2011

Deron Brunson v. Bank of New York Mellon : Brief of Appellee

Utah Court of Appeals

Michael D. Black; Rita M. Cornish; Parr, Brown, Gee, and Loveless; Attorneys for Appellees Deron Brunson; Plaintiff/ Appellant

IN THE UTAH COURT OF APPEALS

DERON BRUNSON, Plaintiff/Appellant, vs. THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS CWALT, INC., ALTERNATIVE LOAN TRUST 2005-58 MORTGAGE PASS-THROUGH CERTIFICATES; SERIES 2005-58, and RECONTRUST COMPANY, N.A., and GREEN TREE SERVICING, LLC, Defendants/Appellees.	**BRIEF OF APPELLEES THE BANK OF NEW YORK MELLON AND RECONTRUST COMPANY, N.A.** Appellate Case No. 20110854

Appeal from the Third Judicial District Court, Salt Lake County, State of Utah
The Honorable Paul Maughan, District Court Judge

Deron Brunson
138 East 12300 South #C-1
Draper, UT 84020
Appellant

Michael D. Black (9132)
Rita M. Cornish (11293)
PARR BROWN GEE & LOVELESS
185 South State Street, Suite 800
Salt Lake City, Utah 84111
Attorneys for Appellees

IN THE UTAH COURT OF APPEALS

DERON BRUNSON, Plaintiff/Appellant, vs. THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS CWALT, INC., ALTERNATIVE LOAN TRUST 2005-58 MORTGAGE PASS-THROUGH CERTIFICATES; SERIES 2005-58, and RECONTRUST COMPANY, N.A., and GREEN TREE SERVICING, LLC, Defendants/Appellees.	**BRIEF OF APPELLEES THE BANK OF NEW YORK MELLON AND RECONTRUST COMPANY, N.A.** Appellate Case No. 20110854

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LIST OF PARTIES

Plaintiff/Appellant
Deron Brunson

Defendant/Appellee
The Bank of New York Mellon
ReconTrust Company, N.A.
Green Tree Servicing, LLC

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STATEMENT OF JURISDICTION

The Utah Supreme Court has appellate jurisdiction over this case under Utah Code § 78A-3-102. The Supreme Court is authorized to transfer this appeal to the Court of Appeals under Utah Code § 78A-3-102(4). The Court of Appeals has appellate jurisdiction over this case pursuant to Utah Code § 78A-4-103(2).

STATEMENT OF THE ISSUES

I. Whether the district court erred when it granted Defendants' motion to dismiss pursuant to Rule 12 of the *Utah Rules of Civil Procedure* on the grounds of claim preclusion and issue preclusion without waiting for full briefing on the motion. The issue was not raised before the district court, and Appellant Brunson has stated no ground for review of the issue not preserved in the district court. "A trial court's grant or denial of a motion to dismiss 'is a question of law . . . [the court] review[s] for correctness, giving no deference to the decision of the trial court.'" *State v. Arave*, 2011 UT 84, ¶24, 268 P.3d 163 (alterations and omissions in original) (quoting *State v. Hamilton*, 2003 UT 22, ¶ 17, 70 P.3d 111).

DETERMINATIVE PROVISIONS

None.

STATEMENT OF THE CASE

On or about August 8, 2005, Brunson obtained the one million dollar Loan to fund the purchase of real property located at 14772 South Golden Leaf Court in Draper, Utah (the "Property"). [*See* Order Denying Motion for Temporary Restraining Order and Dismissing Case with Prejudice entered by Judge Paul Maughan on August 13, 2010

(hereinafter, the "Maughan Order," a copy of which is attached hereto as Exhibit A, at 2, ¶ 1.]

Brunson failed to fulfill his payment obligations under the terms of the Loan. ReconTrust as trustee of the Trust Deed securing the Loan began non-judicial foreclosure efforts during the first few months of 2009. [Maughan Order at 2, ¶ 2.]

On June 8, 2009, Brunson initiated a lawsuit (the "First Lawsuit") before the Honorable John Paul Kennedy in the Third District Court, Case No. 090909512, by filing his Verified Complaint against Countrywide Home Loans, Inc. ("Countrywide") and ReconTrust. Countrywide is the servicer of the Loan, and ReconTrust is the trustee of the Trust Deed securing the Loan. [Maughan Order at 2, ¶ 3.]

Countrywide and ReconTrust responded by filing a Motion to Dismiss Brunson's Verified Complaint in the First Lawsuit. Brunson quickly amended his Complaint by filing a Verified Amended Complaint on or about July 2, 2009. Countrywide and ReconTrust filed a Motion to Dismiss the Amended Verified Complaint (the "First Lawsuit Motion to Dismiss") on July 22, 2009. The First Lawsuit Motion to Dismiss was fully briefed. [Maughan Order at 3, ¶¶ 4–7.]

On September 8, 2009, a hearing was held (the "First Lawsuit Hearing") before Judge John Paul Kennedy, in which the Court heard arguments concerning the First Lawsuit Motion to Dismiss. [Order Granting Defendants' Motion to Dismiss Plaintiff's Amended Verified Complaint Pursuant to Rule 12(b)(6) ("Kennedy Order"), attached as Exhibit B.]

On September 21, 2009, Judge Kennedy entered a final order granting the First Lawsuit Motion to Dismiss with prejudice. [Kennedy Order.]

Brunson filed a Notice of Appeal on September 21, 2009, and on December 17, 2009, the Utah Court of Appeals dismissed Brunson's appeal in the First Lawsuit. *See Brunson v. Recontrust Co., N.A.*, 2009 UT App 381. And on January 12, 2010, the Court of Appeals also denied a petition for rehearing.

Brunson then filed a Petition for Writ of Certiorari, which the Supreme Court denied on April 22, 2010. *See Brunson v. Reconstruct*, 230 P.3d 127, 2010 Utah LEXIS 90 (Utah, 2010).

In the First Lawsuit, among other things, Brunson (1) pled a cause of action against the defendants for "wrongful foreclosure," (2) made allegations that the defendants were foreclosing a Trust Deed that was allegedly "void," (3) made allegations that the Loan was securitized and sold for more than the aggregate amount without giving Brunson any excess funds and alleged that the securitization of the Loan caused him damage, and (4) alleged that the defendants should *repay* him the sum of $352,190.30. [Maughan Order at 4, ¶¶ 13–16.]

