UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 12-10394-GW(MANx)	Date	February 7, 2013
Title	*Douglas Gillies v. JP Morgan Chase Bank, N.A., et al.*		

Present: The Honorable	GEORGE H. WU, UNITED STATES DISTRICT JUDGE	
Javier Gonzalez	Wil Wilcox	
Deputy Clerk	Court Reporter / Recorder	Tape No.

Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Douglas Gillies, *pro se*	Bradley James Dugan

PROCEEDINGS: **DEFENDANT'S MOTION TO DISMISS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(B)(6) (filed 12/26/12)**

Court hears oral argument. The Tentative circulated and attached hereto, is adopted as the Court's final ruling. Defendants' motion is **GRANTED WITHOUT LEAVE TO AMEND** and this matter is dismissed with prejudice. Counsel for Defendants will file a proposed order forthwith.

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Initials of Preparer JG

Gillies v. J.P. Morgan Chase, Case No. CV-12-10394-GW(MANx)
Tentative Ruling on Defendant's Motion to Dismiss

I. Background

Douglas Gillies ("Plaintiff"), proceeding *pro per*, filed suit in this Court on December 5, 2012, against J.P. Morgan Chase Bank, N.A. ("Defendant" or "Chase"), alleging three causes of action: (1) wrongful foreclosure, (2) quiet title, and (3) declaratory and injunctive relief. *See generally* Compl., Docket No. 1. The Complaint alleges that Chase erroneously foreclosed on Plaintiff's home, located at 3756 Torino Drive, Santa Barbara, California (the "Property"). *Id.* ¶ 1. Plaintiff previously filed suit against Chase in state court asserting identical and similar claims, and Chase now moves to dismiss the claims pled in Plaintiff's Complaint as barred by the doctrine of *res judicata*. Docket No. 6.

II. Legal Standard

Plaintiffs in federal court are required to give only "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Under Rule 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A complaint may be dismissed for failure to state a claim upon which relief can be granted for one of two reasons: (1) lack of a cognizable legal theory or (2) insufficient facts under a cognizable legal theory. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007); *see also Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008) ("Dismissal under Rule 12(b)(6) is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory."). A motion to dismiss should be granted if the complaint does not proffer enough facts to state a claim for relief that is plausible on its face. *See Twombly*, 550 U.S. at 558-59; *see also William O. Gilley Enters., Inc. v. Atl. Richfield Co.*, 588 F.3d 659, 667 (9th Cir. 2009) (confirming that *Twombly* pleading requirements "apply in all civil cases"). "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged - but it has not 'show[n]' - 'that the pleader is entitled to relief.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (quoting Fed. R. Civ. P. 8(a)(2)).

In deciding a 12(b)(6) motion, the Court is limited to the allegations on the face of the complaint (including documents attached thereto), matters which are properly judicially noticeable and other extrinsic documents when "the plaintiff's claim depends on the contents of a document, the defendant attaches the document to its motion to dismiss, and the parties do not dispute the authenticity of the document, even though the plaintiff does not explicitly allege the contents of that document in the complaint." *Knievel v. ESPN*, 393 F.3d 1068, 1076 (9th Cir. 2005). The court must construe the complaint in the light most favorable to the plaintiff and must accept all factual allegations as true. *Cahill v. Liberty Mutual Ins. Co.*, 80 F.3d 336, 337-38 (9th Cir. 1996). The court must also accept as true all reasonable inferences to be drawn from the material allegations in the complaint. *See Barker v. Riverside Cnty. Office of Ed.*, 584 F.3d 821, 824 (9th Cir. 2009); *Pareto v. F.D.I.C.*, 139 F.3d 696, 699 (9th Cir. 1998). Conclusory

statements, unlike proper factual allegations, are not entitled to a presumption of truth. *See Iqbal*, 556 U.S. at 681; *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009).

