The Order of the Court is stated below:
Dated: November 23, 2018

/s/Thomas R. Lee [SEAL]
Associate Chief Judge

IN THE SUPREME COURT OF THE

STATE OF UTAH

Deron Brunson, Petitioner, v. Honorable L. Douglas Hogan; and Bayview Loan Serving , LLC. Respondents.	ORDER Supreme Court No. 20180790-CA Court Of Appeals No. 20180699-CA Trial Court No. 170904200

This matter is before the Court upon a Petition for Writ of Certiorari, Filed on October 3, 2018.

IT IS HEREBY ORDERED that the Petition for Writ of Certiorari is denied.

End Of Order – Signature at the top of first page.

IN THE UTAH COURT OF APPEALS

DERON BRUNSON, Petitioner, *v.* HONORABLE L. DOUGLAS HOGAN; AND BAYVIEW LOAN SERVICING, LLC, Respodents.	)	ORDER DENYING PRO SE REQUEST FOR REVIEW OF DERON BRUNSON'S PETITION FOR EXTRAORDINARY RELIEF Case No. 20180688-CA

This matter is before the court on Deron Brunson's pro se "Request for Review of The Disposition of Deron Brunson's Petition for Extraordinary Relief," filed on September 19, 2018.

This court construes the pro se filing as a petition for rehearing of this court's order denying Brunson's prose petition for extraordinary writ. Pursuant to rule 35(a) of lhe Utah Rules of Appellate Procedure the reconsideration of the court's denial of a petition for extraordinary writ will not be considered by an appellate court. *See* Utah R. App. P. 35(a). This court also notes that the September 13, 2018 order denying the prose petition for extraordinary writ indicated that the petition had been reviewed and considered by a panel of three Judges. Specifically, the matter was heard

"Before Judges Orme, Christiansen Forster, and Toomey." The order expressing all three Judges' consideration and decision regarding the merits of the petition was issued by the panel chairperson.

IT IS HEREBY ORDERED that the request for review of the disposition of Deron Brunson's petition for extraordinary relief is denied. IT IS FURTHER ORDERED that this matter is closed and no further filings in this case shall be acted upon by this court.

DATED this 20 day of September, 2018

FOR THE COURT:

/s/ Michele M. Christiansen Foster
Michele M. Christiansen Foster, Judge

IN THE UTAH COURT OF APPEALS

DERON BRUNSON, Petitioner, *v.* HONORABLE L. DOUGLAS HOGAN; AND BAYVIEW LOAN SERVICING, LLC, Respodents.	)	ORDER DENYING PETITION FOR EXTRAORDINARY RELIEF Case No. 20180688-CA

Before Judges Orme, Christiansen Forster, and Toomey.

This matter is before the court on Deron Brunson's pro se petition for extraordinary relief.

IT IS HEREBY ORDERED that the petition for extraordinary relief is denied.

DATED this 13 day of September, 2018.

FOR THE COURT:

/s/ Michele M. Christiansen Foster
Michele M. Christiansen Foster, Judge

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY, WEST JORDAN DEPARTMENT, STATE OF UTAH

DERON BRUNSON, **Plaintiff,** **v.** **BAYVIEW LOAN SERVCING , LLC and JANE AND JOHN DOES 1-10,** **Defendants.**	**RULING** **Case No. 170904200** **Judge Douglas Hogan**

Pending before the court is Defendant Bayview Loan Servicing, LLC's Motion for Summary Judgment, filed August 16, 2017. Plaintiff Deron Brunson filed an opposition memorandum on September 5, 2017. Defendant filed a reply on September 15, 2017 and submitted the motion for decision on September 22, 2017.

Also pending before the court is Plaintiffs Motion and Memorandum for Interpretation of Parties *[sic]* Rights, filed July 31, 2017. Defendant filed an opposition memorandum on August 16, 2017. Plaintiff filed a reply on August 28, 2017 and submitted the motion for decision on September 21, 2017.