Brunson filed the current lawsuit on July 20, 2010 (the "Instant Action" or "Second Lawsuit") by filing his Verified Complaint in the Third District Court, Case No. 100913085. [Maughan Order at 4, ¶ 17.]

In the Instant Action, Brunson alleges causes of action against the defendants for "wrongful foreclosure" of the same Loan and same Property. [Maughan Order at 4, ¶ 18.]

In the Instant Action, Brunson alleges causes of action against defendants for damages in the identical amount of $352,190.30, as alleged in the First Lawsuit. [Maughan Order at 4, ¶ 19.]

In the Instant Action, Brunson alleges that the Trust Deed is "void" through the securitization of the subject Loan, as he did in the First Lawsuit. [Maughan Order at 5, ¶ 20.] Like the First Lawsuit, in the Instant Action, Brunson seeks an order declaring that the Trust Deed is "not a lien" against the Property. [Maughan Order at 5, ¶ 23.] The Instant Action, as well as the First Lawsuit, pertains to the same Loan, the same Property, the same foreclosure, the same Trust Deed, and the same remedies sought for by Brunson against the named defendants. [Maughan Order at 5, ¶ 24.]

Countrywide is the servicer of the Loan. BNY is the beneficiary of the Trust Deed, and ReconTrust is the Trustee of the Trust Deed. [Maughan Order at 5, ¶ 25.] Brunson was instructed by Judge Kennedy in the First Lawsuit that the allegations and causes of actions filed by Brunson were frivolous. Nonetheless, Brunson chose to file the Instant Action, once again seeking the remedy of "wrongful foreclosure, among other things." [Maughan Order at 5, ¶ 26.]

In response to Brunson's Verified Complaint in the Instant Action, the Defendants filed a motion to dismiss (the "Instant Action Motion to Dismiss") arguing, among other things, that Brunson's claims are barred by issue and claim preclusion. The memorandum in support of the Instant Action Motion to Dismiss also served as an opposition memorandum to Brunson's TRO Motion.

A hearing (the "Instant Action Hearing") on the TRO Motion was held before Judge Paul G. Maughan on July 27, 2010. A full and complete transcript (hereinafter, the "Instant Action Hearing Transcript") of the Instant Action Hearing is attached as Exhibit C.

At the Instant Action Hearing, Brunson was given the opportunity to present arguments in support of the TRO Motion and also in opposition to the Instant Action Motion to Dismiss. [*See generally* the Instant Action Hearing Transcript.] Judge Maughan also told Brunson that the Instant Action is "frivolous," denied the TRO Motion, dismissed the Instant Action with prejudice, and awarded attorneys fees to the Defendants. [Instant Action Hearing Transcript at 15–16.]

On August 13, 2010, Judge Maughan entered the Maughan Order denying the TRO Motion, finding that the Instant Action is frivolous and that Brunson's claims are barred by issue and claim preclusion, granting the Motion to Dismiss, dismissing the Instant Action with prejudice, awarding attorneys fees to the Defendants, and admonishing Brunson not to re-file this case. [Maughan Order at 5, ¶¶ 27–29, and 6, ¶¶ 1–4.]

Brunson next attempted to have this matter heard on appeal by filing with the Supreme Court, on or about August 24, 2010, the following two documents, styled as follows: (1) a Petition for Extraordinary Writ in Support of Rule 8A and Memorandum of Points and Authorities (the "Writ Petition") and (2) a Verified Petition for Emergency Relief Under Rule 8A (the "Verified Petition") (the Writ Petition and the Verified Petition will sometimes collectively be referred to herein as the "Petitions"). The matter

was assigned appellate case number 20100689 and was eventually assigned to the Court of Appeals.

On September 3, 2010, the Court of Appeals entered an order (the "Petitions Order") denying the Petitions. A copy of the Petitions Order is attached hereto as Exhibit D. Brunson then filed an appeal (appellate case number 20100752) which was dismissed by this Court of Appeals for lack of jurisdiction. *See Brunson v. Bank of N.Y. Mellon*, 2010 UT App 354, 2010 Utah App. LEXIS 366.

This appeal followed.

SUMMARY OF THE ARGUMENT

Brunson does not contest the substantive dismissal of his claims. Rather, Brunson merely argues that the district court heard and decided the Instant Motion to Dismiss prior to Brunson filing a written memorandum in response. This is not reversible error. The trial court is entitled to manage its cases and docket in the fashion it deems most expeditious. No error occurred, but even if it did any such error was harmless as Brunson does not in any way contest the outcome. Moreover, Brunson had already received his full measure of due process when he previously litigated to completion in the First Lawsuit the claims repleaded in the Instant Action. The district court gave Brunson a full opportunity to address the substance of the motion to dismiss—*i.e.* that it was barred by res judicata and collateral estoppel—which is more than sufficient procedural due process under the circumstances.

ARGUMENT

This lawsuit centers on Appellant Brunson's second of three attempts to assert baseless claims in an effort to stop Appellee The Bank of New York Mellon ("BNY") from foreclosing on its collateral, the subject property. This particular case was filed by Brunson on July 20, 2010, along with a motion for a temporary restraining order ("TRO"). Six days later BNY and ReconTrust Company ("ReconTrust") filed a combined opposition to the TRO and motion to dismiss. At the TRO hearing the very next day and after hearing Brunson's arguments, the Court denied the TRO and granted the motion to dismiss. Brunson filed an objection to the proposed order of dismissal on August 4, 2010, and the Court entered the order on August 13, 2010. Brunson filed a

Petition for an Extraordinary Writ (Appellate Case 20100689) on August 30, 2010, seeking to vacate the order. That Petition was transferred to this Court of Appeals which denied the Petition on September 10, 2010. Unsatisfied, Brunson filed a Notice of Appeal on September 13, 2010. That appeal (Appellate Case 20100752) was poured over to this Court of Appeals and was dismissed for lack of jurisdiction because the underlying order was not final. As it turns out, the case was still outstanding as to Green Tree Servicing, LLC ("Green Tree"). Eventually, Brunson obtained a default against Green Tree, and Green Tree, in turn, moved to vacate the default and dismiss the case. While briefing was in process on that motion, Brunson filed the instant notice of appeal on September 14, 2011. The motion to vacate the default and dismiss the lawsuit as to Green Tree was granted and a final order entered on March 28, 2012.