III. Analysis

A. The Court Would GRANT Defendant's Request for Judicial Notice.

Defendant has requested that the Court take judicial notice of two complaints filed by Plaintiff in the Superior Court of California. *See* Docket No. 13, Def.'s Req. for Judicial Notice ("RJN"), Docket No. 7, Exs. A, D. Defendant also requests that the Court take judicial notice of two decisions from the California Court of Appeal, issued in 2011 and 2012, affirming the general demurrer sustained by the state trial court in each of these cases. *See* RJN, Exs. C, E. "To determine whether to grant a motion to dismiss for claim preclusion purposes, judicial notice may be taken of a prior judgment and other court records." *Harper v. City of Monterey*, No. 11–cv–02903–LHK, 2012 U.S. Dist. LEXIS 7712, at *12 (N.D. Cal. Jan. 23, 2012) (citing *Holder v. Holder*, 305 F.3d 854, 866 (9th Cir. 2002)). Thus, the Court would GRANT Defendant's request for judicial notice and consider the documents when appropriate and necessary.[1]

B. The Court Would GRANT, Defendant's Motion to Dismiss the Complaint.

1. Plaintiff Previously Filed Two Related Actions in State Court.

Before initiating the case at bar, Plaintiff previously filed two lawsuits in state court. Plaintiff filed the first action against Chase in 2009, and in his first amended complaint in that case pled three causes of action: (1) declaratory relief, (2) injunction to prevent foreclosure sale, and (3) quiet title. RJN, Exs. A, B. The second action was filed against California Reconveyance Company, not a party to the instant matter, and raised similar claims arising out of the same foreclosure and mortgage related allegations that had been pled in the first suit Plaintiff filed against Chase. RJN, Ex. D. In both cases, the state court sustained with prejudice a general demurrer filed by the defendant, without leave to amend; and judgments were thus issued dismissing each of the state court cases. *See* RJN, Exs. C & E. Plaintiff then appealed both of these rulings, and the California Court of Appeal affirmed both. *Id.* Importantly, the Court of Appeal in the second suit affirmed the trial court's rationale in dismissing the case, namely that it was "barred by the doctrine of res judicata." RJN, Ex. E at 1.

Defendant Chase now argues that the case at bar, Plaintiff's third foreclosure-related lawsuit concerning the Property, also should be dismissed by virtue of the application of *res judicata* principles.

2. *Res Judicata*

"The preclusive effect of a state court judgment in federal court is based on state preclusion law." *Howard v. Am. Online, Inc.*, 208 F.3d 741, 748 (9th Cir. 2000). In order for a claim to be precluded under California law, "three requirements have to be met: (1) the second lawsuit must involve the same 'cause of action' as the first one, (2) there must have been a final judgment on the merits in the first lawsuit and (3) the party to be precluded must itself have been

[1]Plaintiff has not opposed the request for judicial notice.

a party, or in privity with a party, to that first lawsuit." *San Diego Police Officers' Ass'n v. San Diego City Emp. Ret. Sys.*, 568 F.3d 725, 734 (9th Cir. 2009).

While the second and third elements of this test are conceptually straight-forward, the first requirement is more complex. Under California law,

> a cause of action is comprised of a primary right of the plaintiff, a corresponding primary duty of the defendant, and a wrongful act by the defendant constituting a breach of that duty. The most salient characteristic of a primary right is that it is indivisible: the violation of a primary right gives rise to but a single cause of action . . . As far as its content is concerned, the primary right is simply the plaintiff's right to be free from the particular injury suffered.

Mycogen Corp. v. Monsanto Co., 28 Cal. 4th 888, 904 (2002) (citations and quotations omitted). "If the 'primary right' sought to be vindicated in a subsequent litigation is the same as that in an earlier suit, the second action will be claim precluded under California law." *Maldonado v. Harris,* 370 F.3d 945, 952 (9th Cir. 2004). Here, the harm alleged to have been suffered in the state actions is the same as that alleged here, namely the loss of Plaintiff's home due to foreclosure, and related economic injuries. *See Boecken v. Phillip Morris USA, Inc.*, 48 Cal. 4th 788, 805-06 (2010) (discussing how a cause of action is defined by the harm alleged).

