No. 20-762

In The
Supreme Court of the United States

ERIC FERRIER,

Petitioner,

vs.

CASCADE FALLS CONDOMINIUM ASSOCIATION, INC., BANK OF AMERICA NA, TODD STOLFA, and LISA KEHRER,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI ON BEHALF OF RESPONDENT CASCADE FALLS CONDOMINIUM ASSOCIATION, INC.

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QUESTIONS PRESENTED

1. Whether the petition for a writ of certiorari is untimely because it was not filed or served until after the 90-day deadline.

2. Whether questions presented by Petitioner are properly before the Court as to Cascade Falls.

3. Whether the Eleventh Circuit Court of Appeals properly affirmed the dismissal of Petitioner's federal action pursuant to the *Rooker-Feldman* doctrine when the federal action sought to collaterally attack a Florida Circuit Court final foreclosure judgment.

4. Whether there are adequate and independent grounds to support the Eleventh Circuit's decision affirming the dismissal of Petitioner's complaint.

RULE 29.6 STATEMENT

Respondent Cascade Falls Condominium Association, Inc. ("Cascade Falls") is a privately owned corporation. It does not have a parent corporation nor does any publicly held corporation own ten percent (10%) or more of its stock.

RELATED CASES

Eric Ferrier v. Cascade Falls Condominium Association, Inc., Case No. CACE-10-041941 (Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida)

Cascade Falls Condominium Association, et al. v. Eric Ferrier, Case No. 16-61124 (United States District Court for the Southern District of Florida)

Eric Ferrier v. Cascade Falls Condominium Association, et al., Case No. 17-61597 (United States District Court for the Southern District of Florida)

Eric Ferrier v. Cascade Falls, et al., Case No. 19014224 (United States Court of Appeals for the Eleventh Circuit)

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STATUTORY AND RULE PROVISIONS INVOLVED

28 U.S.C. § 2101(c)

> Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

United States Supreme Court Rule 13

> 1. Unless otherwise provided by law, a petition for a writ of certiorari to review a judgment in any case, civil or criminal, entered by a state court of last resort or a United States court of appeals (including the United States Court of Appeals for the Armed Forces) is timely when it is filed with the Clerk of this Court within 90 days after entry of the judgment. . . .
>
> 3. The time to file a petition for a writ of certiorari runs from the date of entry of the judgment or order sought to be reviewed, and not from the issuance date of the mandate (or its equivalent under local practice). . . .

STATEMENT OF JURISDICTION

The Eleventh Circuit Court of Appeals entered its decision on July 15, 2020. If the petition had been timely filed and served, this Court would have jurisdiction under 28 U.S.C. § 1254(1).

INTRODUCTION[1]

The Eleventh Circuit Court of Appeals correctly decided that Petitioner's allegations constituted a collateral attack on a previous state foreclosure judgment and affirmed the dismissal of his complaint for lack of subject matter jurisdiction.

Petitioner was declared a "vexatious litigant" pursuant to Florida law stemming from multiple unsuccessful legal actions he has pursued against Cascade Falls. This petition is yet another example of Petitioner's campaign to subject Cascade Falls to meritless legal proceedings. As explained further below, because the petition is untimely and does not present any compelling reasons to warrant review by this Court, it should be denied.

[1] References to the filed documents contained in the appendix to the Petition for Writ of Certiorari are designated as "Pet. App." followed by the relevant page number (e.g., Pet. App. 1). References to the appendix attached to Respondent Cascade Falls' Brief in Opposition to Petition for Writ of Certiorari are designated as "App." followed by the relevant page number (e.g., App. 1).

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition in the District Court

The Petitioner, Eric Ferrier, filed a *pro se* complaint in the Southern District of Florida against Cascade Falls Condominium Association, Inc. ("Cascade Falls"), Bank of America, NA, Lisa Kehrer, and Todd Stolfa on August 10, 2017 ("2017 SD Lawsuit"). (App. 1-74). The complaint alleged two (2) counts against Cascade Falls: (1) Discrimination pursuant to the Fair Housing Amendments Act and Fair Housing Act Title VIII of the Civil Rights Act of 1968; and (2) Fraud pursuant to 11 U.S.C. § 548 and 18 U.S.C. § 1344. (App. 51-66).

