

21-831

No.

ORIGINAL

In the Supreme Court of the United States

Matt P Jacobsen,

Petitioner,

v.

RUSHMORE LOAN MANAGEMENT SERVICES, LLC;

U.S. BANK NATIONAL ASSOCIATION, as Trustee
for the RMAC Trust Series 2016-CTT;

CLEAR RECON CORP,

Respondents.

*Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Ninth Circuit 19-16341*

PETITION FOR A WRIT OF CERTIORARI

Matt P Jacobsen
1311 La Loma Drive
Carson City, NV 89701
(408) 899-0833

TABLE OF CONTENTS

i ...	QUESTIONS PRESENTED
i ...	RELATED CASES
1 ...	PETITION FOR A WRIT OF CERTIORARI
1 ...	OPINION BELOW
1 ...	JURISDICTION
1 ...	STATUTORY PROVISIONS INVOLVED
1 ...	STATEMENT
2 ...	Legal Background
2 ...	Factual Background
2 ...	Proceedings Below
4 ...	REASONS FOR GRANTING PETITION
10 ...	CONCLUSION
11 ...	CERTIFICATE OF SERVICE

QUESTIONS PRESENTED

1. Does Res Judicata apply when the earlier action(s) did not cover all the claims and allegations of the later case?
2. Must a District Court find facts?
3. Must a District Court correct orders in such a way as to be consistent?
4. May a court take judicial notice of the truth of public records?

RELATED CASES

- In The First Judicial District Court of the State of Nevada In and for Carson City, Dept II; Case No. 18 RP00019 1B; Matt Jacobsen v. RUSHMORE LOAN MANAGEMENT SERVICES, LLC; U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR THE RMAC TRUST, SERIES 2016-CTT; U.S. BANK NATIONAL ASSOCIATION; CLEAR RECON CORP.; no judgment; no petition for rehearing

- Ninth Circuit Case No. 13-15498; Matt Jacobsen v. HSBC Bank USA, NA, et al; judgment 02/26/2018; no petition for rehearing

- USDC Nevada, Reno; Case No. 3:15-cv-00504-MMD; MATT P JACOBSEN vs. CLEAR RECON CORP, HSBC BANK USA N.A., PHH MORTGAGE CORPORATION; judgment 08/31/2016; rehearing denied 01/22/2019

- USCA Ninth Circuit; Case No. 17-15843; [same caption as 3:15-cv-00504]; judgment 09/19/2018; rehearing denied 01/18/2019

PETITION FOR A WRIT OF CERTIORARI

Matt P Jacobsen, Pro Se, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit (19-16341) in this case.

OPINION BELOW

The Memorandum of the United States Court of Appeals for the Ninth Circuit. Unpublished. Judgment was entered 06/10/2019. The [15] opinion of the district court (App., 1b) is unreported.

JURISDICTION

The judgment of the court of appeals (App., 1a) was entered on 06/10/2019. A timely petition for rehearing was denied (App., 1c) on 04/06/2021. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

STATUTORY PROVISIONS INVOLVED

The pertinent statutes and constitutional provisions involved are 28 U.S.C. §§ 1331, 1332, 1441(b)(2); 12 U.S.C. § 2601, 15 U.S.C. § 1692; 28 U.S.C. § 1291; NRS 40.010, 107.080, 107.510.

STATEMENT

This case presents questions of broad practical importance: Should courts follow the law on Res Judicata? Should courts find facts? Should courts be logically consistent? Can a litigant bypass the fact-finding process by creating a public record and then asking the court to take judicial notice of (the truth of) the public record?

1. Legal Background

Res judicata, or claim preclusion, prohibits lawsuits on “any claims that were raised or could have been raised” in a prior action. *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir.2001). However, preclusion “does not apply to an issue which could not have been raised in the prior proceeding.” See *Landeros v. Pankey*, 39 Cal. App. 4th 1167, 1174, 46 Cal. Rptr. 2d 165, 169 (Ct. App. 1995).

2. Factual Background

There was no trial or summary judgment, so the facts are still disputed. According to [15] Order on Motion to Dismiss (App., 1b): “This lawsuit concerns the same defaulted mortgage loan and the same deed of trust for the Property and claims previously brought against the same Defendants or entities in privity.” That Order otherwise found no facts.

3. Proceedings Below

The Plaintiff, Matt Jacobsen, asked the state court for Quiet Title (NRS 40.010), Declaratory Judgment, RESPA (12 U.S.C. § 2601), NRS 107 .080, Cancellation of Instrument, FDCPA (15 U.S.C. § 1692), against RUSHMORE LOAN MANAGEMENT SERVICES LLC, U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR THE RMAC TRUST, SERIES 2016-CTT U.S. BANK NATIONAL ASSOCIATION; CLEAR RECON CORP

Defendants HSBC BANK USA, N.A. and HSBC MORTGAGE CORPORATION (USA) removed the case to Federal District Court as 2:19-cv-00071, in the wrong division; it was then transferred to the Northern Division as 3:19cv00017.

