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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **ROBERT ORDUNO,**

3 Plaintiff-Appellant,

4 v.

NO. 34,019

5 **MICHAEL TIERNEY CEO,**

6 **FLAGSTAR BANK FSB, &**

7 **SUSAN C. LITTLE, Attorney,**

8 Defendants-Appellees.

9 **APPEAL FROM THE DISTRICT COURT OF SANTA FE COUNTY**

10 **Sarah M. Singleton, District Judge**

11 Robert Orduno

12 Santa Fe, NM

13 Pro se Appellant

14 Sutin, Thayer & Browne

15 Michelle K. Ostrye

16 Justin R. Sawyer

17 Albuquerque, NM

18 for Appellees Michael Tierney and Flagstar Bank FSB

1 Susan C. Little
2 Albuquerque, NM

3 Pro se Appellee

4 **MEMORANDUM OPINION**

5 **WECHSLER, Judge.**

6 {1} Appellant Robert Orduno (Plaintiff), in a self-represented capacity, appeals
7 from the district court’s dismissal of his claims based on res judicata, issue preclusion,
8 the compulsory counterclaim rule, and a rejection of Plaintiff’s belief that he has a
9 valid patent for purposes of setting aside the 2008 foreclosure. [RP 192, 199] Our
10 notice proposed to affirm, and in response Plaintiff filed a memorandum in opposition
11 and Appellees Michael Tierney and Flagstar Bank FSB filed a memorandum in
12 support. We remain unpersuaded by Plaintiff’s arguments, and therefore affirm.

13 {2} Plaintiff continues to argue that the district court erred in dismissing his claims.
14 [RP 192, 199; MIO 1-8] Plaintiff maintains that the 2008 foreclosure should be set
15 aside as a nullity and fraudulent trespass on his property on the asserted basis that he
16 has a superior title to the foreclosed property by virtue of a land patent that he created,
17 executed, and filed in the Santa Fe County property records in 2007. [RP 1; DS 2-3;
18 MIO 6] In support of his continued arguments, Plaintiff attaches several documents
19 to his memorandum in opposition to our notice, including affidavits and a document
20 entitled “regain control of your land through a land patent process.” [Ct.App.File,

1 black clips] As we did in our notice, we point out that to the extent the attached
2 documents were considered below, we consider them as part of our review. *Cf. State*
3 *v. Harrison*, 2010-NMSC-038, ¶ 10, 148 N.M. 500, 238 P.3d 869 (stating matters not
4 of record are not considered on appeal).

5 {3} For the reasons detailed in our notice, we remain in agreement with the district
6 court’s dismissal of Plaintiff’s claims. [RP 192, 199] Because Plaintiff and Defendants
7 were the same parties to the 2008 foreclosure proceedings wherein Plaintiff also raised
8 and had the opportunity to address his land patent claims, we agree with the district
9 court that Plaintiff’s claims are barred by both res judicata and issue preclusion. [RP
10 194] *See generally Atencio v. Vigil*, 1974-NMSC-034, ¶ 8, 86 N.M. 181, 521 P.2d 646
11 (recognizing that “under the doctrine of res judicata, a judgment ‘on the merits’ in a
12 prior suit involving the same parties or their privies bars a second suit based on the
13 same cause of action [and] [u]nder the doctrine of collateral estoppel, on the other
14 hand, such a judgment precludes relitigation of issues actually litigated and
15 determined in the prior suit, regardless of whether it was based on the same cause of
16 action as the second suit” (internal quotation marks and citation omitted)). And as
17 related to the barring of Plaintiff’s present suit by res judicata, we additionally agree
18 with the district court that Plaintiff’s claims are barred by the compulsory
19 counterclaim rule stemming from the prior 2008 foreclosure litigation. [RP 196] *See*

1 Rule 1-013(A) NMRA; *Slide-A-Ride of Las Cruces, Inc. v. Citizens Bank of Las*
2 *Cruces*, 1987-NMSC-018, ¶¶ 8-11, 105 N.M. 433, 733 P.2d 1316 (recognizing that
3 under Rule 1-013(A), the affirmative defense of res judicata is available where an
4 issue has been expressly raised or is logically related to the subject matter of the prior
5 litigation).

6 {4} While we acknowledge Plaintiff’s assertions that his affidavits were not fully
7 considered [MIO 1] and that he has been denied due process of law [MIO 2], we
8 disagree that he is entitled to relief because these assertions stem from the 2008
9 foreclosure proceedings and, as discussed above, Plaintiff is barred from re-litigating
10 these matters in any subsequent proceedings. Given this, we elect not to dwell on the
11 lack of merits of Plaintiff’s self-created “land patent” claims because he is precluded
12 from raising such claims in the first instance.

13 {5} In conclusion, for the reasons detailed in our notice and discussed above, we
14 affirm.

15 {6} **IT IS SO ORDERED.**

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17

JAMES J. WECHSLER, Judge

1 **WE CONCUR:**

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3 **JONATHAN B. SUTIN, Judge**

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5 _____
5 **MICHAEL E. VIGIL, Judge**