Cascade Falls moved to stay, or, in the alternative, to dismiss the action with prejudice pending final resolution of a nearly identical action that was pending in the Southern District of Florida before The Honorable Marcia G. Cooke, Case No. 16-cv-61124-MGC ("2016 SD Lawsuit"). (App. 75-84). In support of its motion to dismiss, Cascade Falls argued that (1) Petitioner's claims were barred by *res judicata*; (2) Petitioner's claims were barred by the statute of limitations; and (3) Petitioner failed to join an indispensable party. *Id.* Attached to the motion was an order from the Circuit Court of the 17th Judicial Circuit in and for Broward County, finding that Petitioner was a "vexatious litigant" as defined in Section 68.093(2)(d), Florida Statutes, and prohibiting Petitioner from filing any further *pro se* actions without leave of court. (Pet. App. 94-99).

The District Court adopted the Magistrate Judge's recommendation to stay the 2017 SD Lawsuit. (Pet. App. 7-18). On April 11, 2018, Judge Cooke dismissed the 2016 SD Lawsuit. (Pet. App. 87). On October 2, 2019, the District Court entered an order dismissing Petitioner's complaint in the 2017 SD Lawsuit on the grounds that it was frivolous, constituted a collateral attack on a previous state foreclosure lawsuit, and for lack of subject matter jurisdiction. (Pet. App. 20).

Petitioner appealed the District Court's order of dismissal in the 2017 SD Lawsuit to the Eleventh Circuit Court of Appeals. On July 15, 2020, the Eleventh Circuit issued its decision concluding that "the district court properly dismissed Ferrier's cause of action for lack of subject matter jurisdiction." (Pet. App. 6). Petitioner did not file a motion for rehearing. This petition was filed on November 27, 2020.

STATEMENT OF THE FACTS

Foreclosure of the Subject Premises

The claims at issue in Petitioner's complaint date back to 2011 and 2012. Petitioner owned a condominium unit which was part of the Cascade Falls Condominium Association. (App. 5-9). Within a few months of his purchase, Petitioner requested Cascade Falls to repair small leaks coming from the walls which he alleged caused mold to grow. (App. 5, 44, 47-48). In 2010, Cascade Falls sought to foreclose on Petitioner's property based on his failure to pay condominium

association maintenance fees. (App. 8-9). On April 11, 2011, Petitioner and Cascade Falls entered into a settlement agreement which required Petitioner to pay past due condominium association maintenance fees in exchange for having the mold removed from his unit. (App. 8, 48).

After Petitioner defaulted on that agreement, Cascade Falls filed an action to foreclose on the property. (App. 8). A final judgment of foreclosure was entered on August 9, 2012 in Broward County Case Number CACE 10041941 (hereinafter referred to as "2010 Broward County Lawsuit"). (App. 78). The Certificate of Sale for the subject premises was dated September 13, 2012. (App. 88-89). No objections had been filed prior to the sale. *Id.* On November 15, 2012, the Broward County Clerk of Court issued a Certificate of Title to Cascade Falls, which was recorded on that date, in Book 42930, Page 1965, of the Official Records of Broward County, Florida. *Id.* Since that time, Petitioner has not had legal possession of the subject premises.

Broward Circuit Court Determination that Petitioner is a Vexatious Litigant

On July 26, 2016, as a result of numerous attempts to relitigate the same set of operative facts, the Broward County Circuit Court deemed Petitioner a vexatious litigant and prohibited him from filing any further *pro se* actions without leave of Court. (Pet. App. 94-99).

2016 SD Lawsuit

In 2014, Petitioner attempted to re-open the 2010 Broward County Lawsuit. (Pet. App. 100). After the Circuit Court granted Cascade Falls' motion to dismiss, Petitioner removed that action to the Southern District of Florida where he filed a "Counter-Claim Complaint" in Case No. 16-cv-61124-MGC before Judge Cooke. *Id.*

Judge Cooke remanded the case to state court finding that Petitioner's "Notice of Removal is untimely and does not raise viable claims under either federal question or diversity jurisdiction." (Pet. App. 100). Despite Judge Cooke's order remanding the 2016 SD Lawsuit to state court, Petitioner re-filed the Counterclaim against the parties together with a Motion for Clarification and reconsideration on June 1, 2017. (App. 85-87). On June 23, 2017, Judge Cooke entered an order staying the 2016 SD Lawsuit until such time as the Court ruled on Petitioner's Motion for Clarification and Reconsideration. *Id.* Judge Cooke dismissed Petitioner's Counterclaim on April 11, 2018. (Pet. App. 87).