This lawsuit was preceded by a lawsuit in the Third Judicial District Court entitled *Deron Brunson v. ReconTrust Company, N.A.* et al, Case No. 090909512 (the "First Lawsuit"). That lawsuit related to the exact same foreclosure of the exact same subject property. The First Lawsuit was filed June 8, 2009 and was dismissed by Judge Kennedy on September 21, 2009. Brunson filed a Notice of Appeal on September 22, 2009 (Appellate Case 20090833) (the "First Appeal"). The appeal was poured over to this Court of Appeals which affirmed the dismissal on December 21, 2009. Brunson filed a writ of Certiorari on or about January 25, 2010 (Appellate Case 20100112-SC), which was denied on April 28, 2010.

Despite having had his day in court, including appellate review of the trial court's decision, Brunson was unhappy with the result. Consequently, he filed this lawsuit (the

"Second Lawsuit"). After the dismissal of this lawsuit, Brunson found himself unhappy with the result and, therefore, filed a third lawsuit entitled *Deron Brunson v. American Home Mortgage Servicing, Inc. et al*, Case No. 110915040 in Third Judicial District Court (the "Third Lawsuit"). That lawsuit also related, in part, to the exact same foreclosure of the exact same subject property. The Third Lawsuit was dismissed on November 17, 2011 on the same ground as the lawsuit underlying this appeal—claim and issue preclusion based on the disposition of the First Lawsuit. A motion for reconsideration was denied on April 12, 2012. No appeal has yet been filed in that case.

Brunson argues that the district court committed error when it decided BNY and ReconTrust's motion to dismiss prior to full briefing. However, nowhere in his briefing does Brunson argue that he was harmed or prejudiced by the district court's failure to do so.

Under Rule 61 of the Utah Rules of Civil Procedure,

> no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties, is ground for granting a new trial or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Utah R. Civ. P. 61. In other words, this rule requires Brunson not only to demonstrate a "technical violation" of the *Utah Rules of Civil Procedure*, but also demonstrate that the technical violation harmed his substantive rights or resulted in prejudice.

Although not previously addressed by Utah Appellate Courts with respect to a Rule 12 motion to dismiss, a review of Utah law relating to other dispositive motions such as summary judgment motions, confirms that prejudice is a necessary element to prevailing on appeal. There a numerous examples of the Utah Supreme Court affirming summary judgment granted without "strict compliance to the rules" where "both parties [were] present and no prejudice [was] shown." *Timm v. Dewsnup*, 851 P.2d 1178, 1181 (Utah 1993); *see also Western States Thrift & Loan Co. v. Blomquist*, 29 Utah 2d 58, 61-62, 504 P.2d 1019 (Utah 1972) (affirming summary judgment despite technical violation in timing of hearing); *Security Title Co. v. Payless Builders Supply*, 17 Utah 2d 179, 180 (Utah 1965) (affirming grant of oral summary judgment motion at the end of a pretrial hearing in a foreclosure action without providing any opportunity to respond in writing).

In *Crookston v. Fire Insurance Exchange*, 817 P.2d 789 (Utah 1991), the trial court held a hearing on a motion for summary judgment four calendar days (but only one business day) after it was filed and before any opposition briefing had taken place. *See id.* at 796. Despite the finding a technical violation of Rule 56(c), which required at least ten days notice before a hearing on a motion for summary judgment, the Utah Supreme Court affirmed the trial court's ruling. In doing so, the Supreme Court held that a "technical violation" of the Rules relating to timing does "not divest the court of jurisdiction over the motion . . . . [h]owever, such a violation will void the grant *unless the violation amounts to harmless error*." *Id.* (emphasis added). Stated affirmatively, a "technical violation" of the Rules of Civil Procedure relating to summary judgment motion practice, which like a motion to dismiss is dispositive, does not divest the Court

of the ability to grant the motion, but at best will subject the motion to reversal if the error is not harmless. *See Crookston v. Fire Ins. Exch.*, 817 P.2d 789, 796 (Utah 1991).

Here, Brunson does not even argue that the outcome was wrong, that he was prejudiced, or that more time and briefing would have resulted in a different outcome. Nor can he. Whether described as "prejudice" or "harmful error" the analysis is the same – was the trial court correct on the law? It was.

In the context of a motion to dismiss, where there are no facts at issue, the only question is whether the trial court was correct in its application of the law. The trial court carefully and clearly laid out in its order the elements of claim preclusion and correctly found that they were all met. *See* Maughan Order *passim*. Indeed, even Brunson has conceded that his arguments sound "novel, ridiculous, or frivolous." *See* Docketing Statement, September 30, 2010 at p. 5. Accordingly, there was no reason for the trial court to delay further, and no ten day period or written memorandum would have changed the outcome.[1] *See State v. Evans*, 2001 UT 22 at ¶ 20, 20 P.3d 888 ("Harmless error is an error that is sufficiently inconsequential that there is no reasonable likelihood that it affected the outcome of the proceedings."). Accordingly, no reversible error was committed and this court should affirm the district court's ruling.

Additionally, Brunson was not denied any procedural due process rights. To the contrary, at the hearing, the Court gave Brunson an opportunity to be heard, address the

motion to dismiss, and distinguish his claims in the Instant Case from the claims that had previously been dismissed in the First Lawsuit, which he could not do. This is all the procedural due process that should be accorded to Brunson under the circumstances. *See Richards v. Jefferson County*, 517 U.S. 793, 797 (1996) (noting that "[s]tate courts are generally free to develop their own rules for protecting against the relitigation of common issues or the piecemeal resolution of disputes" and that only "extreme applications of the doctrine of res judicata may be inconsistent with a federal right that is 'fundamental in character'" such as due process).