Plaintiff's opposition fails to rebut the argument that the instant matter involves the same cause of action as his state lawsuits. He first argues that this case should be able to move forward because the decisions rendered against him by the California Court of Appeal were in error. Obviously, this suit is not the suitable forum for those arguments, and Defendant properly discusses why the *Rooker-Feldman* doctrine (a doctrine subtly distinct from *res judicata*) bars his claims to the extent they are brought on this basis.[2] Docket No. 13 at 2-4. Second, Plaintiff argues that he alleges "new and additional facts" in the case at bar as compared with the state court actions, as he argues the state court actions involved allegations that Defendants spelled his name wrong on some documents related to their purchase of the Property at foreclosure, whereas this case supposedly raises "a more central issue" related to the foreclosure involving the recording of various documents. Docket No. 12 at 6-7. However, Defendant notes that the state court decisions amply address all of the purportedly new claims, facts and theories Plaintiff contends are raised for the first time here. *See* Docket No. 13 at 5-6; RJN, Ex. E. More importantly, even were Plaintiff to be correct that the case at bar raises new arguments and facts to support his claims that Defendant wrongfully foreclosed on the Property and to quiet title thereof, "a judgment for the defendant is a bar to a subsequent action by the plaintiff based on the same injury to the same right, even though [the plaintiff] presents a different legal ground for relief." *Johnson v. Am. Airlines, Inc.*, 157 Cal. App. 3d 427, 432 (1984). All in all, it is beyond question that the instant matter involves the same causes of action as the state court actions (the second of

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[2] "The *Rooker-Feldman* doctrine . . . is confined 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 Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005).

which, to reiterate, the state court found to be barred by *res judicata*). Thus, the first element of the *res judicata* test is met here.

The second and third elements of the test for claim preclusion are easily met as well. As to the second element, when a California court sustains a demurrer, that ruling constitutes a final judgment on the merits that has "the effect of a bar in a new action in which the complaint states the same facts which were held not to constitute a cause of action on the former demurrer." *Pollock v. Univ. of S. Cal.*, 112 Cal. App. 4th 1416, 1428 (quoting *McKinney v. Cnty. of Santa Clara,* 110 Cal. App. 3d 787, 794 (1980)) (internal quotations omitted).[3] As for the third element, the parties were the same, as Plaintiff brings suit here against the same Defendant he previously sued in state court. *See* RJN, Exs. A-C. In sum, the second and third requirements for preclusion to adhere are clearly met.

To summarize, the two state complaints and the Complaint filed here allege virtually identical facts, all centering around Defendant's alleged wrongful conduct in foreclosing on Plaintiff's home. It is without doubt that, simply by considering the face of the Complaint and the allegations found in the state court complaints that the federal lawsuit concerns the same "primary rights" as the two state actions, given that the same rights on the part of the Plaintiff, duties on the parts of the relevant defendants, and wrongful acts on the part of the defendants are alleged in all three complaints. Therefore, the state court proceedings involved the same cause of action as the instant suit, and the final judgment in the state court cases sustaining the general demurrers without leave to amend has preclusive effect on the instant matter.

In sum, the Court would GRANT Defendants' motion to dismiss Plaintiffs' Complaint WITHOUT LEAVE TO AMEND, as all three claims are barred as a matter of law by the preclusive effect of the two actions Plaintiff filed in state court prior to filing the instant lawsuit. If Plaintiff appears at oral argument and articulates how he would amend the Complaint in a manner that would not be futile, the Court might consider granting Plaintiff leave to amend, but it is likely not warranted.

IV. Conclusion

The Court would GRANT WITH PREJUDICE Defendant's motion to dismiss the Complaint in its entirety.[4]

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[3]Plaintiff argues that the demurrers issued by the state court here are not a final judgments on the merits, Docket No. 12 at 9, but this argument fails for the reasons set forth in Defendant's reply brief, Docket No. 13 at 9-10.

[4]Given the Court's finding that all of Plaintiff's claims are barred by *res judicata*, the Court does not reach Defendant's alternative arguments that the Complaint fails to state a claim on a substantive level, *see* Docket No. 6 at 10-17, nor Plaintiff's opposition thereto, Docket No. 12 at 10-18, wherein he raises constitutional objections to the foreclosure and also invokes 42 U.S.C. § 1983, although (as noted by Defendant in reply briefing) the case does not involve any state actors.