The Present Case/2017 SD Lawsuit

Petitioner filed the subject lawsuit on August 10, 2017. (App. 1). The complaint alleged two (2) counts against Cascade Falls: (1) Discrimination pursuant to the Fair Housing Amendments Act and Fair Housing Act Title VIII of the Civil Rights Act of 1968; and (2) Fraud pursuant to 11 U.S.C. § 548 and 18 U.S.C. § 1344. (App. 51-66). Petitioner included in his complaint many of the same general allegations from the

SD 2016 Lawsuit against Cascade Falls such as an alleged breach of the 2011 settlement agreement and bodily injury which he suffered as a result of mold while he was present at the subject premises prior to 2012. (App. 5, 8-9, 44, 47-48).

Among the relief requested by Petitioner in his complaint were:

> - An evidentiary hearing regarding the authenticity of the backdated mortgage assignment created in-house, the appraisal of the property and in regards to late fees and interest and attorney fees claimed by [Cascade Falls];
> - A judgment against [Cascade Falls] awarding Eric Ferrier compensatory damages for the property stigma value, body injury damages, mental anguish, emotional distress and the deprivation of the use of his property, the future ability to acquire real estate as the result of his damaged credit; and
> - Bar BAC and any and all persons claiming or having any interest in the Property through it from asserting or claiming any interest, right or title in or to the Property, or any part thereof, adverse to the title of Plaintiff; and Award Owners such other and further relief as equity may require, including, but not limited to, further declaratory and injunctive relief against BAC, [Cascade Farms], Todd Stolfa and Lisa Kehrer.

(App. 73-74).

Cascade Falls' Motion for Stay of Proceedings, or, Alternatively Motion to Dismiss with Prejudice

In the interest of judicial economy, Cascade Falls argued that the proceeding should be stayed pending final resolution of the 2016 SD Lawsuit. (App. 75-84). United States Magistrate Judge Lurana S. Snow found "that the matter pending before Judge Cook is based upon the same operative facts, and involves the same parties as in this case [2017 SD Lawsuit]." *Id.* Petitioner did not file a written objection to Magistrate Judge Snow's factual and legal conclusions. (Eleventh Circuit Court of Appeals Docket). The District Court adopted Magistrate Judge Snow's Report and Recommendations. (Pet. App. 15-18).

Alternatively, Cascade Falls moved to dismiss the 2017 SD Lawsuit based on *res judicata* because "the facts and parties of both the 2016 SD Lawsuit and the 2017 SD Lawsuit, as well as the 2010 Broward County Lawsuit, arise from the same operative facts and circumstances." (App. 80).

Moreover, Cascade Falls argued that Petitioner's claims were barred by the statute of limitations contained in 42 U.S.C. § 3613(a)(1)(A), 11 U.S.C. § 548, and 18 U.S.C. § 1344, and that Petitioner failed to include an indispensable party to the lawsuit. (App. 81-84).

The District Court's Order Dismissing the 2017 SD Lawsuit

On October 2, 2019, the District Court entered an order of dismissal stating:

> This matter is before the Court upon a sua sponte review of the record. Although the pleading makes reference to federal statutes, the Court finds that Ferrier, who is a serial filer, has asserted federal claims that are patently frivolous, wholly insubstantial, and in form only. *See generally, Robinson v. Am. Legion Post 193*, 2008 WL 962875, at *2 (N.D. Fla. Apr. 7, 2008). Ferrier's allegations, in essence, constitute a collateral attack on a previous state foreclosure lawsuit. Accordingly, this case is DISMISSED for lack of subject matter jurisdiction, and the Clerk is directed to DENY pending motions as moot and maintain this case CLOSED.