Finally, Plaintiff's Motion for Leave to File Amended Complaint, filed September 4, 2017, is now before the court. Defendant filed an opposition memorandum on September 22, 2017. Plaintiff filed a reply on October 2, 2017 and submitted the motion for decision on October 4, 2017.

The court reviewed the moving and opposition papers, and now rules on the motions as follows.

BACKGROUND

This case flows from a non-judicial foreclosure executed on Plaintiffs former property. This is the fourth lawsuit Plaintiff has filed in this court challenging that foreclosure after he defaulted on his home mortgage loan. In the prior three lawsuits, Plaintiff challenged the validity of the loan and argued the loan servicers and beneficiaries under the deed of trust lacked authority to foreclose. While the arguments have varied slightly from case to case, each essentially rested on the theory that the loan was rescinded, securitization broke the chain of title, and the entity attempting to foreclose could not prove its authority. He raises the same issues now.

The first lawsuit[2] was dismissed for failure to state a claim. That dismissal was affirmed by the Utah Court of Appeals, and the Utah Supreme

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[2] *Brunson v. Recontrust Co., N.A., et al.*, Case no. 090909512.

Court denied certiorari. The second[3] suit was dismissed with prejudice based on res judicata and affirmed by the Utah Court of Appeals. The third[4] was also dismissed with prejudice on res judicata grounds. Defendant argues both branches of res judicata, claim preclusion and issue preclusion, bar the present case. Plaintiff disagrees and requests permission to amend his complaint.

DISCUSSION

I. Summary Judgment Standard.

> A summary judgment movant, on an issue where the nonmoving party will bear the burden of proof at trial, may satisfy its burden on summary judgment by showing, by reference to "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," that there is no genuine issue of material fact.

Evans v. Huber, 2016 UT App 17, 10,366 P.3d 862 (quoting *Orvis v. Johnson,* 2008 UT 2, 18, 177 P.3d 600). "Upon such a showing, whether or not supported by additional affirmative factual evidence, the burden then shifts to the nonmoving party, who 'may not rest upon the mere allegations or denials of the pleadings,' but 'must set forth specific facts showing that there is a genuine issue for trial.'" *Id.*

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[3] *Brunson v. Bank of New York Mellon, et al.,* Case no. 100913085

[4] *Brunson v. American Home MortgageServiving, et al.,* Case no. I10915040

(quoting Utah R. Civ. P. 56(e)(2008)). On a motion for summary judgment, the court views the facts and reasonable inferences there from in the light most favorable to the nonmoving party. *Morra v. Grand County,* 2010 UT 21, 12, 230 P.3d 1022. In this case, Plaintiff bears the burden of proof on his claims, which Defendant asserts are barred by res judicata.

II. Res Judicata

Defendant argues that is entitled to summary judgment by operation of the doctrine of res judicata as applied to the facts of this case. It also argues that res judicata would bar any new claim now raised by Plaintiff. Res judicata refers to "the overall doctrine of the preclusive effects to be given to judgments". *Moss v. Parr Waddoups Brown Gee & Loveless,* 2012 UT 42, 20,285 P.3d 1157 (citation and internal quotation marks omitted). There are two branches of res judicata: claim preclusion and issue preclusion. *Id.* Defendant argues that both apply in this case. "Claim preclusion corresponds to causes of action; issue preclusion corresponds to the facts and issues underlying causes of action." *Id.* (citation and internal quotation marks omitted). Claim preclusion applies when three elements are satisfied:

(l) both suits must involve the same parties or their privies,
(2) the claim that is alleged to be barred must have been presented in the first suit or be one that could and should have been raised in the first action, and
(3) the first suit must have resulted in a final judgment on the merits.

Id. ¶21. Issue preclusion applies when four similar elements are satisfied:

> (1) the party against whom issue preclusion is asserted was a party to or in privity with a party to the prior adjudication;
> (2) the issue decided in the prior adjudication was identical to the one presented in the instant action;
> (3) the issue in the first action was completely, fully, and fairly litigated; and
> (4) the first suit resulted in a final judgment on the merits.

