

No. _____

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*

APPENDIX

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APPENDIX

App. 1a – The [30] Memorandum and Judgment of the United States Court of Appeals for the Ninth Circuit, Unpublished, Judgment, entered 12/16/2020.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 19-16341

D.C. No. 3:19-cv-00017-MMDWGC

MATT P. JACOBSEN,
Plaintiff-Appellant,

v.

RUSHMORE LOAN MANAGEMENT
SERVICES, LLC; et al.,
Defendants-Appellees.

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Miranda M. Du, District Judge, Presiding

Submitted December 2, 2020**

Before: WALLACE, CLIFTON, and BRESS, Circuit Judges.

Matt P. Jacobsen appeals prose from the district court's judgment dismissing his action alleging federal and state law claims challenging foreclosure proceedings on his property. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a district court's dismissal based on res judicata, Stewart v. U.S. Bancorp, 297 F.3d 953, 956 (9th Cir. 2002), and we may affirm on any ground supported by the record, United States v. Corinthian Colls., 655 F.3d 984, 992 (9th Cir. 2011). We affirm.

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. See Taylor v. Sturgell, 553 U.S. 880, 891 (2008) ("The preclusive effect of a federal-court judgment is determined by federal common law."); Stewart, 297 F.3d at 956 (federal claim preclusion "applies when there is (1) an identity of claims; (2) a final judgment on the merits; and (3) identity or privity between the parties" (citation and internal quotation marks omitted)).

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. See Ashcroft v. Iqbal, 556

U.S. 662,678 (2009) (to avoid dismissal, "a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face" (citation and internal quotation marks omitted)).

We lack jurisdiction to consider the district court's August 19, 2019 postjudgment order denying Jacobsen's motion for injunctive relief because Jacobsen failed to file an amended or separate notice of appeal of that order. See *Whitaker v. Garcetti*, 486 F.3d 572, 585 (9th Cir. 2007) (appellant generally must file a separate notice of appeal or amend a previously filed notice of appeal to secure review of a post-judgment order).

Jacobsen's motion to accept the late filed reply brief (Docket Entry No. 28) is granted. The Clerk will file the reply brief submitted on November 6, 2020.

Appellees' motion to cancel the lis pendens (Docket Entry No. 29) is denied without prejudice to renewing this motion before the district court.

AFFIRMED.

* 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).

App. 1b – The [15] opinion of the district court

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

Case No. 3:19-cv-00017-MMD-WGC

MATT P. JACOBSEN,
Plaintiff,

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,

Defendants.

ORDER

This case is the third iteration of Plaintiff's attempt to prevent foreclosure on real property located at 1311 La Loma Drive, Carson City, Nevada 89701 ("Property"). 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. (Compare 3:12-cv-00486-MMD-WGC (ECF No.1-1 at 3-19) ("First Case") & 3:15-cv-00504-MMD (ECF No. 2 at 1-16) ("Second Case") with 3:19-cv-00017-MMD-

WGC (ECF No. 1-1 at 11-36.)¹ In Plaintiff's First Case, the Court dismissed all of Plaintiff's claims with prejudice, except his claim of violations of the Real Estate Settlement Procedures Act (RESPA)- which was dismissed without prejudice. (First Case (ECF Nos. 27, 36).) In the Second Case, the Court dismissed all claims with prejudice and/or without leave to amend and entered judgment in favor of Defendants. (Second Case (ECF No. 71).) Together the first two actions covered all claims Plaintiff asserts here.

¹The Court takes judicial notice of the cases of record. See Disabled Rights Action Comm. v. Las Vegas Events, Inc., 375 F.3d 861, 866 n.1 (9th Cir. 2004) (the court may take judicial notice of the records of state agencies and other undisputed matters of public record under Fed. R. Evid. 201).