(Pet. App. 20).

The Eleventh Circuit's July 15, 2020 Unpublished Opinion

Similarly, the Eleventh Circuit determined that the practical effect of the adjudication of Petitioner's complaint would be to overturn the state court judgment of foreclosure:

> Here, Ferrier was a "state-court loser" with respect to the state foreclosure proceedings regarding his condominium – proceedings which had completed before Ferrier filed the

> underlying federal action. And, as set forth above, the relief requested by Ferrier in his complaint clearly invited the district court to review and reject the state court's judgments in the foreclosure proceedings. Thus, pursuant to *Rooker-Feldman*, the district court correctly concluded that it lacked jurisdiction over Ferrier's complaint. (Pet. App. 4) (citations omitted).

Moreover, the Eleventh Circuit declined to recognize a "fraud exception" to *Rooker-Feldman* that would permit Petitioner to proceed with his case pursuant to Federal Rule of Civil Procedure 60(d) because:

> Such an exception would effectively gut the doctrine by permitting litigants to challenge almost any state-court judgment in federal district court merely by alleging that "fraud" occurred during the state-court proceedings. (Pet. App. 5).

Petitioner did not file a petition for rehearing. (Eleventh Circuit Court of Appeals Docket). His petition for writ of certiorari was filed on November 27, 2020. (App. 90).

REASONS TO DENY THE PETITION

Notwithstanding the fact that the petition is untimely, Petitioner fails to establish any compelling reason warranting this Court's discretionary review. Pursuant to Supreme Court Rule 10, "[a] petition for a writ of certiorari is rarely granted when the asserted

error consists of erroneous factual findings or the misapplication of a properly stated rule of law." U.S. Sup. Ct. Rule 10. Yet those are precisely the errors asserted in the petition and thus Petitioner does not present an issue that falls within the category of cases this Court has deemed worthy of certiorari.

I. THE PETITION FOR WRIT OF CERTIORARI IS UNTIMELY BECAUSE IT WAS NOT FILED OR SERVED UNTIL AFTER THE 90-DAY DEADLINE.

A petition for a writ of certiorari must be filed within 90 days from either entry of judgment or denial of a petition for rehearing. U.S. Sup. Ct. R. 13.1. The 90-day period runs from the date of entry of judgment, not the date a mandate is issued. U.S. Sup. Ct. R. 13.3. The petition must be accompanied by proof of service, and the petitioner must notify the other parties "promptly" of the filing. U.S. Sup. Ct. R. 12.3.

In federal court, the filing of the Court of Appeals' decision constitutes the entry of judgment. *See Clay v. United States*, 537 U.S. 522, 525 (2003) (calculating time to petition for certiorari from date federal court of appeals filed its decision).

Here, the Eleventh Circuit's decision was entered on July 15, 2020. (Pet. App. 1-6). Accordingly, the petition was due by October 13, 2020. However, the docket indicates that the petition was filed on November 27, 2020, 46 days after it was due. (App. 90). Moreover, Cascade Falls was not served with a copy of the

petition or otherwise informed of its filing until at least December 2, 2020. *Id.*

Because the petition was neither filed nor served until 46 days after the 90-day deadline, it is untimely and should be denied. *Missouri v. Jenkins*, 495 U.S. 33, 45 (1990) (recognizing that the "90-day limit is mandatory and jurisdictional"); *County of Sonoma v. Eva Isbell*, 439 U.S. 996 (1978) (denying petition for certiorari as untimely).

II. THE QUESTIONS PURPORTEDLY PRESENTED AGAINST CASCADE FALLS ARE NOT PROPERLY BEFORE THE COURT.

This Court does "not decide in the first instance issues not decided below." *National Collegiate Athletic Ass'n v. Smith*, 525 U.S. 459, 470 (1999); *Ark. Game & Fish Comm'n v. United States*, 568 U.S. 23, 37-38 (2012). Thus, certiorari review is limited in scope to questions raised in the court of appeals. *See G.D. Searle & Co. v. Cohn*, 455 U.S. 404, (1982). This longstanding principle precludes review of issues – constitutional or otherwise – that a petitioner attempts to raise for the first time before this Court. *See Pa. Dep't of Corr. v. Yeskey*, 524 U.S. 206, 212 (1998) (declining to review whether application of the Americans with Disabilities Act to state prisons is a constitutional exercise of Congress's power when the issue was not raised in the District Court or Court of Appeals); *Duignan v. United States*, 47 U.S. 195, 200 (1927) (declining to review constitutional issue that was not raised below).

