

1 HONORABLE RICHARD A. JONES
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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 BANK OF AMERICA et al.,

CASE NO. C 13-1726 RAJ

11 Plaintiff,

ORDER

12 v.

13 ANTHONY G. MWAURA et al.,

14 Defendants.
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17 **I. INTRODUCTION**

18 This matter comes before the court on the motion of defendants Anthony Mwaura
19 and Noelle Gichohi for declaratory judgment (Dkt. # 28) and the motion of plaintiff Bank
20 of America's ("BOA") for summary judgment (Dkt. # 32). For the reasons stated below,
21 defendants' motion is DENIED and BOA's motion is GRANTED.

22 **II. BACKGROUND**

23 On August 9, 2007, defendants Anthony Mwaura and Noelle Gichohi executed a
24 promissory note in favor of Countrywide Bank, FSB evidencing defendants' promise to
25 pay \$217,290. (Note) Dkt. # 32-1, pp. 2-3. Repayment of the note was secured by a deed
26 of trust ("DOT"), encumbering real property commonly known as 1814 South 286th
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1 Lane, #P102, Federal Way, Washington (“the Property”). (DOT) Dkt. # 32-1, pp. 5-19.
2 On October 13, 2010, two additional documents appear to have been recorded against the
3 property: (1) a Deed of Full Reconveyance (Dkt. # 32-3, p. 4) and (2) an Assignment of
4 Deed of Trust (Dkt. # 32-3, p. 6). The first document purports to reconvey the Property
5 to defendant-borrowers and the second document purports to assign the Property to a
6 private trust. BOA insists that these documents are fraudulent and has asked the court to
7 declare that they are “void and of no effect” and that the DOT recorded in 2007 remains a
8 valid lien against the Property and maintains the same lien priority it possessed prior to
9 the unauthorized execution and recording of the fraudulent documents. (Mot.) Dkt. # 32,
10 pp. 1-2.

11 Defendants claim that they have no knowledge of the two allegedly fraudulent
12 documents recorded on October 13, 2010. (Opp.) Dkt. # 34, p. 9. Rather, they contend
13 that “the title on this property is so clouded that Defendants believe that the true owner of
14 the note can only be uncovered by conducting discovery.” *Id.*, p. 10. Alternatively, they
15 insist that BOA does not have a valid lien because defendants validly rescinded their loan
16 by sending both Countrywide and BOA a “Notice of Right to Cancel” within the three-
17 year period allowed by the Truth in Lending Act (“TILA”).

18 **III. ANALYSIS**

19 a. Defendants’ Motion for Declaratory Judgment

20 Defendants ask this court to issue an order declaring that defendants have properly
21 served BOA with a “Notice of Right to Cancel” their loan under TILA. (Mot.) Dkt. # 28.
22 The court cannot enter such an order because defendants are barred by the doctrine of *res*
23 *judicata*.

24 The doctrine of *res judicata* bars litigation in a subsequent action of any claims
25 that were raised or *could have been raised* in a prior action. *See Ownes v. Kaiser Found.*
26 *Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001); *see also Federated Dep’t Stores,*
27 *Inc. v. Moitie*, 452 U.S. 394, 401-02 (1981) (“The doctrine serves the important public

1 policy of providing ‘an end to litigation’ and ensures that ‘matters once tried shall be
2 considered forever settled as between the parties.’”).

3 Defendants have filed at least two previous actions related to this matter. In
4 *Mwaura v. Bank of Am. N.A.* (Case No. 13-cv-337-RSM), defendants filed a complaint
5 seeking to quiet title to the Property and for declaratory and injunctive relief. Dkt. # 31-
6 2, pp. 30-32. Judge Ricardo Martinez dismissed that complaint. Defendants later filed an
7 action before Judge Barbara J. Rothstein, *Mwuara v. Countrywide, et al.* (Case No. 13-
8 cv-1553-BJR), seeking to quiet title to the Property and for declaratory relief, wrongful
9 foreclosure, and fraud. Dkt. # 31-3, p. 41. Judge Rothstein, citing to Judge Martinez’s
10 prior order, dismissed the complaint on *res judicata* grounds.

11 Defendants cannot continue to raise claims or counterclaims that have been
12 litigated and decided in previous matters. Accordingly, defendants’ motion for
13 declaratory judgment is DENIED.

14 b. BOA’s Motion for Summary Judgment

15 Summary judgment is appropriate if there is no genuine dispute as to any material
16 fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P.
17 56(a). The moving party bears the initial burden of demonstrating the absence of a
18 genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).
19 Where the moving party will have the burden of proof at trial, it must affirmatively
20 demonstrate that no reasonable trier of fact could find other than for the moving party.
21 *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). On an issue where
22 the nonmoving party will bear the burden of proof at trial, the moving party can prevail
23 merely by pointing out to the district court that there is an absence of evidence to support
24 the non-moving party’s case. *Celotex Corp.*, 477 U.S. at 325. If the moving party meets
25 the initial burden, the opposing party must set forth specific facts showing that there is a
26 genuine issue of fact for trial in order to defeat the motion. *Anderson v. Liberty Lobby,*
27 *Inc.*, 477 U.S. 242, 250 (1986). The court must view the evidence in the light most

1 favorable to the nonmoving party and draw all reasonable inferences in that party's favor.
2 *Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 150-51 (2000).

3 Here, BOA is the party seeking summary judgment. Since BOA is the plaintiff
4 and bears the burden of proof at trial, it bears the burden of demonstrating there is no
5 genuine issue of material fact as to any of its claims. The only claim stated by BOA is
6 one for declaratory relief. (Compl.) Dkt. # 1-1, ¶¶ 12-14; see also (Reply) Dkt. # 37, p. 2.

