

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

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

CHARITY MAE PANTALION,

Plaintiff,

CIV. NO. S-09-2262 MCE GGH PS

vs.

RESMAE MORTGAGE CORPORATION, et al.,

Defendants.

ORDER AND

ORDER TO SHOW CAUSE

Plaintiff is proceeding pro se in this action, referred to the undersigned pursuant to Local Rule 72-302(c)(21). A motion to dismiss by defendants Wilshire Credit Corporation, Mortgage Electronic Registration Systems, Inc., Merrill Lynch Mortgage Investors, Inc., and Merrill Lynch Investors Trust Series 2006 RM5 is presently noticed for hearing on the March 4, 2010, law and motion calendar of the undersigned. Opposition to motions, or a statement of non-opposition thereto, must be filed fourteen days preceding the noticed hearing date. E.D. Cal. L. R. 78-230(c). Court records reflect that plaintiff failed to file opposition or a statement of non-opposition to the motion.

Failure to comply with the Local Rules “may be grounds for imposition by the Court of any and all sanctions authorized by statute or Rule or within the inherent power of the Court.” E.D. Cal. L. R. 11-110; see Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995).

Additionally, “[n]o party will be entitled to be heard in opposition to a motion at oral arguments

\\\\\\

1 if written opposition to the motion has not been timely filed.” E.D. Cal. L. R. 78-230(c).<sup>1</sup> Pro se  
2 litigants are bound by the rules of procedure, even though pleadings are liberally construed in  
3 their favor. King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987); Jacobsen v. Filler, 790 F.2d 1362,  
4 1364-65 (9th Cir.1986). The Local Rules specifically provide that cases of persons appearing in  
5 propria persona who fail to comply with the Federal and Local Rules are subject to dismissal,  
6 judgment by default, and other appropriate sanctions. E.D. Cal. L. R. 83-183.

7 Plaintiff is informed that her notice of filing bankruptcy does not act to stay this  
8 action. Such a bankruptcy filing has no effect on this case; however, where the debtor is a  
9 plaintiff and there are no counterclaims against her in the case. In re Palmdale Hills Property,  
10 LLC, \_\_\_ B.R. \_\_\_, 2009 WL 5812119, \*4 (9<sup>th</sup> Cir. BAP 2009) (policy considerations for  
11 imposing a stay non-existent where debtor initiated action); In re White, 186 B.R. 700, 704 (9<sup>th</sup>  
12 Cir. BAP 1995); In re Merrick, 175 B.R. 333, 337 (9<sup>th</sup> Cir. BAP1994); In re Mitchell, 206 B.R.  
13 204, 212 (Bankr. C.D. Cal. 1997). The automatic stay of 11 U.S.C. § 362 has no application to  
14 suits brought by debtors, but only stays actions *against* debtors. Id. Therefore, the undersigned  
15 finds that a stay is not appropriate in this case.

16 Good cause appearing, IT IS HEREBY ORDERED that:

17 1. The hearing date of March 4, 2010 is vacated. Hearing on defendants’ motion  
18 is continued to March 25, 2010.

19 2. Plaintiff shall show cause, in writing, no later than March 11, 2010 why  
20 sanctions should not be imposed for failure timely to file opposition or a statement of non-  
21 opposition to the pending motion.

22 3. Plaintiff is directed to file opposition, if any, to the motion, or a statement of  
23 non-opposition thereto, no later than March 11, 2010. Failure to file opposition and appear at  
24 hearing, or to file a statement of non-opposition, will be deemed a statement of non-opposition,

---

25  
26 <sup>1</sup> Moreover, failure to appear at hearing may be deemed withdrawal of opposition to a  
motion or may result in sanctions. E.D. Cal. L. R. 78-230(j).

1 and shall result in a recommendation that this action be dismissed.

2 4. Plaintiff's request for a stay based on her bankruptcy filing is denied.

3 DATED: February 25, 2010

4 /s/ Gregory G. Hollows

5 \_\_\_\_\_  
6 GREGORY G. HOLLOWS  
7 U. S. MAGISTRATE JUDGE

8 GGH:076:Pantalion2262.osc.wpd

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26