In this case, not only are Questions II and III unelaborated in the petition, but they were also not raised before the Eleventh Circuit or considered by it as to Cascade Falls. (Petition; Pet. App. 1-6; U.S. Sup. Ct. R. 14.1(h) – requiring "[a] direct and concise argument amplifying the reasons relief on for allowance of the writ"). Moreover, Petitioner's argument that sovereign immunity does not defeat the Court's jurisdiction was not raised before the Eleventh Circuit or considered by it as to Cascade Falls. (Petition, pp. 10-12; Pet. App. 1-6). Therefore, such arguments cannot serve as the basis for granting certiorari in this case. *Springfield v. Kibbe*, 480 U.S. 257, 259 (1987) ("We ordinarily will not decide questions not raised or litigated in the lower courts.").

III. THE ELEVENTH CIRCUIT CORRECTLY HELD THAT THE DISTRICT COURT LACKED SUBJECT MATTER JURISDICTION OVER PETITIONER'S CLAIMS PURSUANT TO THE *ROOKER-FELDMAN DOCTRINE*.

In concise and well-reasoned decisions, the District Court and the Eleventh Circuit disposed of Petitioner's claims due to lack of subject matter jurisdiction pursuant to the *Rooker-Feldman* doctrine.

The *Rooker-Feldman* doctrine prohibits lower federal courts from conducting appellate review of final state court judgments. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals*

v. Feldman, 460 U.S. 462 (1983); *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). The doctrine applies to "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." *Exxon Mobil*, 544 U.S. at 284.

The Eleventh Circuit correctly recognized that the *Rooker-Feldman* doctrine extends to both federal claims raised in the state court and to those "inextricably intertwined" with a state court judgment. *Feldman*, 460 U.S. at 482; *Casale v. Tillman*, 558 F.3d 1258, 1260 (11th Cir. 2009). "A claim is inextricably intertwined if it would 'effectively nullify' the state court judgment, or it succeeds only to the extent that the state court wrongly decided the issues." *Id.*

In the Eleventh Circuit, the *Rooker-Feldman* doctrine has been routinely applied to dismiss actions in which plaintiffs sought to challenge state-court foreclosure judgments. *See, e.g.*, *Parker v. Potter*, 368 Fed. Appx. 945, 947-948 (11th Cir. 2010) (applying *Rooker-Feldman* to a federal claim under the Truth in Lending Act seeking rescission of mortgage transaction following entry of final foreclosure judgment in state court); *Velardo v. Fremont Inv. & Loan*, 298 Fed. Appx. 890, 892-893 (11th Cir. 2008) (holding that appellants' federal TILA claims were inextricably intertwined with a state-court foreclosure judgment and therefore barred by *Rooker-Feldman*); *Harper v. Chase Manhattan Bank*, 138 Fed. Appx. 130, 132-133 (11th Cir. 2005)

(dismissing federal TILA, Fair Debt Collection Practices Act, and Equal Credit Opportunity Act claims under *Rooker-Feldman* because they were inextricably intertwined with a state-court foreclosure proceeding).

Here, Petitioner cannot escape application of the *Rooker-Feldman* doctrine because the claims raised in his complaint have a connection with the 2010 Broward County lawsuit as demonstrated by the relief he requested:

> - An evidentiary hearing ***regarding the authenticity of the backdated mortgage assignment created in-house, the appraisal of the property*** and in regards to late fees and interest and attorney fees claimed by [Cascade Falls];
> - A judgment against [Cascade Falls] awarding Eric Ferrier compensatory damages for the ***property stigma value, body injury damages, mental anguish, emotional distress and the deprivation of the use of his property, the future ability to acquire real estate as the result of his damaged credit***; and
> - Bar BAC and any and all persons claiming or having ***any interest in the Property through it from asserting or claiming any interest, right or title in or to the Property, or any part thereof, adverse to the title*** of Plaintiff.

