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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

8 Frank Steed,

9 Plaintiff,

10 v.

11 BankUnited,

12 Defendant.

No. CV-12-02643-PHX-DGC

ORDER

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14 On December 11, 2012, Plaintiff Frank Steed filed an action to quiet title to real
15 property located at 1823 West Maddock Road, Phoenix, Arizona, 85086. Doc. 1.
16 Defendant BankUnited filed a motion to dismiss on January 7, 2013. Doc. 3. Plaintiff
17 has failed to respond to the motion to dismiss despite the Court's warning that such a
18 failure could lead to dismissal with prejudice under Rule 41(b). The Court has
19 considered the substance of the motion to dismiss and determined that Plaintiff's suit is
20 barred by *res judicata* and should be dismissed with prejudice.

21 On August 18, 2009, Plaintiff and his wife filed a state court action against
22 BankUnited and another defendant in Maricopa County Superior Court (Case No.
23 CV2009-053727) claiming breach of contract, tortious interference with the use and
24 enjoyment of property, and wrongful foreclosure. Doc. 3-1 at 49-59. Though no claim
25 was made to quiet title, the suit challenged the legitimacy of the deed of trust and
26 Plaintiffs sought to enjoin the trustee's sale. Doc. 3-1 at 49-59. In December 2010, the
27 parties entered into a settlement agreement to resolve the suit and BankUnited filed a
28 notice of settlement. Doc. 3-1 at 85. As part of the agreement, Plaintiff was required to

1 dismiss the suit. When he failed to do so, BankUnited filed a motion to enforce the
2 settlement agreement and dismiss the state court action with prejudice. Doc. 3-1 at 97-
3 101. A hearing was held at which both parties presented oral argument on the motion to
4 enforce the settlement agreement. Doc. 3-1 at 126. The superior court issued an order on
5 August 6, 2012, granting BankUnited's motion to enforce the settlement agreement and
6 dismissing Plaintiff's claims with prejudice. Doc. 3-1 at 132. BankUnited argues that
7 the state court judgment precludes Plaintiff from bringing this action.

8 Federal courts must give the same preclusive effect to a state court judgment that
9 the state would give to its own judgments. *Migra v. Warren City Sch. Dist. Bd. Of Educ.*,
10 465 U.S. 75, 81 (1984). In Arizona, *res judicata* or claim preclusion requires that
11 between both suits there be (1) identity of claims, (2) a final judgment on the merits in the
12 previous litigation, and (3) identity or privity between parties. *In re Gen. Adjudication of*
13 *All Rights to Use Water in Gila River Sys. & Source*, 127 P.3d 882, 887-88 (2006).

14 Plaintiff's suits in state and federal court satisfy all three elements. Though the
15 two claims are not styled with identical captions (the state court suit was not an action to
16 "quiet title"), both suits contest the enforceability of the deed of trust and employ many
17 of the same legal theories. See Doc 1 at ¶¶ 16-20; Doc. 3-1 at 53-55. Different labels on
18 claims that argue the same subject matter are not sufficiently different to avoid *res*
19 *judicata*. *MacRae v. Betts*, 14 P.2d 253, 255 (1932). The state court's dismissal was not
20 based on jurisdiction, improper venue, or failure to join, and therefore it was on the
21 merits in satisfaction of the second element. Ariz R. Civ. P. 41(b). Finally, Plaintiff and
22 BankUnited are parties in both actions.

23 **IT IS ORDERED** that Defendant's motion to dismiss (Doc. 3) is **granted**.
24 Plaintiff's complaint (Doc. 1) is **dismissed with prejudice**. The Rule 16 Case
25 Management conference set for February 28, 2013 at 4:30 p.m. is **vacated**.

26 Dated this 28th day of February, 2013.

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David G. Campbell
United States District Judge