CASE NO.: 82379

IN THE SUPREME COURT OF THE STATE OF NEVADA

FOR THE NINTH CIRCUIT

LEO KRAMER and AUDREY KRAMER, PRO SE

Plaintiffs-Appellants
v.
National Default Servicing Corporation; et al.,

Defendants-Appellees

ON APPEAL FROM THE JUDGMENT OF THE
THIRD JUDICIAL DISTRICT COURT OF LYON COUNTY

HON. John P. Schlegelmilch, Judge Presiding

Case No. 18-CV-00663

APPELLANTS' OPPOSITION TO RESPONDENT BRECKENRIDGE PROPERTY FUND 2016, LLC'S MOTION TO STRIKE REQUESTS TO TAKE JUDICIAL NOTICE IN SUPPORT OF APPELLANTS' OPENING & REPLY BRIEF

November 17, 2021

Leo Kramer and Audrey Kramer
Plaintiffs-Appellants, in Pro se
2364 Redwood Road
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21-33258

TO ALL JUSTICES OF THE SUPREME COURT OF THE STATE OF NEVADA, AND TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Appellants, Leo Kramer and Audrey Kramer, ("Appellants") file this their Opposition to Respondent, Breckenridge Property Fund 2016, LLC's (" Breckenridge") Motion to Strike Appellants' Requests to take Judicial Notice in Support of Appellants' Opening and Reply Brief, and in support thereof, Appellants show onto the court as follows:

I. Background

The **Summary of Schedules"** submitted on 4/22/2010, in Chapter 11 bankruptcy, **Case 10-43951** in the United States Bankruptcy Court Northern District of California formed the basis of the Notice of Default and Appellants' claims for wrongful foreclosure in the court below, which was fully adjudicated and closed on June 16, 2011. However, and ironically Chase Bank did not file a proof of claim in this bankruptcy. Perhaps because Chase knew they did not have standing to do so!

On page six (6) of Breckenridge's Answering Brief, it argued that:

> Chase filed a proof of claim regarding the Loan in both Case No. 14-42866 and Case No. 11-49493, before the latter's dismissal. To the proof of claims Chase attached a copy of the WaMu Mortgage Plus Agreement and Disclosure relating to the Loan and the DOT. In Case No. 14-42866, Leo Kramer proposed a Chapter 13 plan wherein Chase was recognized as a Class 3

> creditor, and Leo Kramer was to surrender his interest in the Collateral Property upon plan confirmation. Leo Kramer received discharges in both Case No. 10-43951 and Case No. 14-42866, on June 16, 2011, and January 9, 2017, respectively. At no point in the bankruptcy proceedings did Leo Kramer assert claims against Chase or WaMu.1 Nor did Kramer seek to have the lien evidenced in the DOT stripped from the Property to render the Loan "unsecured." ROA 173-174.

Surprisingly, Breckenridge now wants this Court to Strike Appellants' Request for Judicial Notice of the same proof of claim because it demonstrates that Appellant Leo Kramer did not acknowledge that he was indebted to Washington Mutual Bank or to JPMorgan Chase Bank in the amount alleged by Breckenridge and National Default Corporation which formed the basis for Notice of Default which was mailed to Appellants via certified mail as required by Nevada Law. In fact, the amount acknowledged in the Proof of Claim was "**Amount of Claim**: Unknown." Appellants did not utilize the entire $176,000.00 Revolving Line of Credit because Washington Mutual Bank became a defunct Banking Institution thus, breached the Revolving Line of Credit Agreement. Appellants were unable to utilize substantial part of the line of credit because of the Breach by Washington Mutual Bank.

By its argument in the Respondent's Brief and in its recent Motion to Strike, it's obvious and unequivocally that Breckenridge, National Default Corporation, and JPMorgan Chase Bank are tied at the hip and Breckenridge could and cannot be a bonafide encumbrancer of Appellants' real property. Additionally, Breckenridge's

argument that: "Breckenridge will be substantially prejudiced if this Court does not strike the requests to take judicial notice." **(p.2., ¶ 3 Mtn to Strike.) is unmeritorious since** Breckenridge made reference to same Proof of claim.