Id. ¶23

Plaintiff financed the ownership of real property located at 14772 South Golden Leaf Ct., Draper, Utah 84020 by a loan in the amount of $1,000,000, evidenced by a promissory note dated August 8, 2005 and secured by a deed of trust, recorded September 23, 2005. In 2009, ReconTrust Co., N.A. became trustee. In 2009, Plaintiff filed suit pro se against ReconTrust Co, N.A., evidently in an effort to prevent a non-judicial foreclosure following Plaintiffs default. The record from that case indicates that Plaintiff asserted causes of action for breach of contract, "mistake," and wrongful foreclosure of a trust deed. ReconTrust filed a motion to dismiss for failure to state a claim. At a hearing on September 8, 2009, Judge Paul Kennedy granted that motion on the grounds that the facts asserted by Plaintiff simply could not support his claims. The transcript of that hearing, found in the case docket, reveals that

Plaintiff claimed he did not receive a copy of the promissory note and did not understand the documents he signed in connection with the loan. He asserted he decided the loan documents were void and stopped paying on the loan when he discovered he did not have a copy of the promissory note and was not provided one by ReconTrust upon written request[5]. He complained that the loan had "been sold a lot of times" and that he had not shared in any profit on those sales. Plaintiff, who has evidently represented himself through all four cases related to this foreclosure, has a ninth-grade education.[6] His first complaint was rife with all sorts of shortcomings, as ReconTrust and the court noted at oral argument. Nevertheless, as the transcript makes clear, ReconTrust cancelled immediate plans for foreclosure in response to Plaintiff's first complaint, pending the outcome of the motion to dismiss. Thus, Plaintiff did manage to briefly delay foreclosure proceedings by filing a lawsuit, even though it was eventually dismissed with prejudice. Plaintiff appealed the dismissal to the Utah Court of Appeals, which affirmed Judge

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[5] Recontrust provided a copy of the promissory note to Plaintiff at oral argument. The letter referenced by Plaintiff, which is not available to this court, was reviewed and discussed. Recontrust argued the letter made no coherent request for any documentation. Recontrust also pointed out that a copy of the promissory note had been attached to its motion to dismiss.

[6] The court noted Plaintiffs lack of education , and suggested he hire a lawyer. Plaintiff responded that he refused to do so as "a matter of principle" and stated that he hoped to "figure out how to defend [his] rights" because attorneys "lie" and "violate their oath of office."

Kennedy's ruling on December 17, 2009[7]. The Utah Supreme Court denied certiorari on April 28, 2010.

On July 20, 2010, Plaintiff again filed suit, this time against Bank of New York Mellon, the beneficiary of the trust deed. He again complained of wrongful foreclosure and argued the trust deed was void. He also resuscitated his arguments regarding the securitization and repeated sales of the loan, and again complained that he had not shared in the profits. He requested identical damages to the amount requested in the suit against Recontrust. Plaintiff requested an expedited hearing on his request for temporary restraining orders to prevent foreclosure. Bank of New York Mellon rightly asserted that Plaintiffs claims were barred by res judicata because Plaintiff had already made identical claims against Recontrust and lost. On August 13, 2010, Judge Paul Maughan denied the TRO request, dismissed the case with prejudice on its merits, and specifically ordered that Plaintiff not re-file the case. He did so one the grounds that 1) suit was barred by both claim preclusion and issue preclusion and 2) suit was frivolous, without merit, and not brought in good faith pursuant to Utah Code Ann. § 78B-5-825. Plaintiff appealed. Judge Maughan's order was affirmed by the Utah Court of Appeals on August 9, 2012[8]. It specifically held that both claim preclusion and issue preclusion barred Plaintiff's claims.

