

Supreme Court Case Number S206021

In The Supreme Court of California

DOUGLAS GILLIES
Plaintiff and Appellant

vs.

CALIFORNIA RECONVEYANCE CO,

Defendant and Respondent.

After a decision by the Court of Appeal, Second Appellate District,
Division 6

Superior Court Case Number 1381828

Honorable Denise de Bellefeuille, Judge Presiding

Superior Court of the State of California

County of Santa Barbara

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION AND SUMMARY

Petitioner's Petition for Review ("Petition") concerns the second lawsuit filed by Petitioner regarding a loan that he received from Washington Mutual Bank. The Complaint at issue here contained causes of action for 1) declaratory relief, 2) fraudulent transfer, 3) violation of Civil Code § 2923.5 and 4) injunction. The gravamen of these causes of action, as in the previous lawsuit, is that California Reconveyance Company ("CRC") should be precluded from proceeding with the foreclosure because the Petitioner's name on the Notice of Default and Election To Sell ("NOD") and Notice of Trustee's Sale ("NOTS") was spelled *Douglas* Gillies, not *Douglas* Gillies and that CRC did not comply with Civil Code § 2923.5. In reviewing the complaint filed in the second action, the trial court concluded that the second action was barred by the doctrine of res judicata because the same issues had previously been addressed and decided in a previous lawsuit. The Court of Appeal affirmed. The Petition fails to state any basis warranting further review of the Court's unassailable decision.

II. NONE OF PEITITONER'S ISSUES WARRANT FURTHER REVIEW

The grounds for this Court accepting a petition for review are set forth in CRC 8.500(b). Subsection (b)(1) provides this court may order review "when necessary to secure uniformity of decision or to settle an important question of law." The Petition fails to raise an important issue of law and should be denied.¹

¹ Research does not disclose any reported similar case, making consideration of divergent authority inapplicable.

A. **Court of Appeal's Decision in Gillies II Correctly Applied the Doctrine of Res Judicata**

On November 25, 2009, the Petitioner initiated an action entitled *Douglas Gillies v. JPMorgan Chase Bank, N. A. and CRC*, Santa Barbara Superior Court Case Number 1340786 ("*Gillies I Action*"), in which Petitioner claimed that CRC and JPMorgan Chase Bank NA ("*JPMorgan*") should be prevented from proceeding with non-judicial foreclosure because of purported irregularities concerning the NOD and the NOTS. On March 25, 2010, after having previously provided Plaintiff with leave to amend, the trial court sustained JPMorgan's and CRC's demurrer without leave to amend to Petitioner's First Amended Complaint. On May 28, 2010, the Petitioner appealed. On April 11, 2011, the California Court of Appeal filed its decision affirming the judgment in the *Gillies I Action*.

On July 13, 2011, Petitioner filed a second action ("*Gillies II Action*"), whose allegations arose out of the same non-judicial foreclosure proceedings that were the subject of *Gillies I*. Again, the Petitioner complained that CRC should be precluded from proceeding with the non-judicial foreclosure because the NOD and the NOTS misspelled his first name with an e (*Douglas*) instead of with an a (*Douglas*) and because California Civil Code § 2923.5 had not been complied with, only this time, he added an allegation that he had never been contacted by anyone to assess his financial situation and explore options to avoid foreclosure.

The Petitioner alleged that, even though he received actual notice of the NOD and the NOTS, the misspelling purportedly prevented him from obtaining "constructive" notice because the misspelling purportedly created an indexing issue in the grantor/grantee index ("*Indexing Issue*").

The trial court granted CRC's motion to strike based on its determination that the *Gillies II Action* was barred by the doctrine of res judicata. In *Ojavan Investors, Inc. v. California Coastal Com.*, 54 Cal.App.4th 373, 383 -

84 (Cal.App.2.Dist.1997) ("*Ojavan*"), the Court of Appeal held that if a general demurrer has been filed, resulting in a final decision on the merits, the prior determination becomes conclusive in the second action. The trial court determined that, even though the causes of action in the *Gillies II Action* were different from those filed in the *Gillies I Action*, the issues concerning the Indexing Issue asserted in *Gillies II* were the same issues asserted and decided in the appeal of the *Gillies I Action*.

In *Gillies II*, the Court of Appeal again affirmed the trial court's decision. The Petition argues that res judicata should not apply because Petitioner was somehow denied the opportunity to assert the "Indexing Issue" in *Gillies I*. See Petition, pages 27 – 32. However, as the trial court's ruling indicated, Petitioner did raise the "Indexing Issue" in his appeal briefs and in oral argument to the Court of Appeal, and this issue was considered in the Court of Appeal's decision in the *Gillies I Action*. Furthermore, even if Petitioner had not raised the "Indexing Issue" directly, the prior judicial determination "becomes conclusive in the subsequent lawsuit between the same parties with respect to that issue and also with respect to every matter which *might* have been urged to sustain or defeat its determination." *Ojvan, supra*, 54 Cal.App.4th 373, 383 -384 (emphasis added). In sum, no review is necessary because the doctrine of res judicata has been correctly applied in this case.

B. Petitioner Has Failed To Raise Any Issue of Prejudice

In addition, the Petition fails to show that Petitioner was prejudiced by the Indexing Issue. An alleged error or irregularity in a notice of default or of a trustee's sale is not actionable unless prejudice has been shown. See *Debrunner v. Deutsche Bank Nat. Trust Co.*, 204 Cal. App. 4th 433, 443 (2012), reh'g denied (Apr. 6, 2012), review filed (Apr. 30, 2012). Here, the Petitioner admits he received actual notice of the foreclosure notices. The cases cited by Petitioner


hold that actual notice is sufficient to satisfy the notice requirement. See *Cady v. Purser*, 131 Cal. 552 (1901). Furthermore, Petitioner cites no cases pertaining to foreclosure notices; the cases that he cites concern title documents. So these case have no relevance to the case here, because, foreclosure notices do not affect title, ownership or possession of real property. See *Ortiz v. Accredited Home Lenders, Inc.*, 639 F.Supp.2d 1159, 1168 (S. D. Cal. 2009).

III. CONCLUSION

For the foregoing reasons, the Respondent respectfully requests that the Court decline review in this case.

DATED: November 1, 2012

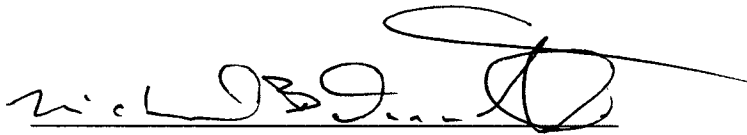
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CERTIFICATE OF BRIEF LENGTH
[California Rules of Court, rule 8.204(c)(1)]

Pursuant to California Rules of Court, rule 8.204(c)(1), I certify that the foregoing brief contains 1,353 words, as shown by the word count function of the computer program used to prepare the brief.

Dated: November 1, 2012

A handwritten signature in black ink, appearing to read "Michael B. Tannatt", written over a horizontal line.

Michael B. Tannatt