Accordingly, Request For Judicial Notice of **Certified Copy** of Plaintiff/Appellant, Leo Kramer's **"Summary Of Schedules"** submitted on 4/22/2010, in Chapter 11 bankruptcy, **Case 10-43951** in the United States Bankruptcy Court Northern District of California is proper because the matter pertaining to the Proof of claim is part of the record of the court below and the Proof of Claim is not subject to reasonable dispute and it is generally known or can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

Additionally, Judicial Notice of the Private Investigator (PSID # 4941), William J. Paatalo's Curriculum Vitae (CV) and Supplemental Declaration detailing attached exhibit-titled "**FINAL REPORT OF THE EXAMINER**" and "**Final Report of The Examiner** are proper because the matters contained therein, further illuminate the fact that National Default Corporation lack standing to conduct the unlawful foreclosure of Appellants' real property, the subject of this Appeal.

In its motion to Strike Appellant's Request for Judicia Notice, Respondent Breckenridge Property Fund 2016, LLC (Breckenridge) contends that:

> Appellants rely on NRS 47.130, which permits judicial notice of facts under certain circumstances. However, Appellants provide no direction to this Court

in their requests for judicial notice establishing that the district court considered the notice. See NRAP 10 (confining review to the record). **(pp.1-2., ¶3 Mtn to Strike.).**

Appellants contends that there is no language in the NRAP 10 which Respondent Breckenridge Property Fund 2016, LLC (Breckenridge) rely upon that confines review only on the record of the trial court, as courts have often taken judicial notice on matters not subject to reasonable dispute and matters that is generally known or can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

Notwithstanding, Appellants, on the contrary state very specific circumstances as to the exact reason and location of each document the Hon. Justices should take notice. Such as: Page 68, Paragraph 2 of the "Final Report of The Examiner", authored by court-appointed, Joshua R. Hochberg. The language is clear and concise and proves beyond any doubt that "**ALL** of WMB's mortgage backed securities were transferred, via blanket-lien, by the OTS to FHLB-SF, as collateral in exchange for the FHLB-to continue lending to WMB, providing liquidity to WMB right up to the FDIC's seizure of the bank on September 25, 2008. That's the real reason Breckenridge wants to strike RJN, because it offers this Hon. Court evidence which proves that Breckenridge is not a bona fide purchaser or encumbrancer because the ruling in the District Court was obtained by FRAUD!

Appellee fails to inform the court that Appellants were both denied their right of DUE PROCESS in the U.S. District Court under the laws of the Constitution, when Chase Bank falsely asserted Appellants were judicially estopped due to Appellant, Leo Kramer's bankruptcy, of which, Plaintiff, Audrey Kramer **was not** a party to. And as such Appellants were both denied their right to conduct discovery.

Moreover, the fabricated fraudulent documents were willfully buried amongst hundreds of pages of exhibits proffered by JPMorgan Chase Bank's attorneys to the U.S. District Court. And as such, Appellees did not discover these fabricated fraudulent documents until June of 2019, when the Third Judicial District Court of Lyon County permitted Appellants, for the first time, to conduct discovery. Whereby, Appellants hired Licensed Private Investigator, William J. Paatalo, who upon careful examination of the documents filed in the court as evidence and also with the Lyon County Records Office discovered Chase's fraud upon the Court.

Appellants' Request For Judicial Notice of certain documents and things concerns and exposes the fraudulent documents the Defendants used to unlawfully foreclose on Appellants' property. The lower court ignored the fabricated fraudulent Assignment of Deed of Trust, as well as the expired fabricated Limited Power of Attorney, as well as several other documents, stating the US District Court had already ruled on those documents; however, the District Court Ruling was obtained by JPMorgan Chase Bank and their attorney of record proffering fabricated

fraudulent documents as evidence to the court. And any judgment obtained by FRAUD is a NULLITY and is VOID on its face. Appellants currently have pending APPEAL in the 9th Circuit Court of Appeals **Case #: 20-15095.** Additionally, Appellant, Ms. Kramer has Independent action for Fraud filed in the U.S, District Court of Nevada-LV against Chase Bank and its lawyers, **Case #: 2:21-cv-01585**.