Defendants have moved to dismiss this case, arguing, *inter alia*, that Plaintiff is precluded from bringing this action. (ECF No. 3.) The Court agrees. See, e.g., Pulley v. Preferred Risk Mut. Ins. Co., 897 P.2d 1101, 1102 (Nev. 1995) (citation omitted) ("[T]he doctrine of res judicata precludes parties or those in privity with them from relitigating a cause of action or an issue which has been finally determined by a court of competent jurisdiction ."); see also Univ. of Nev. v. Tarkanian, 897 P.2d 1180, 1192 (Nev. 1994) (noting that res judicata bars "all grounds of recovery

. . . that could have been asserted" in the prior action). Plaintiff cannot bring a new action asserting the same claims to prevent foreclosure on the Property each time a new default notice or notice of sale is filed by merely rephrasing his allegations against Defendants or those in privity.

It is therefore ordered that Defendants' motion to dismiss (ECF No. 3) is granted.

It is further ordered that Plaintiff's case is dismissed with prejudice.

It is further ordered that the Clerk of Court enter judgment accordingly and close this case.

DATED THIS 10th day of June 2019.

MIRANDA M. DU
UNITED STATES DISTRICT JUDGE

App. 1c – A timely petition for panel rehearing was [33] denied on 04/06/2021.

**FILED APR 6 2021
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

No. 19-16341
D.C. No. 3:19-cv-00017-MMD-WGC
District of Nevada, Reno

MATT P. JACOBSEN,
Plaintiff-Appellant,

v.

RUSHMORE LOAN MANAGEMENT SERVICES,
LLC; et al.,
Defendants-Appellees.

ORDER

Before: WALLACE, CLIFTON, and BRESS, Circuit
Judges.

Jacobsen's petition for panel rehearing (Docket
Entry No. 32) is denied.

No further filings will be entertained in this closed case.

App. 1b – The [20] order of the district court denying
Preliminary Injunction.

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

Case No. 3:19-cv-00017-MMD-WGC

MATT P. JACOBSEN,
Plaintiff,

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,

Defendants.

ORDER

This case is the third iteration of Plaintiff's attempt to prevent foreclosure on real property located at 1311 La Loma Drive, Carson City, Nevada 89701 ("Property"). The Court dismissed this action with prejudice, noting that "Plaintiff cannot bring a new action asserting the same claims to prevent foreclosure on the Property each time a new default notice or notice of sale is filed by merely rephrasing his allegations against Defendants or those in

privity.” (ECF No. 15.) Plaintiff has appealed. (ECF No. 17.) Before the Court is Plaintiff’s emergency motion for injunction pending appeal (“Motion”) (ECF No. 19).

Plaintiff asks the Court to stop Defendants from conducting a nonjudicial foreclosure sale of the Property scheduled for August 22, 2019. (Id. at 3.)

Ordinarily, the filing of a notice of appeal divests a district court of jurisdiction over the matters being appealed. Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982) (per curiam). Federal Rule of Civil Procedure 62(c) codifies an exception to this basic principle: it allows a district court to “suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party’s rights” while an appeal is pending. Fed. R. Civ. P. 62; Nat. Res. Def. Council, Inc. v. Sw. Marine, Inc., 242 F.3d 1163, 1166 (9th Cir. 2001) (recognizing that a district court “retains jurisdiction during the pendency of an appeal to act to preserve the status quo”). “Rule 62(c) does not restore jurisdiction to the district court to adjudicate anew the merits of the case,” and the “district court’s exercise of jurisdiction should not materially alter the status of the case on appeal.” Mayweathers v. Newland, 258 F.3d 930, 935 (9th Cir. 2001). District courts consider four factors in ruling on Rule 62(c) motions: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably

injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” Hilton v. Braunschweig, 481 U.S. 770, 776 (1987).

After considering these factors, the Court must deny Plaintiff’s Motion. The Court already made a finding that Plaintiff’s claims lack merit in dismissing this action such that Plaintiff cannot make a showing that he is likely to succeed on the merits. (ECF No. 15.)

Under the circumstances here, consideration of the public interests and the injuries to Defendants also counsel against granting a stay of the effect of this Court’s dismissal of this action and preventing Defendants from proceeding with nonjudicial foreclosure. The Court again reiterates that Plaintiff cannot continue to challenge the foreclosure sale by seeking judicial intervention on claims that have been dismissed.

For the foregoing reasons, Plaintiff’s emergency motion for injunction (ECF No. 19) is denied.

DATED THIS 19th day of August 2019.

MIRANDA M. DU

UNITED STATES DISTRICT JUDGE