7 “Courts of record within their respective jurisdictions shall have power to declare
8 rights, status and other legal relations whether or not further relief is or could be
9 claimed.” RCW 7.24.010. One interested “under a deed . . . or whose rights, status or
10 other legal relations are affected by statute . . . may have determined any question of
11 construction or validity arising under the instrument . . . and obtain a declaration of
12 rights, status or other legal relations thereunder.” RCW 7.24.020. The elements required
13 to establish a right to declaratory relief in Washington are: (1) an actual, present, and
14 existing dispute, as compared to a possible, speculative or moot disagreement; (2) parties
15 having genuine and opposing interests which are direct and substantial rather than
16 potential or abstract; and (3) a judicial determination which will be final and conclusive.
17 *Lechelt v. City of Seattle*, 32 Wn. App. 831, 835–36 (1982) (citing *Ronken v. Bd. of Cnty.*
18 *Com'rs*, 89 Wn.2d 304 (1977)); see also RCW 7.24, *et. seq.* A case is ripe where the
19 essential facts establishing the right to declaratory relief have already occurred. *Boeing*
20 *Co. v. Cascade Corp.*, 207 F.3d 1177 (9th Cir. 2000).

21 Here, BOA contends that two documents recorded in the King County Recorder's
22 Office are fraudulent: (1) the Deed of Full Reconveyance, dated October 13, 2010 (Dkt. #
23 32-3, p. 4), and (2) the Assignment of Deed of Trust, also dated October 13, 2010 (Dkt. #
24 32-3, p. 6). The first of these documents purportedly demonstrates that the “obligations
25 secured by the Deed of Trust have been fully satisfied” and that the beneficiary has
26 requested that the deed be reconveyed to the defendants. Dkt. # 20-1, p. 26. This
27 document was supposedly signed by Kathy Kubik as Assistant Secretary of United

1 National Title Company. The second document then assigns the deed to a private trust
2 set up in the name of the property address (*i.e.*, 1814 South 286th Lane P102 Trust). This
3 assignment was supposedly executed by Clarence Roland, “attorney-in-fact” for the
4 defendants in this action and notarized by a woman named Heather Richardson. Dkt. #
5 20-1, p. 23.

6 BOA has submitted a declaration from its Assistant Vice President and Operations
7 Team Manager stating that it has no record of defendants satisfying their loan obligations
8 and that BOA never authorized the reconveyance of the deed. *See* Decl. of Kelly M.
9 Thompson, Dkt. # 32-2. BOA has also submitted a declaration from Kathy Kubik,
10 stating that she never signed the reconveyance and has never worked for United National
11 Title Company (Dkt. # 33, ¶ 2, 4). Ms. Kubik also states that she does not know and has
12 never met or spoken with either defendant. *Id.*, ¶ 3. Ms. Kubik further states that she
13 was at one point a notary republic in the State of Nevada and that several years ago she
14 hired a company called Restorlution Trustee Corporation to help her save her home. *Id.*,
15 ¶ 6. In connection with her attempt to save her own home, she notarized some documents
16 for that company. *Id.* She also claims that one of the employees of that company was a
17 man by the name of Clarence Roland. *Id.*, ¶ 7.

18 This evidence is sufficient to carry BOA’s initial burden of demonstrating that
19 there is no genuine issue of material fact regarding the invalidity of the documents
20 recorded in the county recorder’s office. Accordingly, the burden then shifts to
21 defendants to set forth specific facts showing that there is a genuine issue for trial.
22 *Anderson*, 477 U.S. at 250.

23 Defendants have failed to meet this burden. Defendants’ only arguments in
24 opposition to BOA’s motion are: (1) they have no knowledge of the fraudulently
25 recorded documents, and (2) they cancelled their loan via a “Notice of Right to Cancel”
26 under TILA. (Opp.) Dkt. # 34. Neither argument has merit. Defendants’ knowledge of
27 the documents is irrelevant to BOA’s claim that they are fraudulent and, as stated above,

1 defendants' argument regarding cancellation under TILA is barred by *res judicata*.
2 Accordingly, defendants have failed to set forth any facts that show there is a genuine
3 issue for trial.

4 BOA is entitled to judgment as a matter of law.

5 **IV. CONCLUSION**

6 For all of the foregoing reasons, defendants' motion for declaratory judgment
7 (Dkt. # 28) is DENIED and BOA's motion for summary judgment (Dkt. # 32) is
8 GRANTED. The clerk is directed to enter judgment in favor of BOA and against
9 defendants. The judgment shall state the following:

10 (1) The document entitled "Assignment of Deed of Trust" and
11 recorded in the King County Recorder's Office on October
12 13, 2010 as instrument number 20101013001232 is VOID;

13 (2) The document entitled "Deed of Full Reconveyance" and
14 recorded in the King County Recorder's Office on October
15 13, 2010 as instrument number 20101013001233 is VOID;

16 (3) The Deed of Trust recorded in the King County
17 Recorder's Office on August 13, 2007 as instrument number
18 20070813002368 against the real property commonly known
19 as 1814 South 286th Lane, #P102, Federal Way, Washington
20 ("Property") remains a valid lien against the Property and
21 maintains the same lien priority that it possessed prior to the
22 execution and recording of the documents entitled
23 "Assignment of Deed of Trust" and "Deed of Full
24 Reconveyance."

25 Dated this 26th day of January, 2016.

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27 The Honorable Richard A. Jones
United States District Court