Each of the claims asserted in the Instant Action had been previously litigated to completion in the First Action, wherein Brunson received his full measure of due process. The very purpose of claim preclusion is to "bar[] a party from prosecuting in a subsequent action a claim that has been fully litigated previously." *Culbertson v. Bd. of County Comm'rs*, 2001 UT 108 at ¶ 13. "Preclusion advances judicial economy by preventing the unnecessary relitigation of claims and issues." *Brigham Young Univ. v. Tremco Consultants, Inc.*, 2005 UT 19 at ¶ 28; *see also Snyder v. Murray City Corp.*, 2003 UT 13 at ¶ 33 ("The doctrine of *res judicata* serves the important policy of preventing previously litigated issues from being relitigated."). Since a party has already received his full measure of due process with respect to claims previously litigated to completion, the due process clause is only implicated "when the party sought to be

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[1] The fact that the outcome would not have changed given additional time or briefing is apparent also from the fact that the Third Lawsuit, which asserted the same claims

precluded [by application of res judicata] was not an actual party in the first lawsuit." *Brigham Young*, 2005 UT 19 at ¶ 28 (internal quotation marks omitted); *see also Richards*, 517 U.S. at 797 n. 4 (noting that the requirement of due process is implicated only when courts "give a conclusive effect to a prior judgment against one who is neither a party nor in privity with a party therein.").

In the Instant Action, Brunson is the exact same party that participated in the First Lawsuit. As such, he has already had participated in our "deep-rooted historic tradition that everyone should have his day in court." *Richards*, 517 U.S. at 797. As a consequence, Brunson is not entitled to any additional procedural due process relating to the claims litigated in the First Lawsuit and the Instant Action, and the district court did not violate those non-existent rights by declining to extend a second day in court. *See Sherrer v. Sherrer*, 334 U.S. 343, 348 (1948) ("It is clear that Respondent was afforded his day in court with respect to every issue involved in the litigation . . . . Under such circumstances, there is nothing in the concept of due process which demands that a defendant be afforded a second opportunity to litigate . . . .").

CONCLUSION

Because the trial court was legally correct in dismissing Brunson's case, any technical error was clearly harmless or not prejudicial, the trial court should be affirmed. Additionally, BNY and ReconTrust request an award of attorney fees on appeal pursuant to Rule 33(a) of the *Utah Rules of Appellate Procedure* insofar as the district court

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relating to the same foreclosure and the same property, was likewise dismissed with

determined that the Instant Action was frivolous, so too is this appeal. *See also* Utah Code Ann. § 78B-5-825.

DATED this 14th day of May, 2012.

PARR BROWN GEE & LOVELESS, P.C.

By: _____
Michael D. Black
Rita M. Cornish
Attorneys for Appellees

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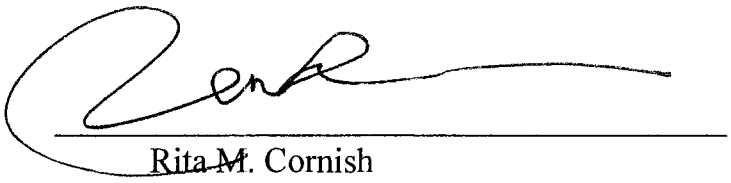
prejudice on the bases of claim and issue preclusion.

CERTIFICATE OF COMPLIANCE WITH RULE 24(f)(1)

This brief complies with the type-volume limitation of Utah R. App. P. 24(f)(1) because this brief contains 3,164 words, excluding the parts of the brief exempted by Utah R. App. P. 24(f)(1)(B).

This brief complies with the typeface requirements of Utah R. App. P. 27(b) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in Time New Roman font size 13.

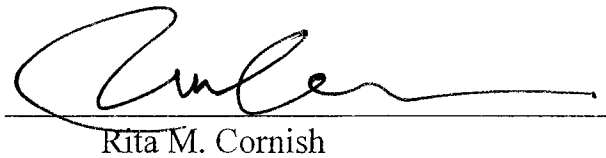


Rita M. Cornish

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of May, 2012 a true and correct copy of the foregoing **BRIEF OF APPELLEE** was served via first class U.S. mail, postage prepaid, upon:

Deron Brunson
138 East 12300 South #C-1
Draper, UT 84020



Rita M. Cornish

ADDENDA

Exhibit A

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Attorneys for Defendants The Bank of New York Mellon fka The Bank of New York, as Trustee for the Certificate Holders CWalt, Inc., Alternative Loan Trust 2005-58 Mortgage Pass-Through Certificates; Series 2005-58, and ReconTrust Company, N.A.

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

DERON BRUNSON, Plaintiff, vs. THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS CWALT, INC., ALTERNATIVE LOAN TRUST 2005-58 MORTGAGE PASS-THROUGH CERTIFICATES; SERIES 2005-58, and RECONTRUST COMPANY, N.A., and GREEN TREE SERVICING, LLC and JOHN DOES OF UNKNOWN NUMBER, Defendants.	**ORDER DENYING MOTION FOR TEMPORARY RESTRAINING ORDER AND DISMISSING CASE WITH PREJUDICE** Case No. 100913085 Judge Paul Maughan

This matter came on for hearing on July 27, 2010, at 11:00 a.m. before the Court, the Honorable Paul G. Maughan, for consideration of plaintiff Deron Brunson's ("Brunson") Motion for Temporary Restraining Order ("TRO") against defendants The Bank of New York Mellon fka The Bank of New York, as Trustee for the Certificate Holders CWalt, Inc., Alternative Loan Trust 2005-58 Mortgage Pass-Through Certificates; Series 2005-58, ("BNY") and ReconTrust Company, N.A. ("ReconTrust") (collectively referred to as "Defendants"). Brunson appeared pro se and Defendants were represented by Darren K. Nelson of the law firm of Parr Brown Gee & Loveless.

The Court having heard the oral argument of the parties, having fully and carefully reviewed the file, including the pleadings filed in Case No. 090909512, Third Judicial District Court, Salt Lake County, State of Utah, before the Honorable John Paul Kennedy, and having stated the Court's findings, conclusions and ruling on the record, the Court finds as follows:

1. On or about August 8, 2005, Brunson obtained a loan in the principal amount of one million dollars (the "Loan) to fund the purchase of a home located at 14772 South Golden Leaf Ct., Draper, Utah (the "Property").

2. Brunson failed to fulfill his payment obligations under the terms of the Loan. ReconTrust as trustee of the Trust Deed securing the Loan began non-judicial foreclosure efforts during the first few months of 2009.

3. Brunson filed a lawsuit in Third District Court, Case No. 090909512 (the "Concluded Lawsuit"), by filing his Verified Complaint on or about June 8, 2009, against

Countrywide Home Loans, Inc. ("Countrywide") and ReconTrust. Countrywide is the servicer of the Loan, and ReconTrust is the trustee of the Trust Deed securing the Loan.

4. Countrywide and ReconTrust responded by filing a Motion to Dismiss Brunson's Verified Complaint, in the Concluded Lawsuit.

