Rangel et al v. BAC Home Loans Servicing LP et al Doc. 10

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NOT FOR PUBLICATION

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Louis S. Rangel; Laurie C. Rangel, Plaintiffs, vs. BAC Home Loans Servicing LP f/k/a Countrywide Home Loans Servicing, LP; Darla Sproles, Defendants.	No. CV-10-08233-PCT-FJM **ORDER**

Plaintiffs Louis S. Rangel and Laurie C. Rangel bring this action against BAC Home Loans Servicing and Darla Sproles asserting allegations of wrongful foreclosure and deceptive business practices. Plaintiffs originally filed this action in the Superior Court of Arizona in Yavapai County on October 15, 2010 in order to prevent the foreclosure of property located at 1903 South Hill Top Drive, Cottonwood Arizona (doc. 1, ex. 1). Defendants removed the action to this court on November 24, 2010 pursuant to 28 U.S.C. §§ 1331 and 1332 (doc. 1). The court has before it a motion to dismiss by defendants (doc. 8), and defendants' motion for summary disposition (doc. 9). Plaintiffs have failed to respond.

On or about November 22, 2005 plaintiffs borrowed $201,600.00 from Countrywide

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Home Loans, Inc., as evidenced by a promissory note and deed of trust.[1] Plaintiffs did not satisfy their obligations, and the loan was noticed for foreclosure in April 2009. Plaintiffs thereafter filed this action asserting claims for injunctive relief, an annulment and setting aside of the foreclosure sale, wrongful foreclosure, and breach of contract. Defendants filed a motion to dismiss for failure to state a claim and for insufficient service of process pursuant to Rules 12(b)(5) and (6), Fed. R. Civ. P.

Plaintiffs response was due December 30, 2010. It is now January 18, 2011 and no response has been filed. LRCiv 7.2(i) permits summary disposition of motions for non-compliance with briefing requirements. Failure to respond is deemed consent to the granting of the motion.

Accordingly, **IT IS ORDERED GRANTING** defendants' motion to dismiss with prejudice (doc. 8). **IT IS FURTHER ORDERED DENYING** defendants' motion for summary disposition as moot (doc. 9).

DATED this 18th day of January, 2011.

Frederick J. Martone
United States District Judge

[1] Although plaintiffs did not attach the Note, Deed of Trust, and Trustee Sale Information to the complaint, plaintiffs referenced them. Since they are matters of public record they are properly subject to judicial notice. See Pesci v. IRS, 67 F.Supp.2d 1189, 1191-92 (D. Nev. 1999), aff'd, 225 F.3d 663 (9th Cir. 2000).