(App. 73-74) (emphasis added).

Thus, in order for Petitioner to prevail in this action, the Court would have to determine that the state court rendered the foreclosure judgment improperly, effectively nullifying the state court judgment. (Pet. App. 1-6). This is precisely the result that the *Rooker-Feldman* doctrine prohibits.

Although *pro se* pleadings are held to a less stringent standard than counseled pleadings, *pro se* litigants are not exempt from complying with procedural rules. *McNeil v. United States*, 508 U.S. 106, 113 (1993) (" . . . we have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel."); *Moton v. Cowart*, 631 F.3d 1337, 1340 n. 2 (11th Cir. 2011). Therefore, Petitioner's attempt to excuse his failure to plead requisite facts to establish a cause of action simply because he was a *pro se* litigant should be rejected. (Petition, pp. 16-18).

Next, Petitioner's bald allegations of fraud during the state court proceedings does not render the *Rooker-Feldman* doctrine inapplicable because they rest on a factual basis that is utterly unsupported by the record below. (Petition, pp. 10-14). Thus, this case is inappropriate to determine whether a fraud exception to the *Rooker-Feldman* doctrine should be recognized. Moreover, such an exception does not exist, because as the Eleventh Circuit explained, it "would effectively gut the doctrine by permitting litigants to challenge almost any state-court judgment in federal district court merely by alleging that 'fraud' occurred during the state-court proceedings." (Pet. App. 5).

Furthermore, Petitioner cannot use Federal Rule of Civil Procedure 60 as a vehicle for the re-litigation of issues decided adversely against him in state court. (Petition, pp. 10-14); *Travelers Indem. Co. v. Gore*, 761 F.2d 1549 (11th Cir. 1985); *Matthews, Wilson & Matthews, Inc. v. Capital City Bank*, 614 Fed. Appx. 969 (11th Cir. 2015).

Therefore, Petitioner's argument that his claim constitutes a "new action" pursuant to Federal Rule of Civil Procedure 60(d) should be rejected and the petition denied.

IV. EVEN IF THE *ROOKER-FELDMAN* DOCTRINE DID NOT BAR THE DISTRICT COURT FROM EXERCISING SUBJECT MATTER JURISDICTION, ADEQUATE AND INDEPENDENT GROUNDS EXISTED TO SUPPORT DISMISSAL OF THE COMPLAINT.

A. Petitioner's Claims Are Barred by *Res Judicata*

Petitioner's claims are also barred by *res judicata* because they pertain to the 2011 Settlement Agreement with Cascade Falls and the propriety of the foreclosure on his property which were already determined by a state court final judgment in 2012. (App. 75-79).

"When a federal court is asked to give *res judicata* effect to a prior state court judgment, the federal court applies the *res judicata* principles of the state from which the allegedly preclusive ruling emanates."

Kizzire v. Baptist Health Sys., Inc., 441 F.3d 1306, 1308 (11th Cir. 2006). Under Florida law, *res judicata* is premised on the conclusion that "a final judgment on the merits bars the parties to a prior action from relitigating a cause of action that was or could have been raised in that action." *In re Piper Aircraft Corp.*, 244 F.3d 1289, 1296 (11th Cir. 2001); *Ragsdale v. Rubbermaid, Inc.*, 193 F.3d 1235, 1238 (11th Cir. 1999).

"The idea underlying res judicata is that if a matter has already been decided, the petitioner has already had his or her day in court, and for purposes of judicial economy, that matter generally will not be reexamined again in ***any court*** (except, of course, for appeals by right)." *Topps v. State*, 865 So. 2d 1253, 1255 (Fla. 2004) (emphasis supplied).

An action is barred by prior litigation if the following elements are present: (1) a final judgment on the merits; (2) the decision was rendered by a court of competent jurisdiction; (3) both cases involve the same parties or their privies; and (4) both cases involve the same causes of action. *Ragsdale*, 193 F.3d at 1238; *Topps*, 865 So. 2d at 1255. All of the elements required to invoke *res judicata* have been established in this case.