5. Brunson quickly amended his Complaint by filing a Verified Amended Complaint on or about July 2, 2009. Countrywide and ReconTrust filed a Motion to Dismiss the Amended Verified Complaint on July 22, 2009.

6. Brunson filed a Memorandum in Opposition to the Motion to Dismiss on July 28, 2009.

7. On August 7, 2009, Countrywide and ReconTrust filed a Reply Memorandum in Support of Motion to Dismiss.

8. On September 8, 2009, a hearing was held (the "Hearing") before Judge John Paul Kennedy, in which the Court heard arguments concerning the Motion to Dismiss.

9. On September 21, 2009, Judge Kennedy entered a final order (the "Final Order") granting the Motion to Dismiss.

10. Brunson filed a Notice of Appeal on September 21, 2009.

11. On December 17, 2009, the Utah Court of Appeals dismissed Brunson's appeal in the Concluded Lawsuit.

12. Brunson filed a Writ of Certiorari. The Utah Supreme Court denied Brunson's Petition for Writ Certiorari on April 22, 2010.

13. In the Concluded Lawsuit, Brunson pled a cause of action against the defendants for "wrongful foreclosure."

14. In the Concluded Lawsuit, Brunson made allegations that the defendants were foreclosing a Trust Deed that was allegedly "void."

15. In the Concluded Lawsuit, Brunson made allegations that the Loan was securitized and sold for more than the aggregate amount without giving Brunson any excess funds. Brunson alleged that the securitization of the Loan caused him damage.

16. In the Concluded Lawsuit, Brunson alleged that the defendants should *repay* him the sum of $352,190.30.

17. Brunson filed this lawsuit on July 20, 2010 (the "Instant Action").

18. In the Instant Action, Brunson alleges causes of action against the defendants for "wrongful foreclosure" of the same Loan and same Property.

19. In the Instant Action, Brunson alleges causes of action against defendants for damages in the identical amount of $352,190.30, as alleged in the Concluded Lawsuit.

20. In the Instant Action, Brunson alleges that the Trust Deed is "void" through the securitization of the subject Loan, as he did in the Concluded Lawsuit.

21. In the Instant Action, Brunson alleges that the "Substitution of Trustee is not dated, signed or notarized." Despite Plaintiff's verified allegation, the Substitution of Trustee provided to the Court is notarized, and recorded with the Salt Lake County Recorder's Office.

22. In the Instant Action, Plaintiff alleges that the Notice of Default and Election to Sell is neither signed nor notarized. However, the Notice of Default and Election to Sell

provided to the Court shows that the subject document was recorded in the Salt Lake County Recorder's Office and acknowledged appropriately.

23. Like the Concluded Lawsuit, in the Instant Action, Plaintiff seeks an order from this Court declaring that the Trust Deed is "not a lien" against the Property.

24. The Instant Action, as well as the Concluded Lawsuit, pertains to the same Loan, the same Property, the same foreclosure, the same Trust Deed, and the same remedies sought for by Brunson against the named defendants.

25. Countrywide is the servicer of the Loan. BNY is the beneficiary of the Trust Deed, and ReconTrust is the Trustee of the Trust Deed.

26. Brunson was instructed by Judge Kennedy in the Concluded Lawsuit that the allegations and causes of actions filed by Brunson were frivolous. Nonetheless, Brunson chose to file the Instant Action, once again seeking the remedy of "wrongful foreclosure, among other things."

27. Brunson has failed to meet his burden of establishing a TRO pursuant to Rule 65(b) of the Utah Rules of Civil Procedure.

28. The Court finds that the Instant Action is barred by both claim preclusion and issue preclusion, as argued by the defendants.

29. The Court finds that the Instant Action is frivolous, without merit, and not brought in good faith pursuant to Utah Code Ann. § 78B-5-825.

Based on the foregoing, IT IS HEREBY

ORDERED, ADJUDGED AND DECREED as follows:

1. Brunson's Motion for TRO is DENIED;

2. Defendants' Motion to Dismiss is granted, and this case shall be dismissed, with prejudice on the merits;

3. Defendants are awarded reasonable attorneys fees in the amount of $2,944.00 pursuant to Utah Code Ann. § 78B-5-825.

4. Plaintiff is ordered not re re-file this case anew.

Dated this 13 day of ~~July~~ Aug, 2010.

BY THE COURT;

Paul. G Maughan
District Court Judge

345650.1

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of July, 2010, a true and correct copy of the foregoing **ORDER DENYING MOTION FOR TEMPORARY RESTRAINING ORDER AND DISMISSING CASE WITH PREJUDICE** was served via United States first class mail, postage prepaid, to:

Deron Brunson
138 East 12300 S. #C 196
Draper, UT 84020
Pro Se

Janet H. Harvel

345650.1

Exhibit B

Order prepared and submitted by:
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Attorneys for Defendants ReconTrust Company, N.A. and Countrywide Home Loans, Inc.

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

DERON BRUNSON, Plaintiff, vs. RECONTRUST COMPANY, N.A. and COUNTRYWIDE HOME LOANS, INC., and JANE AND JOHN DOE does 1--10, Defendants.	ORDER GRANTING DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S AMENDED VERIFIED COMPLAINT PURSUANT TO RULE 12(b)(6) Case No. 090909512 Judge Kennedy

The Motion to Dismiss Plaintiff's Amended Verified Complaint Pursuant to Rule 12(b)(6) (the "Motion") filed by Defendants ReconTrust Company, N.A. and Countrywide Home Loans, Inc. (collectively, "Defendants") came on for hearing on Tuesday, September 8, 2009, at 1:30 p.m. before the Honorable John Paul Kennedy, Third District Judge. Appearances were noted in the record of the hearing, with Deron Brunson ("Plaintiff") appearing *pro se*, and John P. Snow appearing on behalf of Defendants.

Having reviewed the Motion, Defendants' memorandum and reply memorandum in support thereof, and Plaintiff's memorandum in opposition thereto, and having heard the arguments presented at the hearing on the Motion, and for other good and sufficient cause, the Court agrees with and adopts the reasoning set forth in Defendants' briefing on the Motion, and therefore hereby:

ORDERS that Defendants' Motion be, and hereby is, GRANTED. Accordingly, Plaintiff's Amended Verified Complaint is hereby dismissed with prejudice in its entirety.

