

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

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

-----oo0oo-----

RODOLFO B. BAISA and BELLA G.
BAISA,

NO. CIV. 09-1464 WBS JMF

Plaintiffs,

ORDER TO SHOW CAUSE

v.

INDYMAC FEDERAL RESERVE;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.;
TRUSTEE CORPS; BALDWIN
MORTGAGE, INC.; ORHAN TOLU;
MYRNA D. BAESA and DOES 1-20
inclusive,

Defendants.

_____ /

-----oo0oo-----

In their response to this court's October 1, 2009
Order, defendants Tolu and Baldwin Mortgage, Inc. brought to the
court's attention IndyMac Bank, F.S.B., Pasadena, CA's bankruptcy
and its potential impact on Indymac Federal Reserve and this

1 litigation.¹ (Docket No. 40 3-4.) On July 11, 2009, the Federal
2 Deposit Insurance Corporation ("FDIC") issued a press release
3 indicating that "IndyMac Bank, F.S.B., Pasadena, CA was closed by
4 the Office of Thrift Supervision" and that "the FDIC will
5 transfer insured deposits and substantially all of the assets of
6 IndyMac Bank, F.S.B., Pasadena, CA to IndyMac Federal Bank, FSB."
7 (Docket No. 41 Ex. A). The FDIC was named conservator of IndyMac
8 Bank, F.S.B., Pasadena, CA ("IndyMac Bank") and IndyMac Federal
9 Bank, FSB ("IndyMac Federal Bank"). (Id.) Indymac Bancorp,
10 Inc., the former holding company for IndyMac Bank, FSB, filed a
11 Chapter 11 petition in the United States Bankruptcy Court for the
12 Central District of California on July 31, 2008. (Id. Ex. B.)
13 On March 19, 2009, the FDIC issued a press release stating that
14 the FDIC had arranged to sell IndyMac Federal Bank to OneWest
15 Bank, FSB. (Id. Ex. D.)

16 Pursuant to the automatic stay provision of 11 U.S.C. §
17 362(a)(1), the filing of bankruptcy by a defendant in a pending
18 action "prevents the 'commencement or continuation . . . of a
19 judicial, administrative, or other action or proceeding against
20 the debtor that was or could have been commenced before the
21 commencement' of the bankruptcy case." Dean v. Trans World
22 Airlines, Inc., 72 F.3d 754, 755 (9th Cir. 1995).

23 "In the absence of special circumstances, stays
24 pursuant to section 362(a) are limited to debtors and do not
25

26 ¹Defendant Indymac Federal Reserve has thus far failed to
27 make an appearance in this action despite being served with the
28 Complaint on June 3, 2009 (Docket No. 6) and this court's October
1, 2009 Order by regular mail on October 1, 2009 (Docket No. 37).

1 include [claims against] non-bankrupt co-defendants."
2 Ingersoll-Rand Fin. Corp. v. Miller Mining Co., 817 F.2d 1424,
3 1427 (9th Cir. 1987) (citing Teachers Ins. & Annuity Ass'n of Am.
4 v. Butler, 803 F.2d 61, 65 (2d Cir. 1986)). Although the Ninth
5 Circuit has provided little guidance about when a case presents
6 "special circumstances," a court may not rule on issues that
7 require the court to consider the possible liability of the
8 debtor in the underlying case. See Dean, 72 F.3d at 756-57
9 (providing that a court may only consider a motion to dismiss a
10 claim against the debtor if "there [is] no conceivable way for
11 the court's consideration of the motion to harm the bankrupt"
12 defendant); see also Lewis v. Russell, No. S-03-2646, 2009 WL
13 1260290 (E.D. Cal. May 7, 2009).

14 Before proceeding with this action, the court must
15 therefore determine (1) whether defendant Indymac Federal Reserve
16 is the same entity as IndyMac Bank, IndyMac Federal Bank, IndyMac
17 Bancorp, Inc., or any other IndyMac entity; (2) whether defendant
18 Indymac Federal Reserve is in bankruptcy; (3) whether plaintiff's
19 action against Indymac Federal Reserve "'was or could have been
20 commenced before the commencement' of the bankruptcy case," Dean,
21 72 F.3d at 755; and (4) whether the automatic stay provision of §
22 362(a)(1) should apply to the entire action or only Indymac
23 Federal Reserve.

24 IT IS THEREFORE ORDERED that, within ten days of the
25 date of this Order, each non-bankrupt party shall submit a brief
26 that states and provides supporting authority for the party's
27 position on each of the four aforementioned issues that are
28 raised by IndyMac Bank's takeover by the FDIC, IndyMac Federal

1 Bank's sale to OneWest Bank, FSB, and IndyMac Bancorp, Inc.'s
2 bankruptcy raised in the exhibits presented in Docket No. 41.

3 The Clerk of the Court is instructed to mail a copy
4 of this Order to Indymac Federal Reserve and/or Indymac Federal
5 Bank at 888 East Walnut Street, Pasadena, California, 91101.

6 DATED: October 14, 2009

7
8 

9 WILLIAM B. SHUBB
10 UNITED STATES DISTRICT JUDGE
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28