These fraudulent documents discovered by forensic auditor and private investigator, Mr. Paatalo pertain to a fabricated Assignment of Deed of Trust, fabricated expired Power of Attorney and fabricated Proof of Claim, to name a few.

Mr. Paatalo's investigation is fluid and has been ongoing. Appellants recently came into possession of a document that proves beyond any doubt that JPMorgan Chase Bank **DID NOT** acquire **ANY** of WAMU Bank's assets via Purchase And Assumption Agreement, as has been falsely and brazenly asserted to the courts. Appellants respectfully **Request Judicial Notice** of document called "**Final Report of the Examiner**", concerning WAMU's bankruptcy, filed in the US Bankruptcy Court of Delaware, **Case #: 08-12229**.

The above document titled, "**FINAL REPORT OF THE EXAMINER**" clearly and concisely supports the fact that "ALL of WASHINGTON MUTUAL BANK'S (WMB'S) assets were transferred to FEDERAL HOME LOAN BANK OF SAN FRANCISCO ("FHLB-SF") prior to being taken into receivership by the FDIC. This fact can be found on page 68 of the report, paragraph 2, where it states

the following: *"On September 10, 2008, the FHLB-SF told OTS that obtaining a blanket-lien on WMB's assets would give FHLB managers more assurance to continue lending to WMB. 242 On September 18, 2010, FHLB-SF obtained a blanket lien on **all** of WMB's assets to secure additional borrowings."*

Plaintiff received a **true certified copy** of the "***FINAL REPORT OF THE EXAMINER***" directly from the court clerk of the US Bankruptcy Court District of Delaware. *(Note: The date "September 18, 2010" appears to be a scrivener's error and should be "September 18, 2008," given WMB entered into receivership on September 25, 2008, it would be moot for the OTS to transfer WMB's assets as collateral to FHLB-SF, via blanket-lien, after WMB entered into receivership). This scrivener's error can readily be explained and corroborated via deposition testimony of OTS's Regional Director, MR. DARREL DOCHOW, and or US Bankruptcy District of Delaware, Court-appointed examiner, JOSHUA R. HOCHBERG.*

This document titled the "FINAL REPORT OF THE EXAMINER" cannot be questioned as it is public record and can readily be obtained thru Pacer or the Court Clerk of the Bankruptcy Court, District of Delaware. Appellants obtained a true and certified copy of the Final Report of The Examiner directly from the Court Clerk, Cheryl Hollis, of the US Bankruptcy Court District of Delaware.

In order to continue providing liquidity, HFLB-SF obtained a blanket-lien on all of WMB's assets to secure additional borrowings." Please See in the *"**FINAL REPORT OF THE EXAMINER**" (Page 68, Paragraph 2)*

The FACT that all of WMB's assets were granted by the OTS as collateral, via blanket-lien, to FHLB-SF prior to WMB entering into receivership by the FDIC offers clear support that the FDIC did not acquire **any** of WMB's loans.

The "blanket lien" gave the FHLB-SF a priority lien interest on ALL WMB assets over the FDIC's Receivership per 12 U.S.C. §1430.

Which means the FDIC did not and could not sell assets which they did not acquire to JPMorgan Chase Bank ("Chase") via the Purchase and Assumption Agreement ("PAA") as Chase has falsely and brazenly alleged to the courts.

Further, the FDIC working in concert with the OTS was well aware that all of WMB's assets had been transferred prior to taking WMB into receivership. Chase was also aware that **no** loans transferred to Chase Bank thru the FDIC via the PAA, certainly no schedule of any WMB assets exists or as ever been produced as in association with the infamous PAA, because there was no inventory on WMB's books and records of any identifiable assets being conveyed.

The above facts, which have been verified and certified by the US Bankruptcy Court of Delaware, further proves that Chase Bank obtained ruling in their favor by committing FRAUD upon the US District Court of Nevada. There is no statute of

limitation when fraud is involved, and any ruling obtained based on fraud is a nullity and is VOID on its face, not voidable, but simply VOID. Therefore, the unlawful foreclosure and sale of Appellants' property is VOID, which means National Default Servicing Corporation was not and could not be a duly appointed trustee, and by extension Breckenridge Property Fund is not and could not be a bona fide encumbrancer of Appellants' property.

