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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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DONNA L. PHILLIPS,
Plaintiff,

NO. CIV. S-09-3112 FCD/EFB

v.

MEMORANDUM AND ORDER

IMS LOANS, INC., a California corporation, WELLS FARGO BANK, as successor by acquisition to Wachovia Bank and World Savings Bank, a California corporation; and DOES 1 through 10, inclusive,

Defendants.

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This matter is before the court on (1) the court's order imposing sanctions and dismissing the case, filed May 11, 2010 (Docket #s 11, 14) and (2) defendant Wachovia Mortgage, a division of Wells Fargo Bank's ("defendant") motion for an award of attorneys' fees (Docket #s 15, 18, 19) and the court's order to show cause ("OSC") to plaintiff's counsel for failure to

1 respond to the motion (Docket #20).¹ On May 11, 2010, the court
2 dismissed this mortgage foreclosure case, under Federal Rule of
3 Civil Procedure 41(b), for plaintiff's failure to comply with
4 court orders or otherwise prosecute the case. Defendant now
5 moves for an award of attorneys' fees based on that order,
6 arguing that as the prevailing party in the case, it is entitled
7 to fees pursuant to its contracts with plaintiff.

8 Defendant originally removed this case to this court on
9 November 6, 2009. Subsequently, on November 13, 2009, it moved
10 to dismiss the case. (Docket #6.) Plaintiff failed to respond
11 to the motion, and the court issued an OSC to plaintiff's counsel
12 on February 1, 2010. (Docket #9.) Again, plaintiff failed to
13 respond, and on March 29, 2010, the court issued an order
14 sanctioning counsel \$150.00, and it issued a further OSC to
15 plaintiff's counsel re: imposition of additional monetary
16 sanctions, in the amount of \$300.00, and for dismissal of the
17 case for failure to prosecute. (Docket #10.) Counsel did not
18 respond, and the court issued its May 11 Order dismissing the
19 case and imposing sanctions on counsel in the amount of \$450.00.
20 (Docket #11.) Counsel did not timely pay the sanctions, and on
21 June 4, 2010, the court set the matter for a hearing on July 23,
22 2010. (Docket #14.)

23 Counsel additionally did not respond to defendant's motion
24 for attorneys' fees, which sought an award of \$7,907.50 against
25 plaintiff, personally, pursuant to the terms of the Promissory
26

27 ¹ Because oral argument will not be of material
28 assistance, the court orders these matters submitted on the
briefs. E.D. Cal. L.R. 230(g).

1 Note and Deed of Trust plaintiff executed with defendant.
2 (Docket #18.) As a result of counsel's failure to respond to
3 that motion, the court issued another OSC on June 28, 2010
4 (Docket #20), setting the matter for hearing on July 23, 2010.
5 Again, plaintiff's counsel did not respond to the OSC pertaining
6 to defendant's attorneys' fees motion.

7 Because of plaintiff's counsel's continued failure to comply
8 with the court's orders, the court reviewed counsel's state bar
9 records. On April 9, 2010, a Notice of Disciplinary Charges was
10 issued to counsel by the State Bar of California, charging
11 counsel with 29 offenses, including among other things: failure
12 to maintain client funds in trust account, moral turpitude
13 misappropriation of funds, failure to cooperate in State Bar
14 investigations, formation of a partnership with a non-lawyer,
15 failure to refund unearned fees, sharing legal fees with a non-
16 lawyer, unauthorized practice of law in another jurisdiction, and
17 failure to perform with competence. (In the Matter of: Stephen
18 Paul Collette, No. 186439, Case Nos. 09-O-10385, 09-O-12389, 09-
19 O-12430, 09-O-12656, 09-O-13415, 09-O-13532, 09-O-14457.)

20 Like his conduct in this court, counsel failed to respond to the
21 charges, and on June 21, 2010, the State Bar Court issued an
22 order, entering default against counsel, which deemed the factual
23 allegations of the charges admitted, and suspended counsel from
24 the practice of law. (In the Matter of Stephen P. Collette,
25 Member No. 186439, Case No. 09-O-10385-RAH.) His suspension
26 remains in effect until counsel requests and the Bar Court grants
27 a motion for termination of actual suspension. Until then,
28 counsel remains ineligible to practice law. (Id.)

1 As a result of the State Bar disciplinary proceedings and
2 counsel's present ineligible status, the court HEREBY VACATES, in
3 its discretion, the pending sanctions orders (Docket #s 11, 20)
4 against counsel as further collection efforts appear to be
5 futile. A hearing on these orders is likewise unnecessary.

6 With respect to defendant's motion for attorneys' fees, the
7 court directs defendant to attempt to personally serve plaintiff
8 Donna L. Phillips with the motion. Due to the State Bar
9 proceedings, plaintiff is effectively without counsel in this
10 case. Defendant's motion seeks imposition of an award of
11 attorneys' fees against plaintiff, *personally*, pursuant to her
12 contracts with defendant. It is not clear whether plaintiff has
13 any knowledge about the status of her counsel or the pending
14 motion against her. As such, the court orders defendant to
15 attempt to serve plaintiff with the motion within 30 days.

16 Defendants shall file either a proof of service, indicating how
17 and at what location service was effectuated, or a declaration
18 attesting to the efforts made to locate plaintiff. Upon receipt
19 of either the proof of service or declaration, the court will
20 reset the motion for attorneys' fees for hearing, providing if
21 plaintiff is located, a time for her to respond to the motion.
22 Accordingly, the hearing on defendant's motion for fees (Docket
23 #15), set for July 23, 2010, is HEREBY VACATED. The motion is

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1 deferred pending further order of the court.

2 IT IS SO ORDERED.

3 DATED: July 15, 2010

A handwritten signature in black ink, appearing to read "Frank C. Damrell, Jr.", written in a cursive style.

FRANK C. DAMRELL, JR.
UNITED STATES DISTRICT JUDGE

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