1. The Broward County Circuit Court's August 9, 2012 Foreclosure Judgment Was Final

An order is deemed final under Florida law "when it adjudicates the merits of the cause and disposes of

the action . . . leaving no judicial labor to be done except the execution of the judgment." *McGurn v. Scott*, 596 So. 2d 1042, 1043 (Fla. 1992). Similarly, an order is final under federal law when it "terminate[s the action]" or "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." *Ritzen Group, Inc. v. Jackson Masonry*, LLC, 140 S. Ct. 582, 586 (2020).

Here, Cascade Falls sought to foreclose on Petitioner's property after he defaulted on a 2011 Settlement Agreement to pay past due condominium association fees. (Pet. App. 10-11). As a result, the Broward County Circuit Court entered a final judgment of foreclosure on August 9, 2012 and a certificate of title was issued to Cascade Falls on November 15, 2012. (App. 88-89). Because there was no further judicial labor required in that matter, that judgment was final for the purposes of *res judicata*.

2. The Broward County Circuit Court Was a "Court of Competent Jurisdiction"

The "court of competent jurisdiction" requirement for *res judicata* claim preclusion refers to the power of the initial forum "to award the full measure of relief sought in the later litigation." *Davidson v. Capuano*, 792 F.2d 275, 278 (2d Cir. 1986). There is no question that the Broward County Circuit Court was a court of competent jurisdiction as it could have afforded Petitioner the relief sought in the present case had he filed

a claim for such. *Ebeh v. St. Paul Travelers*, 459 Fed. Appx. 860, 861 (11th Cir. 2012) (finding that was a court of competent jurisdiction); § 26.012, Fla. Stat. (describing jurisdiction of Florida circuit courts); (App. 47-48).

3. Both the 2010 Broward County Lawsuit and the Present Case Involved the Same Parties

Petitioner does not dispute that he was involved in a prior state foreclosure action with Cascade Falls. (App. 8 ("[Cascade Falls] has foreclosed on Owner Eric Ferrier. . . . The default judgment was appealed by the Plaintiff upon [Cascade Falls] acquiring the property. . . ."); Petition, pp. 2-8).

Thus, both actions involved the same parties for *res judicata* purposes.

4. Both the 2010 Broward County Lawsuit and the Present Case Involved the Same Causes of Action

A cause of action is the same for *res judicata* purposes if it "arises out of the same nucleus of operative fact, or is based upon the same factual predicate, as a former action." *Lobo v. Celebrity Cruises, Inc.*, 704 F.3d 882, 893 (11th Cir. 2013); *Lucky Brand Dungarees, Inc. v. Marcel Fashions Group, Inc.*, 140 S. Ct. 1589, 1594-1595 (2020). "The test for a common nucleus of operative fact is 'whether the same facts are involved in both cases, so that the present claim could have been

effectively litigated with the prior one.'" *Lobo*, 704 F.3d at 893. Importantly, the doctrine of *res judicata* applies "even if some new factual allegations have been made [or] some new relief has been requested. . . ." *McNear v. Wells Fargo Bank, N.A.*, 651 Fed. Appx. 928, 932 (11th Cir. 2016) (citation omitted).

All of Petitioner's claims in the present action arise out of the same nucleus of operative fact as his claims in the 2010 Broward County Lawsuit, specifically, the core contention that foreclosure was improper, Cascade Falls breached the 2011 Settlement Agreement, and bodily injury which Petitioner suffered as a result of mold while he was present at the subject premises prior to 2012. (App. 4-5, 32, 44, 47-48); *Compare Langermann v. Dubbin*, 613 Fed. Appx. 850, 854 (11th Cir. 2015) (concluding that plaintiff's claims in a prior action arose out of the same nucleus of operative facts as the present action because they involved an allegation that the terms of a class settlement agreement were violated by demanding that he sign a release or permit a home visit).

Moreover, the relief requested in this case is substantially similar to what Petitioner could have requested in the 2010 Broward County Lawsuit: (1) challenging price property sold for and fees and interests claimed by Cascade Falls in the foreclosure action; (2) stigma associated with foreclosure; and (3) preclude Cascade Falls from having any interest, right, or title to the property. (App. 73-74).