Discovery was stayed on motion of all Defendants.

The case was dismissed with prejudice on motion of Defendants CLEAR RECON CORP, RUSHMORE LOAN MANAGEMENT SERVICES LLC, on the grounds that “the first two actions covered all claims Plaintiff asserts here.”

The District Court did not find adequate facts from which to draw conclusions of law.

The District Court impermissibly took judicial notice, not of the existence and language of the documents, but of conclusions to be drawn from reading those documents.

If the [15] Order (App., 1b) is corrected, so should be the [20] Order denying Preliminary Injunction

(App., 1d).

Plaintiff appealed to the Ninth Circuit as 19-16341. The Ninth Circuit affirmed, stating (App., 1a): “The district court properly dismissed Jacobsen's action as barred by res judicata because Jacobsen's claims were raised or could have been raised in his prior federal actions between the parties or their privies that resulted in a final judgment on the merits. ... To the extent that certain of Jacobsen's claims could not have been raised in the prior federal actions, dismissal of those claims was proper because Jacobsen failed to allege facts sufficient to state any plausible claim for relief.” No further analysis was given.

REASONS FOR GRANTING PETITION

The doctrine of Res Judicata is often used as a docket-clearing device. However, its use should be confined to matters that have been heard or could have been heard. It should not be used to preclude claims based on events that occurred after the filing date of the previous lawsuit, since the previous lawsuit deals with the state of facts that existed on that filing date, and subsequent facts could not have been litigated in the previous case. The same is true even more so for events that occurred after the closing date of the previous lawsuit.

I. MANY OF THE CLAIMS AROSE AFTER THE

FILING DATE OF THE PREVIOUS LAWSUIT(S)

The District Court case (3:19cv00017) was dismissed with prejudice, on the grounds that “the first two actions covered all claims Plaintiff asserts here.”

However, the first two actions did NOT cover claims and allegations related to facts that occurred after the 10/5/15 date of filing of the Second Case (3:15-cv-00504); a lawsuit is supposed to be about the state of facts which existed as of the date of filing, therefore Plaintiff could not have brought the new claims in the Second Case.

Those new claims are: (1) On 10/22/18, Clear Recon recorded a NOTICE OF BREACH AND DEFAULT AND OF ELECTION OR CAUSE TO BE SOLD REAL PROPERTY UNDER DEED OF TRUST, in which U.S. Bank as trustee for RMAC purported to be beneficiary, however it has a number of flaws and is unauthorized; (2) On 10/30/2018, Fannie Mae recorded a COPORATE ASSIGNMENT OF DEED OF TRUST, in which Nationstar purported to assign to U.S. Bank as trustee for RMAC , however it was a fake made by Nationwide Title Clearing and has a number of other flaws and is unauthorized; none of the Defendants received a valid assignment of the debt in any manner; (3) On 5/3/2017, Clear Recon recorded SUBSTITUTION OF TRUSTEE, in which Nationstar purported to appoint Clear Recon, however it has a number of flaws and is

unauthorized; (4) On 10/22/2018, Clear Recon recorded a NOTICE OF BREACH AND DEFAULT AND OF ELECTION OR CAUSE TO BE SOLD REAL PROPERTY UNDER DEED OF TRUST, by U.S. Bank (as trustee for RMAC) claiming to be beneficiary, however it is unauthorized and has a number of flaws (including that U.S. Bank as trustee for RMAC is not the beneficiary because the document that purportedly made U.S. Bank as Trustee a Beneficiary, namely the CORPORATE ASSIGNMENT OF DEED OF TRUST, Instrument No. 489658, was not signed until 10/30/2018 and was not recorded until 10/30/2018); (5) On 8/20/2018, Plaintiff received a Statement from Rushmore, which Plaintiff timely disputed; (6) All Defendants are not mortgagees whatsoever, and are otherwise making completely unsubstantiated claims to the property; (7) Plaintiff is ready and able to tender any and all valid outstanding indebtedness secured by the Property to any person to whom such debt is lawfully owed; (8) No one ever sent to Plaintiff the written statement required by NRS 107.080; the Uchi affidavit was not based on personal knowledge and otherwise does not fit the “business records exception to the hearsay rule.”; (9) Rushmore violated NRS 107.080 and 107.510 in multiple ways.

In addition: (1) The FIRST CAUSE OF ACTION for Quiet Title cause of action is different because the parties are different (except for Clear Recon) and the facts are different. (2) Most of the SECOND CAUSE