Appellants' vehemently tried to bring the fraudulent fabricated documents to the lower court's attention, but to no avail, as it appeared that the lower court overlooked and ignored Appellants' and Mr. Paatalo's evidence with regard to the fraudulent documents that were proffered to the court as evidence by NDSC on behalf of Chase Bank.

Appellants' requested to take leave from the lower court to Amend their Complaint to Include Chase Bank as one of DOSE 1-25 was denied.

Further, when Appellants presented the fabricated falsified assignment of deed of trust to the Third Judicial District Court concerning Appellants' property, the court turned a blind eye and completely ignored the fact that the fabricated assignment was dated and signed 10 years after WAMU Bank entered into receivership with the FDIC. It was literally a physical impossibility for WAMU Bank to have conveyed "For Value Received" the Deed to Appellants' property to Chase Bank.

Notwithstanding all of the fabricated fraudulent documents falsely proffered as evidence to the courts, Appellants informed the court that there were outstanding tribal issues that only a jury could decide, yet the court granted summary judgment despite the overwhelming evidence that Appellants' property had been foreclosed and sold by NDSC, who was not and could not be a duly appointed trustee of Appellants' property. This fact is supported by Appellants' RJN of The Final Report of The Examiner, which is why Appellee, Breckenridge is desperately trying to exclude this document, as they know it will show that Appellants' Assignment of Deed was obtained by FRAUD!

II. Argument

A. The Court should deny Breckenridge's motion to strike Appellants' Request for judicial notice because the matters that are subject to judicial notice are matters not subject to reasonable dispute and are generally known or can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

On appeal, a court can only consider those matters that are contained in the record made by the court below and the necessary inferences that can be drawn therefrom." *Mack v. Estate of Mack*, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009).

Here, the matters to be judicially noticed are matters in the record of the court below. Further, Generally, the court's review pleading's sufficiency is confined to the four corners of the pleading itself. However, two exceptions to this rule, permit

the court to consider documents extraneous to the pleading: request for judicial notice and the doctrine of incorporation by reference. The former permits the court to judicially notice an adjudicative fact if it is "not subject to reasonable dispute." Fed. R. Evid. 201(b). The latter "treats certain documents as though they are part of the complaint itself," *Khoja v. Orexigan Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th Cir. 2018), "if the plaintiff refers extensively to the document or the document forms the basis of the plaintiff's claim," *United States v. Ritchie*, 342 F.3d 903, 907 (9th Cir. 2003).

A court may take judicial notice whether it is requested or not. FRE 201(c). However, a court shall take judicial notice if requested by a party and supplied with the "necessary information." FRE 201(d). A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the "tenor" of the matter noticed. FRE 201(e). Finally, a court may take judicial notice of adjudicative facts "at any stage in the proceedings." FRE 201(f). Judicial notice may be taken at any stage in a case, including for the first time on appeal. *Dawson v. Mahoney*, 451 F.3d 550, 551 (9th Cir. 2006); *United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

Judicially noticed facts often consist of matters of public record, such as prior court proceedings. Federal courts may "take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a

direct relation to the matters at issue". U.S. ex rel Robinson Rancheria Citizens Council v. Borneo, Inc., 971 F.2d 244, 248 (9th Cir. 1992). Judicial notice of judicial proceedings within and without the federal judicial system includes judicial notice of pleadings and orders arising out of those proceedings. *Asdar Group v. Pillsbury, Madison & Sutro*, 99 F.3d 289, 290, fn. 1 (9th Cir. 1996).

Here, Appellants' request for judicial notice contained court certified documents and it is irrefutable that matters and issues to be judicially noticed in the instant case, are facts or matters of public record, as well as facts that have direct relation to the matters at issue.