DATED this 21 day of Sept, 2009.

BY THE COURT:

The Honorable John Paul Kennedy
Third District Judge, State of Utah

Approved as to form:

Deron Brinson
Plaintiff *pro se*

Exhibit C

IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE CITY

SALT LAKE COUNTY, STATE OF UTAH

-oOo-

DERON BRUNSON, Plaintiff, vs. THE BANK OF NEW YORK MELLON, CERTIFICATEHOLDERS CWALT, INC., ALTERNATIVE LOAN TRUST, RECONSTRUCT COMPANY, GREEN TREE SERVICING, LLC, and JOHN DOES OF UNKNOWN NUMBER, Defendants.	Case No. 100913085 HEARING FOR TEMPORARY RESTRAINING ORDER

-oOo-

BE IT REMEMBERED that on the 27th day of July, 2010, commencing at the hour of 11:00 a.m., the above-entitled matter came on for hearing before the HONORABLE PAUL G. MAUGHAN, sitting as Judge in the above-named Court for the purpose of this cause, and that the following proceedings were had.

-oOo-

A P P E A R A N C E S

For the Plaintiff: DERON BRUNSON
Appearing Pro Se

For the Defendants: DARREN K. NELSON
Attorney at Law
Parr, Brown, Gee & Loveless
185 South State Street, #1300
Salt Lake City, Utah 84111

* * *

P R O C E E D I N G S

(Transcriber's Note: Speaker identification may not be accurate with audio recordings.)

THE COURT: All right. Deron Brunson vs. York Mellon, et al.

This is case ending in 3085. And Mr. Brunson is present and you, sir?

MR. NELSON: I'm sorry, your Honor. Mr. Darren Nelson, Parr, Brown, Gee & Loveless, on behalf of the defendants except for Green Street.

THE COURT: Okay. How did you--why are you here, Mr. Nelson?

MR. NELSON: I'm here because we were alerted Friday of a TR--or excuse me, of a complaint that had been filed by Mr. Brunson.

THE COURT: And how did you--

MR. NELSON: We--

THE COURT: How were you alerted? You're welcome. I'm just wondering why, 'cause I have no notice that you were going to be here, other than what you've--

MR. NELSON: We sub--we submitted some material--

THE COURT: Right.

MR. NELSON: --yesterday.

THE COURT: Right.

MR. NELSON: We were notified because Recontrust was--

THE COURT: Had been given a copy of--

MR. NELSON: Had been given a copy of--of the material.

THE COURT: Okay.

MR. NELSON: We--we kind of monitor this stuff in our office, to be honest with you. They--they retained us Friday afternoon and we--I--I prepared some material yesterday.

THE COURT: All right.

MR. NELSON: We--this--as your Honor is aware, we--we've been litigating with Mr. Brunson for awhile.

THE COURT: Yeah. I am. Okay.

Mr. Brunson, why shouldn't I just dismiss this out of hand and--and find you in violation of Rule 11 and sanction?

MR. BRUNSON: Has the Court read my--

THE COURT: I've read it.

MR. BRUNSON: Okay.

THE COURT: I've read the file.

MR. BRUNSON: Okay. As you know, I'm pro se and so

I read the rules. It's my impression that--

THE COURT: If you've read the rules, answer my question.

MR. BRUNSON: Because they didn't follow the rules when they follow--when they tried to foreclose on my property.

THE COURT: In what way?

MR. BRUNSON: If you'll go to some of the exhibits, the--the notice of trustee has not been signed, has not been notarized. The--the other documents that do the foreclosure haven't been notarized or signed. According to--

THE COURT: Hasn't all this been litigated before?

MR. BRUNSON: No. No. This is--I felt I had the right to establish new claims. I'm suing the Bank of New York whom I had not--

THE COURT: Well, what was changed between now and when Judge Kennedy and the Court of Appeals and the Supreme Court kinda pushed your case aside? What's changed?

MR. BRUNSON: My causes of action. In my other complaint, I alleged for a breach of contract and--and I alleged a couple of other things. It's my understanding that when I found that there was other--see, what I'm alleging now is, who are the owners of my note in order which to foreclose? The information that--

THE COURT: And why do you care? Have you paid them? Have you paid anybody?

MR. BRUNSON: I have, to a certain degree, yes.

THE COURT: Are you current?

MR. BRUNSON: No. I'm not.

THE COURT: You're in default?

MR. BRUNSON: I'm in default. So, because--

THE COURT: So, why do you care then?

MR. BRUNSON: Well, because as--as they are a servicing agent and they are servicing a loan and if the loan has been paid off or if the individuals that own the note, they could come after me and say, hey--

THE COURT: They're coming after you right now.

MR. BRUNSON: They're not the owners of the note. The articles that they've given to me say that they are servicing the note, but it doesn't say that they own the note. And the note, as I've alleged in my complaint, has been securitized, which means it's been sold for the aggregate amount, which is more than--which is for the full 30 years of the loan.

THE COURT: So?

MR. BRUNSON: So, the question I asked myself, well, who--who are the owners of the note? Legally, can these guys enforce the note that they don't own? If--if the owners of the note--if the law is correct and the only one that can enforce the note is those who hold the note, then I want to know who the owners are. I want them to tell me who the

owners are.

THE COURT: So, who do you get your--your past due notices from?

MR. BRUNSON: Servicing of the mortgage, but they're not the owners of the note, so, I ask myself the question, what--

THE COURT: Okay.

MR. BRUNSON: --what is the law here? It is--

THE COURT: The law is, it says you have to pay your mortgage.

MR. BRUNSON: Well, the law says that persons entitled to enforce an instrument means the holder of the instrument. So, I look at this and I go, is this true? And this is Utah Statutes, Code 78-3-301 and it says persons entitled to enforce an instrument means the holder of the instrument, it can't be a servicing agent. A non-holder in a position of the instrument has the rights of a holder or a person not in a position of the instrument who is entitled to enforce the instrument pursuant to Section 78-3--

THE COURT: Okay.

MR. BRUNSON: --309.

THE COURT: All right. Is--

MR. BRUNSON: So--

THE COURT: --is that your argument then?

MR. BRUNSON: One more thing. So, if--if--so, if

this is the law and if they have to show that they own the note, let them show that they own the note. I'm asking, if they own the note, then let them come forward. If they don't own the note, then--then let the ones who own the note come forward.