Hence, Petitioner's so-called "new" claims are nothing more than an attempt to circumvent a Broward County Circuit Court order prohibiting him from filing *pro se* actions without leave of court because he was determined to be a vexatious litigant pursuant to Section 68.093, Florida Statutes and relitigate issues that were conclusively decided in the 2010 Broward lawsuit. (Pet. App. 4).

Because all four factors are satisfied by the 2012 foreclosure judgment, Petitioner's claims are precluded by *res judicata*.

B. The District Court Properly Dismissed Petitioner's Claims as Patently Frivolous.

Contrary to Petitioner's assertion, the District Court's order of dismissal did not completely foreclose him from any access to the court. (Petition, pp. 14-16). Rather, it recognized the complaint did not raise a substantial federal claim. (Pet. App. 20). As such, the District Court exercised its inherent responsibility to dismiss this frivolous lawsuit which was nothing more than "a collateral attack on a previous state foreclosure lawsuit," as explained in Section III above. *See Hagans v. Lavine*, 415 U.S. 528, 536-537 (1974) (holding "that the federal courts are without power to entertain claims otherwise within their jurisdiction if they are so attenuated and unsubstantial, obviously frivolous, plainly unsubstantial, or no longer open to discussion."); *Battle v. Central Hospital*, 898 F.2d 126, 129

(11th Cir. 1990) (a claim is frivolous if it is without arguable merit either in law or fact); (Pet. App. 20).

Here, it is also important to note that 11 U.S.C. § 548, which Petitioner based his fraud claim upon, relates to property transfers that only a bankruptcy trustee may void. That statute clearly did not apply to Cascade Falls which is a condominium association, not a bankruptcy trustee. (App. 5). Similarly, 18 U.S.C. § 1344, which Petitioner also based his fraud claim upon, did not apply to this case as it is a criminal statute addressing criminal bank fraud against a financial institution. 18 U.S.C. § 1344(1)-(2). Cascade Falls is not a bank to whom the statute applies. The foregoing further demonstrates the baselessness of the claims raised in Petitioner's complaint.

C. Petitioner's Claims are Barred by the Statute of Limitations.

Fair Housing Discrimination Act

A plaintiff may commence a civil action pursuant to the Fair Housing Discrimination Act no later than two (2) years after the occurrence or the termination of an alleged discriminatory housing practice. 42 U.S.C. § 3613(a)(1)(A). Petitioner has not had legal ownership of the subject premises since September 13, 2012, more than five (5) years prior to filing this action. (App. 88-89). Therefore, Petitioner's Fair Housing Discrimination Act claim against Cascade Falls was properly dismissed, as the two (2) year statute of limitations

expired more than three (3) years before this action was filed.

Fraud Pursuant to 11 U.S.C. § 548 and 18 U.S.C. § 1344

Petitioner also made a claim against Cascade Falls for fraud under 11 U.S.C. § 548 and 18 U.S.C. § 1344. An action proceeding under 11 U.S.C. § 548 may not be commenced after the earlier of:

> (1) the later of (A) 2 years after the entry of the order for relief; or (B) 1 year after the appointment or election of the first trustee . . . or (2) the time the case is closed or dismissed.

11 U.S.C. § 546.

Again, Petitioner's fraud claim is time-barred under 11 U.S.C. § 548 because he last had legal ownership of the subject premises more than five (5) years prior to filing this action. (App. 88-89).

In sum, Petitioner had every opportunity to file his claims on a timely basis but chose not to do so. There are valid reasons why statutes of limitations exist, including to promote finality and to prevent stale claims. *United States v. Kubrick*, 444 U.S. 111, 117 (1979). This case epitomizes why a statute of limitations is necessary for fair housing discrimination and fraud claims. The property at issue has already been foreclosed, final judgment was entered, and title has passed to a new owner. Not enforcing the statute of limitations in this case would undermine principles of finality and the

validity of property ownership by relitigating the validity of such ownership, as Petitioner sought to do before the Eleventh Circuit and the District Court.

Accordingly, the petition should be denied.

CONCLUSION

Based on the foregoing, the petition for writ of certiorari should be denied because it is untimely and without merit.

Respectfully submitted,

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