIONAL ASSOCIA-
TION 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 SUC-
CESSOR BY MERGER TO CHASE MANHATTAN,
MORTGAGE CORPORATION, who, as such VICE
PRESIDENT being authorized to do so, executed the

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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]

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[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

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.	▲ COURT USE ONLY ▲
Defendant: REED KIRK MCDONALD	Case Number: 2014cv 200074
Division: 15 Courtroom:	
WRIT OF RESTITUTION	

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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