On June 22, 2011, Plaintff file yet another suit, this time against American Home Mortgage

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[7] *Brunson v. ReconTrust Co., N A.*, et al., 2009 UT App 381

[8] *Brunson* v. *Bank of New York Mellon,* et al, 2012 UT App 222

Servicing [9]. He alleged the same claims already heard and rejected twice before. He again requested a temporary restraining order to prevent foreclosure. At the hearing on that request, Plaintiff refused to answer the court's direct questions regarding whether he was current on his loan obligations. Instead, he would only state that he believed he had paid was he was required to pay. As a result, Judge Sandra N. Peuler denied Plaintiff's request on July 12, 2011. Defendants filed motions to dismiss. Judge Peuler granted those motions, again on res judicata grounds, and dismissed Plaintiff's third suit with prejudice.

Plaintiff filed the present case against Bayview, which has power of attorney to effectuate foreclosure of the mortgage loan for the Bank of New York Mellon, on June 30, 2017[10]. He again complains of the same transactions and occurrences addressed by the previous three cases. His claims are, again, difficult to make out, likely because he is, again, unrepresented. Suffice it to say that his arguments are securitization-based, as his other suits have been. Defendant argues the present suit is barred by res judicata.

Defendant is correct. Claim preclusion applies here because this action involves the same parties, or their privies, as the first action. Plaintiff is the same party. Defendant is in privity with defendants from

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[9] *Brunson v. American home Mortgage Servicing,* et al., Case no. 110915040

[10] Foreclosure finally took place on July 27, 2017 after this court denied yet another of Plaintiff's motions for temporary restraining orders.

prior cases. Indeed, it acts on behalf of Bank of New York Mellon, an entity that has already prevailed against Plaintiff. Plaintiffs claims, however presented, were brought or could have been brought in prior actions. And those actions resulted in judgment on their merits.

Issue preclusion also applies. Plaintiff was a party to the previous suits, which presented issues identical to those addressed here. Those issues were completely, fully, and fairly litigated. Finally, previous cases have resulted in final judgments on their merits. No genuine dispute of material fact regarding the res judicata effect of prior rulings exists, and Defendant is entitled to judgment as a matter of law.

III. Plaintiff's Motions

Plaintiff has requested the opportunity to amend his complaint. "Although leave to amend is 'freely given when justice so requires,' Utah R. Civ. P. 15(a), justice does not require that leave be given 'if doing so would be futile.'" *Jensen v. IHC Hasps., Inc.*, 2003 UT 51, 139, 82 P.3d 1076, 1102 (quoting *Benton v. Adams,* 56 P.3d 81, 86 (Colo.2002). Justice does not so require here. Plaintiff's long and complicated series of litigation has never featured a single legally cognizable claim. His redundant claims have been rejected by no fewer than three trial courts and two appellate courts. Any claim he could have raised in prior cases is now precluded by res judicata. Plaintiff has already had many opportunities to make any sort of a case from the transactions and occurrences detailed here. At this

point, any further amendment would be futile. In any case, Plaintiffs motion to amend is mooted by this court's ruling on Defendant's motion for summary judgment.

Finally, Plaintiff has presented a "Motion for Interpretation of Parties *[sic]* Rights." This is not a cognizable motion. As no justiciable controversy remains between the parties, Plaintiffs motion most closely resembles a request for an advisory opinion. This court lacks jurisdiction to render such a ruling. *See Black v. Alpha Fin. Corp.*, 656 P.2d 409 (Utah 1982); *Baird v. State*, 574 P.2d 713 (Utah 1978).

CONCLUSION

Based on the foregoing, Defendant's Motion for Summary Judgment is GRANTED. Plaintiffs Motion to Amend is MOOT. Plaintiffs Motion for Interpretation of Parties *[sic]* Rights is MOOT. Defendant is also awarded its costs and fees for defending this meritless action. Defendant shall submit an affidavit detailing its fees and costs as well as a Judgment for the Courts review and signature.

DATED this 25th day of October, 2017.

DISTRICT COURT JUDGE
[SEAL]
/s/ Douglas Hogan
Judge Douglas Hogan

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