

AUG 21 2014

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

KARMEL ROE,

Plaintiff - Appellant,

v.

BANK OF AMERICA NA, FKA  
Countrywide Home Loans, and successor  
by merger to BAC Home Loans Servicing,  
L.P.; et al.,

Defendants - Appellees.

No. 12-56425

D.C. No. 5:11-cv-01991-TJH-DTB

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Terry J. Hatter, Jr., District Judge, Presiding

Submitted August 13, 2014\*\*

Before: SCHROEDER, THOMAS, and HURWITZ, Circuit Judges.

Karmel Roe appeals pro se from the district court's order dismissing her  
action alleging various federal and state law claims arising from foreclosure

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously concludes this case is suitable for decision  
without oral argument. *See* Fed. R. App. P. 34(a)(2).

proceedings. We have jurisdiction under 28 U.S.C. § 1291. We review for an abuse of discretion the district court's application of judicial estoppel. *Ah Quin v. Cnty. of Kauai Dep't of Transp.*, 733 F.3d 267, 270 (9th Cir. 2013). We vacate and remand.

After the district court dismissed Roe's action, we decided *Ah Quin v. County of Kauai Department of Transportation*, which remanded a dismissal on the basis of judicial estoppel where the plaintiff-debtor argued that she had omitted her claims from her bankruptcy schedules due to inadvertence or mistake. *See id.* at 279. Because the district court did not have the benefit of *Ah Quin* when it issued its order of dismissal, we remand to allow the district court to reconsider its application of judicial estoppel, including whether the bankruptcy court accepted Roe's nondisclosure and whether she would derive an unfair advantage if not estopped. *See id.* at 271 (noting that both factors are met where the debtor obtains a discharge or plan confirmation).

We deny as unnecessary Bank of America's request for judicial notice, filed on March 7, 2013, and Roe's request for judicial notice, filed on May 7, 2013.

The parties shall bear their own costs on appeal.

**VACATED and REMANDED.**