And I think the evidence will show in the case that they don't own the note, that they've been paid off and whatever payments I'm going to make to them is going to--is going to be unjust enrichment, unless the owners of the note be here--

THE COURT: Well, did you pay off the note?

MR. BRUNSON: No, your Honor, I have not. So--

THE COURT: So, you're standing here saying you're--how far behind are you?

MR. BRUNSON: I--I don't know; two years.

THE COURT: So, you haven't paid on your obligation, your note, your contract, your mortgage that you signed and said you would for two years? And now you're standing here saying what?

MR. BRUNSON: Now, I'm standing here saying, if you want to enforce the note, show me who the--who owns the note? Did you sell my note?

THE COURT: Well, why don't you--why don't you leave the house and go find something you can afford and--

MR. BRUNSON: Because I want to know who owns the

note. I think, if--

THE COURT: You have no right to be in the house, do you?

MR. BRUNSON: I--I think I do, because they--

THE COURT: Because why? You haven't paid anything. Why would--

MR. BRUNSON: Because--

THE COURT: Why do you think you can stay in a house and ignore your legal obligation and--and have a right to do that? I mean, what--

MR. BRUNSON: Because they satisfied the note when they--when they--

THE COURT: Who satisfied the note?

MR. BRUNSON: The--the originators of the note, when they had it illegally secured tightly--

THE COURT: Oh.

MR. BRUNSON: --when they put it on--

THE COURT: Oh. Okay.

MR. BRUNSON: I would like to produce the evidence that shows that they--they will be (inaudible) and also, I think they collect insurance, al--they've already collected when you know--

THE COURT: Did you pay insurance?

MR. BRUNSON: They have--

THE COURT: Did you pay insurance?

MR. BRUNSON: I paid--

THE COURT: Did you pay insurance?

MR. BRUNSON: Some--what type of insurance, your Honor? Yes. I have paid insurance.

THE COURT: Okay. Let's--

MR. BRUNSON: And property taxes.

THE COURT: Okay. Let's hear from Mr. Nelson.

MR. NELSON: Your Honor, this--this lawsuit involves the same property, the same loan, the same allegation of wrongful foreclosure and the same parties or the same privity of parties. The only difference between this and what we've done with Judge Kennedy, all the way up to the Supreme Court, that was just on a remittitur two months ago, is that he's now added the trust--or excuse me, the beneficiary of the trust deed and deleted Countrywide Home Loans as a servicer of the loan; but it is the same, again, the same underlying transaction and the same operative facts wherein ultimately, as the Court can read both--both complaints, the Amended Verified before Judge Kennedy and the Verified Complaint before your Honor. The end result, the prayer for relief is the same: You, Recontrust, which is the same in both--both lawsuits, cannot foreclose this because the deed, the trust deed is void or it's invalid.

Now, the legal theory with the securitization of the note here and whether Recontrust can foreclose because it is

or is not a national bank, which is something that's been litigated numerous times in--in Federal Court recently, it--it has changed just a little bit, but--but the real question is as it's promulgated by the Utah Supreme Court is whether that issue or whether that claim for--for a wrongful foreclosure is precluded under the res judicata, the principle which is a subset--which--and a subset of claim preclusion of issue preclusion.

The Utah Supreme Court in O'Maughan, which we've cited, has indicated that where two causes of action embody the same dispositive issue, a prior determination of that issue in the context of one cause of action has preclusive effect in the later litigation regarding the other cause of action and prevents the re-litigation of issues that have been once litigated and determined in another action, even though the claims for relief in the two actions may be different.

I think it's enlightening a little bit to--to look at what Mr. Brunson's argument was before Judge Kennedy. Judge Kennedy asked him many of these same questions and he said, I'm--Mr. Brunson: I'm pursuing--and this is on Page 36 of Page--of Exhibit H, which was the hearing transcript in Exhibit 1. "I'm pursuing this action because I believe they devalued my property, I believe that they devalued my money, I believe that I've been injured strongly in that way because I have more than just this property, I believe that the banking

industry totally destroyed every--my hard work."

The Court: (Judge Kennedy on Line 21:) "Okay. Now, what did they do then with respect to this property, this piece of property that you alleged in your claim that caused this problem to you?

"Mr. Brunson: They securitized my loan." It's on Line 24. "They sold the loan documents, then they made money on it."

He brought all of this stuff up on securitization in the other lawsuit. Judge Kennedy asked him why he didn't get a lawyer, he--this is one of several cases and one of several parcels of property Mr. Brunson said--or excuse me, has, and has filed lawsuits on.

On Page 40, beginning at Line 2, Judge Kennedy said: "I would just caution you again"--or "caution you, Mr. Brunson, you're going to end up spending a lot of money on legal fees that are somebody else's legal fees rather than your own. I can't tell you that you've been taught--that you've talked to the right lawyers, there are a lot of very good, very honest, capable lawyers in town that could set you straight on this matter. It seems to me and I think the advice that you've been--that you--you got as you described it from the lawyer that you talked to, namely, you borrowed money, pay it back, is probably very good advice. If you can't pay it back, there's a--that's a different problem and

maybe you need to talk to some lawyer about that: What do I do when I can't pay it back? What option do I have, besides filing a frivolous lawsuit in court, which this is, in my opinion."

The lawsuit hasn't changed, your Honor. All he's done is, he's gone all the way up to the Supreme Court on one, the notice has been--the sale has been re-noticed and he's now come--fabricated under the ambut of securitization formally by adding the trustee, but under the--the clear law of the cases that we cited in our opposition, that is clearly precluded for claim preclusion and issue preclusion.

THE COURT: Okay. Do you want to respond, Mr. Brunson, to that argument?

MR. BRUNSON: Well, the question I ask myself which seems to be prevalent even in a case of--of enjoined Paul Kennedy is, if you take out a loan, you default, you owe, the laws, the rules, anything in regards to that doesn't matter. I--I didn't know that. I thought that the Rules of Civil Procedure superseded a contract. I thought--and that's what I'm learning, I'm learning that--that if I hide behind the law to protect my rights which I find are given in the law, and if, because I've defaulted on the loan, if the Court is able to strip me of those rights, then it would seem, in my logical following, that plaintiff is now hiding behind the court. And I'm under the impression that if I invoke law, then it was up

to plaintiff to preempt that law and that the Court would look at the law and see if the law applied or not. I've only been guided by the law. I have not lied, I have not been dishonest.

