

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

EDWARD B. HAMILTON, et al.,
Plaintiffs,
vs.
BANK OF BLUE VALLEY, et al.,
Defendants.

CASE NO. CV F 10-1740 LJO SKO
**ORDER TO DISMISS REMAINING
DEFENDANTS**
(Doc. 21, 22.)

BACKGROUND

This Court’s October 20, 2010 order (“October 20 order”) dismissed with prejudice defendants JP Morgan Chase Bank, N.A. (“Chase”) and Mortgage Electronic Systems, Inc. (“MERS”) and noted irreparable deficiencies in the operative complaint of plaintiffs Edward Hamilton (“Mr. Hamilton”) and Anne Marie Hamilton (“Mrs. Hamilton”). The October 20 order required Mr. and Mrs. Hamilton, no later than October 29, 2010, to file papers to show cause why this Court should not dismiss this action against remaining defendants Bank of Blue Valley, Quality Loan Service Corp., and Washington Mutual Bank FA (collectively “remaining defendants”). The October 20 order **“ADMONISHES Mr. and Mrs. Hamilton and their counsel that this Court will dismiss this action against defendants Bank of Blue Valley, Quality Loan Service Corp., and Washington Mutual Bank FA if Mr. and Mrs.**

1 **Hamilton and/or their counsel fail to comply with this order and fail to file timely papers to show**
2 **cause why this Court should not dismiss this action against defendants Bank of Blue Valley,**
3 **Quality Loan Service Corp., and Washington Mutual Bank FA.”** (Bold in original.) Mr. and Mrs.
4 Hamilton’s counsel filed papers which failed to address meaningfully why this Court should not dismiss
5 the remaining defendants. The papers appeared to repeat rejected arguments to oppose dismissal of
6 Chase and MERS. The papers, at best, tangentially touched on the remaining defendants.

7 DISCUSSION

8 Failure To Comply With Orders

9 This Court’s Local Rule 110 provides that “[f]ailure of counsel or of a party to comply with these
10 [Local] Rules or with any order of the Court may be grounds for the imposition by the Court of any and
11 all sanctions . . . within the inherent power of the Court.” District courts have inherent power to control
12 their dockets and “in the exercise of that power, they may impose sanctions including, where appropriate
13 . . . dismissal of a case.” *Thompson v. Housing Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A court may
14 dismiss an action, with prejudice, based on a party’s failure to obey a court order or local rules. *See, e.g.*,
15 *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (dismissal for noncompliance with local rule);
16 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with an order
17 requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (dismissal
18 for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of address); *Malone*
19 *v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court
20 order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution
21 and failure to comply with local rules).

22 In determining whether to dismiss an action for failure to comply with a court order or local rules
23 or for lack of prosecution, a court must consider several factors: (1) the public’s interest in expeditious
24 resolution of litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to defendant;
25 (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic
26 alternatives. *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;
27 *Ferdik*, 963 F.2d at 1260-1261; *Ghazali*, 46 F.3d at 53.

28 In this case, the public’s interest in expeditiously resolving this litigation and the Court’s interest

1 in managing its docket weigh in favor of dismissal as Mr. and Mrs. Hamilton indicate a lack of interest
2 to further litigate or prosecute this action with their meaningless papers. The third factor -- risk of
3 prejudice to defendant -- also weighs in favor of dismissal, since a presumption of injury arises from the
4 occurrence of unreasonable delay in prosecuting an action. *Anderson v. Air West*, 542 F.2d 522, 524 (9th
5 Cir. 1976). The fourth factor -- public policy favoring disposition of cases on their merits -- is greatly
6 outweighed by the factors in favor of dismissal discussed herein. Finally, a court's warning to a party
7 that its failure to obey the court's order will result in dismissal satisfies the "consideration of
8 alternatives" requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-133; *Henderson*, 779 F.2d
9 at 1424. The October 20 order "**ADMONISHES Mr. and Mrs. Hamilton and their counsel that this
10 Court will dismiss this action against defendants Bank of Blue Valley, Quality Loan Service Corp.,
11 and Washington Mutual Bank FA if Mr. and Mrs. Hamilton and/or their counsel fail to comply
12 with this order and fail to file timely papers to show cause why this Court should not dismiss this
13 action against defendants Bank of Blue Valley, Quality Loan Service Corp., and Washington
14 Mutual Bank FA.**" (Bold in original.) Mr. and Mrs. Hamilton's counsel ignored the import of the
15 October 20 order in failing to address why the remaining defendants should not be dismissed. As such,
16 Mr. and Mrs. Hamilton's counsel disobeyed the October 20 order despite adequate warning that
17 dismissal will result from disobedience of this Court's order.

18 Moreover, the October 20 order demonstrates that Mr. and Mrs. Hamilton lack a viable claim
19 under their complaint's theories. This Court construes absence of a meaningful response to the October
20 20 order as a concession that Mr. and Mrs. Hamilton lack viable claims against the remaining
21 defendants. As detailed in the October 20 order, the complaint's California and federal statutory claims
22 fail as barred legally or by limitations periods. The complaint's purported state law claims are barred
23 legally for reasons discussed in the October 20 order. In light of this Court's discussion in the October
24 20 order and the grounds raised by Chase and MERS, Mr. and Mrs. Hamilton lack a viable claim.

25 This Court surmises that Mr. and Mrs. Hamilton brought this action in absence of good faith and
26 that Mr. and Mrs. Hamilton exploit the court system solely for delay or to vex defendants. The test for
27 maliciousness is a subjective one and requires the court to "determine the . . . good faith of the
28 applicant." *Kinney v. Plymouth Rock Squab Co.*, 236 U.S. 43, 46 (1915); see *Wright v. Newsome*, 795

1 F.2d 964, 968, n. 1 (11th Cir. 1986); *cf. Glick v. Gutbrod*, 782 F.2d 754, 757 (7th Cir. 1986) (court has
2 inherent power to dismiss case demonstrating “clear pattern of abuse of judicial process”). A lack of
3 good faith or malice also can be inferred from a complaint containing untrue material allegations of fact
4 or false statements made with intent to deceive the court. *See Horsey v. Asher*, 741 F.2d 209, 212 (8th
5 Cir. 1984). An attempt to vex or delay provides further grounds to dismiss this action against the
6 remaining defendants.

7 **CONCLUSION AND ORDER**

8 For the reasons discussed above, this Court:

- 9 1. DISMISSES this action without prejudice against the remaining defendants; and
10 2. DIRECTS the clerk to enter judgment in favor of defendants Bank of Blue Valley,
11 Quality Loan Service Corp., and Washington Mutual Bank FA and against plaintiffs
12 Edward Hamilton and Anne Marie Hamilton and to close this action.

13 IT IS SO ORDERED.

14 **Dated:** October 29, 2010

/s/ Lawrence J. O'Neill
UNITED STATES DISTRICT JUDGE