

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

SUNBELT RENTALS a.k.a. Nations Rent, a North Carolina Corporation, No. 2:10-cv-0690-MCE-GGH

Plaintiff,

v.

ORDER

HAWKS TRUCK STOP, et al.,
Defendants.

----oo0oo----

Through the present action, Plaintiff Sunbelt Rentals ("Plaintiff") seeks to foreclose a mechanic's lien for real property located in Sacramento after Defendants Hawks Truck Stop, Makhan Virk and Pritpal Kahur allegedly breached their contract with Plaintiff on August 28, 2009. Plaintiff's lien on the subject property was recorded on November 2, 2009. See Exhibit A to Pl.'s Comp.

///
///
///

1 Also named as Defendants in Plaintiff's action are the
2 United States Small Business Administration ("SBA") and its
3 predecessor in interest, the Greater Sacramento Certified
4 Development Certified Development Corporation ("CDC"). The
5 United States government, on behalf of said Defendants, now moves
6 to dismiss Plaintiff's Complaint against them, pursuant to
7 Federal Rule of Civil Procedure 12(b)(6), for failure to state a
8 claim against either the SBA or the CDC upon which relief can be
9 granted.

10 The government requests that the Court take judicial notice
11 as to the Deed of Trust filed on behalf of the CDC on January 19,
12 2001, as well as a subsequent assignment by the CDC to the SBA of
13 the Deed of Trust recorded that same day. Since the court may
14 properly notice documents "the authenticity of which is not
15 contested" and on which the complaint "necessarily relies" (see
16 Parrino v. FHP, Inc., 146 F.3d 699, 706 (9th Cir. 1998),
17 superseded on other grounds by Abrego Abrego v. Dow Chem. Co.,
18 443 F.3d 676, 681 (9th Cir. 2006)), judicial notice of the Deed
19 of Trust and subsequent Assignment is granted.

20 Because the January 19, 2001 Deed of Trust was filed more
21 than eight years before Plaintiff Mechanic's Lien was entered on
22 November 2, 2009, the government moves to dismiss Plaintiff's
23 Complaint against the SBA and CDC on grounds that liens recorded
24 prior to Plaintiff's Mechanic's Lien are unaffected by subsequent
25 foreclosure on a later-filed Mechanic's Lien, and that
26 accordingly actions against such prior lienholders must be
27 dismissed. See e.g., Walker v. Lytton Sav. & Loan Ass'n, 2 Cal.
28 3d 152, 159-61 (1970).

1 Plaintiff has not opposed the Government's motion on behalf
2 of the SBA and CDC. Given that non-opposition, and good cause
3 appearing therefor, the government's Motion to Dismiss (Docket
4 No. 3) is hereby GRANTED.¹ Defendants United States Small
5 Business Administration the Greater Sacramento Certified
6 Development Certified Development Corporation are dismissed from
7 this lawsuit.

8 IT IS SO ORDERED.

9 Dated: April 26, 2010

10
11 

12 MORRISON C. ENGLAND, JR.
13 UNITED STATES DISTRICT JUDGE
14
15
16
17
18
19
20
21
22
23
24
25
26

27 ¹ Because oral argument will not be of material assistance,
28 the Court orders this matter submitted on the briefing. E.D.
Cal. Local Rule 230(g).