If I look at the law and it says, in order to enforce a note, you must be the owner of the note, that's what I've been guided by, your Honor, so, let's find out who the owner is. If the law says that when you foreclose, the documents have to be notarized and signed, that--that's what I'm guided by, your Honor.

THE COURT: Okay.

MR. BRUNSON: That--that's all I have, but if the law and the rules don't apply and if this Court would be merciful with me and say, listen, this is how the Court's going to look at it, you pay a loan or give up, I withdraw. I just didn't know. But my--my whole impression this whole time if the Rules of Civil Procedure are important, the rules and statutes are the law, they guide who can foreclose, they guide who owns the note, that's all I followed, your Honor.

So, I come--I throw myself at the mercy of the Court and beg for its forgiveness. If that's how the Court is going to look at it. that it's the rules, the laws that I have looked on, that I've done an immense amount of research, that I've studied, if these laws do not apply, then what--what can I say? So, I--I will, if the Court will grant me mercy, I'll-

-I'll withdraw.

THE COURT: The Court's not in the business of mercy. I'm sorry. It's following of law. And the Court finds that you have not met your burden for a restraining order and I'm not going to impose it.

You have been prior--you've been instructed on prior occasions by various courts, but most recently, apparently, Judge Kennedy, who's told you that when you have a money obligation, you have an obligation to pay it back. When you don't pay it back, there might be some other remedies. He's encouraged you to get an attorney. He's advised you against filing frivolous lawsuits.

It appears to this Court that you've disregarded all of that advice and yet filed another lawsuit. You have not, at least, obtained--retained an attorney, at least one's not here, I don't know if you consulted with one, and you filed what appears to be a virtual, an albeit identical lawsuit that was dismissed by Judge Kennedy. This case is going to be dismissed as well and you're advised not to file again. You can't file again, a case that has already been ruled, it's res judicata on both counts, as Mr. Nelson has pointed out.

So, Mr. Nelson, will you prepare the appropriate order?

MR. NELSON: Yes, your Honor.

THE COURT: Anything else that you're requesting?

No. Mr. Nelson, anything else?

MR. BRUNSON: Not that I--

MR. NELSON: Your Honor, we would request, on the basis that--that this is a frivolous lawsuit, we would request that attorney's fees be awarded against Mr. Brunson and in favor of my client.

THE COURT: Okay. Do you have an amount or affidavit?

MR. NELSON: I would be happy to submit an affidavit on that.

THE COURT: All right. The Court will also grant attorney's fees for filing this frivolous lawsuit.

If you'll prepare the appropriate order.

Court's in recess.

MR. NELSON: Thank you, your Honor.

(Whereupon, this hearing was concluded.)

* * *

TRANSCRIBER'S CERTIFICATE

STATE OF UTAH :
: ss.
COUNTY OF SALT LAKE :

I, Toni Frye, do hereby certify:

That I am a Certified Court Transcriber of Tape Recorded Court Proceedings; that I received the electronically recorded files of the within matter and have transcribed the same into typewriting, and the foregoing pages, to the best of my ability, constitute a full, true and correct transcription, except where it is indicated the Electronically Recorded Court Proceedings were inaudible.

Dated this 29th day of July, 2010.

Toni Frye

Toni Frye, Transcriber

I, RENEE L. STACY, Certified Shorthand Reporter, Registered Professional Reporter and Notary Public for the State of Utah, do hereby certify that the foregoing transcript, prepared by Toni Frye was transcribed under my supervision and direction.

Renee L. Stacy

Renee L. Stacy, CSR, RPR

My Commission Expires:
11-9-11

Notary Public
RENEE L. STACY
2242 East Summerwood Drive
Layton, Utah 84040
My Commission Expires
November 9, 2011
State of Utah

Exhibit D

IN THE UTAH COURT OF APPEALS

----ooOoo----

Deron Brunson, Plaintiff and Petitioner, v. The Bank of New York Mellon fka The Bank of New York, as Trustee for the Certificateholders CWALT, Inc.; Alternative Loan Trust 2005-58 Mortgage Pass-Through Certificates, Series 2005-58; Recontrust Company, N.A.; Green Tree Servicing, LLC; and John Does of unknown number, Defendants and Respondents.	ORDER Case No. 20100689-CA

Before Judges Davis, Roth, and Christiansen.

This matter is before the court on Deron Brunson's petition for extraordinary relief filed pursuant to rules 8A and 19 of the Utah Rules of Appellate Procedure.

A petition for extraordinary relief may be granted only "where no other plain, speedy, and adequate remedy is available." Utah R. Civ. P. 65B(a). The Utah Supreme Court recently reaffirmed that before an appellate court can address the merits of a petition for extraordinary relief, "the petitioning party must have 'exhaust[ed] all available avenues of appeal." See Friends of Great Salt Lake v. Utah Dep't of Natural Res., 2010 UT 20, ¶ 23, 230 P.3d 1014. A petition for extraordinary relief may not be utilized as a substitute for an appeal. See State v. Stirba, 972 P.2d 918, 923 (Utah Ct. App. 1998).

The record indicates that on August 18, 2010, the district court dismissed Brunson's action and awarded Respondents attorney fees for being forced to defend Brunson's frivolous action. Brunson has another plain, speedy, and adequate remedy in that he may elect to appeal the district court's dismissal of his lawsuit. Because Brunson has not exhausted his available

CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2010, a true and correct copy of the foregoing ORDER was deposited in the United States mail or placed in Interdepartmental mailing to be delivered to:

GREEN TREE SERVICING, LLC
C/O CT CORP
136 E S TEMPLE
SALT LAKE CITY UT 84111

DERON BRUNSON
138 E 12300 S #C 196
DRAPER UT 84020

DARREN K. NELSON
MICHAEL D. BLACK
JOHN P SNOW
PARR BROWN GEE & LOVELESS
185 S STATE STE 800
PO BOX 11019
SALT LAKE CITY UT 84111

THIRD DISTRICT, SALT LAKE
ATTN: MARINA DAVIS & SUSAN NORBY
450 S STATE ST BX 1860
PO BOX 1860
SALT LAKE CITY UT 84114-1860

Dated this September 3, 2010.

By _____
Judicial Assistant

Case No. 20100689
THIRD DISTRICT, SALT LAKE, 100913085