B. The Court should deny Breckenridge's motion to strike Appellants' Request for judicial notice because Breckenridge's Motion to Strike is not timely

A motion to strike is used to strike from any pleading "any redundant, immaterial, impertinent, or scandalous matter." NRCP 12(f). NRCP 12(f) mirrors the Federal Rule of Civil Procedure 12(f) and therefore federal case law is helpful in analyzing NRCP 12(f). Under Federal regime, a court may grant a motion to strike pursuant to Federal Rule of Civil Procedure 12(f) if the contested language constitutes an "insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. Pro. 12(f). Matter which is "immaterial" is "that which has no essential or important relationship to the claim for relief or the

defenses being pleaded." *Fantasy, Inc. v. Fogerty,* 984_F.2d_1524, 1527 (9th Cir.1993), *rev'd on other grounds,* 510_U.S._517, 114_S. Ct._1023, 127_L. Ed. 2d_455_(1994) (citing 5A Charles Alan Wright & Arthur R. Miller § 1382, at 706-07) (internal citations omitted). "`Impertinent' matter consists of statements that do not pertain, and are not necessary to the issues in question." *Id.* (citing 5A Charles Alan Wright & Arthur R. Miller § 1382, at 711).

Here, in its Motion to Strike, Breckenridge is not alleging or arguing any grounds upon which Motion to Strike is intended nor is Breckenridge alleging that certain portion of Appellants pleading be stricken. This is impart because Breckenridge motion to strike is untimely. The pleading stage in this litigation has long gone. The case is now on Appeal seeking reversal of clearly erroneous ruling or judgment of the court below.

Appellants contends that Breckenridge's reliance on **NRCP 12 (f)** is misplaced as that rule authorizes the district court to strike such matters from pleadings, not to Strike Request for Judicial Notice. See **NRCP** ...the court to strike such material from a pleading); see also **NRCP** 7(a) (defining pleading). NRCP 7(a) sets forth a list of the pleadings that are permissible in a civil action in Nevada, as follows:

> (a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a

third-party complaint is served. Thus, the only pleadings allowed are complaints, answers and replies. Appellants' Request for Judicial Notice contemplated within the meaning of **NRCP** 7(a)

Accordingly, the court should deny Breckenridge's motion to strike. Breckenridge's motion to Strike is not timely.

Breckenridge will not be substantially prejudiced by the denial of its motion to Strike

In its motion to Strike, Breckenridge contends that "Breckenridge will be substantially prejudiced if this Court does not strike the requests to take judicial notice. **(p.2., ¶ 3 Mtn to Strike.). Conversely, Appellants contend that** Breckenridge will not be substantially prejudiced if this Court does not strike the requests to take judicial notice. Appellants contends that Breckenridge argument Ibid, is **unmeritorious since** Breckenridge made reference to same Proof of claim and matters related to Appellants' Requests for Judicial notice which unequivocally rebut Breckenridge's argument in this Appeal.

Appellants have established the facts or sources were part of the district court's decision

Breckenridge's argument that "...this Court should strike the requests for judicial notice because Appellants have not established the facts or sources were part of the district court's decision and many of the facts stem from the existence of other case is equally unmeritorious because Appellants proffered Court Certified

documents which is not subject to reasonable dispute and can be accurately and readily be determined from sources whose accuracy cannot reasonably be questioned. "[T]he most frequent use of judicial notice of ascertainable facts is in noticing the content of court records." Colonial Penn Ins. Co. v. Coil, 887 F.2d 1236, 1239 (4th Cir. 1989). Court "may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.'" *See for example, U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992);

III. Conclusion

For the foregoing reasons, the Court should deny Breckenridge's motion to strike in its entirety.

Respectfully Submitted,

Date: 11/17/2021

Leo Kramer

Leo Kramer, Appellant, Pro Se

Date: November 17, 2021

Audrey Kramer

Audrey Kramer, Appellant, Pro Se

CERTIFICATE OF SERVICE

I Hereby Certify that on November 17, 2021, that the foregoing:

APPELLANTS' OPPOSITION TO RESPONDENT BRECKENRIDGE PROPERTY FUND 2016, LLC'S MOTION TO STRIKE REQUESTS TO TAKE JUDICIAL NOTICE IN SUPPORT OF APPELLANTS' OPENING & REPLY BRIEF;

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