

1 **WO**2 NOT FOR PUBLICATION
3
4
56 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**8
9 Silvana M. Oraha,

No. CV-16-00722-PHX-JJT

10 Plaintiff,

ORDER

11 v.

12 Carrington Mortgage Services LLC, *et al.*,

13 Defendants.

14 At issue is Defendant Carrington Mortgage Services, LLC's Motion to Dismiss
15 Plaintiff's Complaint (Doc. 4), to which *pro se* Plaintiff Silvana M. Oraha filed a
16 Response (Doc. 9) and Defendant filed a Reply (Doc. 10). In 2009, Plaintiff obtained a
17 loan secured by a Deed of Trust on real property, which Deed of Trust is now held by
18 Defendant. In the Complaint in the present action, Plaintiff alleges claims against
19 Defendant for breach of contract, breach of the covenant of good faith and fair dealing,
20 and an accounting, all with regard to the loan.

21 In its Motion to Dismiss, Defendant points out that Plaintiff filed for Chapter 7
22 bankruptcy protection in the United States Bankruptcy Court for the District of Arizona,
23 Case Number 2:15-BK-15888-PS, on December 18, 2015, two months before she filed
24 the present lawsuit. The bankruptcy case is still pending. Because any claim Plaintiff had
25 as of the date of her bankruptcy filing, including the present action, became part of the
26 bankruptcy estate, Defendant argues that Plaintiff has no standing to bring the present
27 action.

28

1 In opposing Defendant's Motion, Plaintiff does not deny that she filed for
2 bankruptcy protection or that her claims arose prior to her bankruptcy filing, but she
3 instead asserts that the Bankruptcy Court granted Defendant leave from the automatic
4 bankruptcy stay for the narrow purpose of foreclosing on the property, and she should
5 thus be able to litigate her claims related to the property. Plaintiff provides no legal
6 support for that proposition, however. Indeed, 11 U.S.C. § 541(a) is clear in providing
7 that all of Plaintiff's claims arising prior to commencement of her bankruptcy case are
8 held by the bankruptcy trustee, and no evidence exists that the bankruptcy estate
9 abandoned Plaintiff's claims, whether in the Bankruptcy Court's lift stay Order or
10 otherwise. As a result, Plaintiff has no standing to bring her claims in this action.

11 In lieu of dismissing her claims, Plaintiff asks the Court to stay these proceedings
12 pending resolution of her bankruptcy case. The Court finds no cause to stay this matter. If
13 Plaintiff's claims remain after the Bankruptcy Court resolves her case, she may bring
14 them at that time.

15 **IT IS THEREFORE ORDERED** granting Defendant Carrington Mortgage
16 Services, LLC's Motion to Dismiss Plaintiff's Complaint (Doc. 4). All of Plaintiff's
17 claims are dismissed for lack of standing.

18 **IT IS FURTHER ORDERED** directing the Clerk of Court to enter judgment
19 accordingly and close this case.

20 || Dated this 13th day of June, 2016.


John J. Tuchi
Honorable John J. Tuchi
United States District Judge