OF ACTION for Declaratory Judgment is new. (3) The THIRD CAUSE OF ACTION for RESPA is new, based on Plaintiff's 9/4/2018 QWR. (4) The FIFTH CAUSE OF ACTION for Cancellation of Instrument, against CLEAR RECON CORP, HSBC BANK USA, N.A. and HSBC MORTGAGE CORPORATION (USA), based on the 8/13/2012 Corporate Assignment and the July 1, 2015 Notice of Trustee's Sale, is new. (5) The 10/22/2018 Notice of Default, the 5/3/2017 Substitution, and other documents not yet known, were prepared and recorded without a factual or legal basis for doing so. (6) The SIXTH CAUSE OF ACTION for FDCPA, against Rushmore and U.S. Bank, based on Rushmore's 7/11/2018 debt collection letter and Plaintiff's September 4, 2018 dispute, and based on U.S. Bank's 10/22/2018 recording of the Notice of Default, is new. (7) As a consequence of the above-mentioned flaws, Clear Recon is not the Trustee and USB is not the Beneficiary. (8) Defendants CLEAR RECON CORPORATION and PHH MORTGAGE CORPORATION were not named in the First Case, and are not privies. (9) Defendants RUSHMORE LOAN MANAGEMENT SERVICES, INC. and U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS TRUSTEE FOR THE RMAC TRUST, SERIES 2016-CTT and U.S. BANK NATIONAL ASSOCIATION were not named in the Second Case, and are not privies. (10) The Corporate Assignment is dated 8/13/2012, and public notice of it was not

available as of 8/20/2012, the date of filing of the Complaint in the First Case. (11) The present case [00017] alleges tender. (12) The present case alleges violation of NRS 107.080 based on facts that occurred since the date of filing of the Complaint in the First Case. (13) The present case alleges violation of NRS 107.510 based on facts that occurred since the date of filing of the Complaint in the First Case.

II. THE DISTRICT COURT DID NOT FIND ADEQUATE FACTS FROM WHICH TO DRAW CONCLUSIONS OF LAW

The District Court did not find adequate facts from which to draw conclusions of law. There simply were no facts found in the [15] Order (App., 1b).

III. THE DISTRICT COURT IMPERMISSIBLY TOOK JUDICIAL NOTICE

The District Court impermissibly took judicial notice, not of the existence and language of the documents, but of conclusions to be drawn from reading those documents.

As a threshold matter, the EOR00035, 54-56 of which the Court took judicial notice are unauthenticated, and should have been disregarded.

The Court took judicial notice, not of the existence and language of the documents, but of conclusions to be drawn from reading those documents. Specifically, the Court took judicial notice of [EOR00035, 54-56]

(“Mortgage Electronic Registration Systems, Inc. (“MERS”) was the designated beneficiary under the Deed of Trust as nominee for HSBC Mortgage and its successors and assigns.”) The cited EOR00035 is a Statement of Facts; EOR00054-56 are the first three pages of the Deed of Trust. Similarly, the Court took judicial notice of EOR00108 (“An Assignment of Mortgage/Deed of Trust from HSBC Bank to Nationstar Mortgage, LLC (“Nationstar”) was recorded on January 19, 2017”) and EOR00115 (“On May 3, 2017, a duplicate Substitution of Trustee was recorded confirming Nationstar appointed Clear Recon as trustee under the Deed of Trust”) and EOR00119 (“On May 21, 2018, a Corporate Assignment of Deed of Trust was recorded from Nationstar to U.S. Bank National Association, not in its individual capacity but solely as Trustee for the RMAC Trust, Series 2016-CTT (‘RMAC Trust’).”) and EOR00125 (“On October 22, 2018, Clear Recon recorded another Notice of Default again noting that default has occurred in that the loan is past due for monthly installment payments from February 1, 2010.”) and EOR00127-131 (The Notice of Default contained an Affidavit of Authority executed by Rushmore Loan Management Services, LLC (“Rushmore”) as the mortgage servicer which attests that RMAC is the record beneficiary of the Deed of Trust and is entitled to enforce the underlying note) and EOR00122 (“Later on October 30, 2018, another duplicate Assignment of Deed of Trust from

Nationstar to RMAC Trust was recorded.”).

However, though the Court may take judicial notice of the existence of facts such as the existence and language of recorded documents, the Court may not assume the truth or falsity of their contents. See for example *Love v. Wolf*, 226 Cal. App. 2d 3 78, 403 (1964) (while courts can take judicial notice of public records, they do not take notice of the truth of matters stated therein.) In fact, in *Lee v. City of Los Angeles*, 250 F.3d 668, 689-90 (9th Cir. 2001), cited by Defendants, the court held holding that the district court **improperly** took judicial notice of disputed facts recited within public record documents. In *Knievel v. ESPN*, 393 F.3d 1068 (9th Cir. 2005), the issue was whether a certain photograph and caption of Evel Knievel, which included the word “pimp” and which was posted on ESPN’s website, was defamatory – not whether the contents of the documents incorporated by reference were true. (Note: *Knievel* is “an odd case for a court to cite for the proposition that it could take judicial notice when (a) the majority didn’t explicitly take judicial notice; and (b) the dissent had a pretty good argument that the majority could not have taken judicial notice.” –Asst. Prof. Colin Miller, John Marshall School of Law (Chicago).)

CONCLUSION

The petition for a writ of certiorari should be

granted.

Respectfully submitted.

Executed: 11/22/2021.

/s/ Matt P Jacobsen
Matt P Jacobsen
1311 La Loma Drive
Carson City, NV 89701
(408) 899-0833