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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MAGNOLIA'S FINE HOMES & ESTATES,
INC. PRESIDENT/CEO JOHN R WILSON,

No. C 09-05600 JSW

Plaintiffs,

v.

LASALLE BANK NA., LITTON
INDUSTRIES and DOES 1-10,**ORDER DENYING
APPLICATION TO PROCEED IN
FORMA PAUPERIS AND
DISMISSING COMPLAINT**Defendants.

On November 25, 2009, Plaintiff Magnolia's Fine Homes & Estates, Inc. President/CEO John R Wilson filed a complaint and an application to proceed *in forma pauperis*. Courts must deny *in forma pauperis* applications under certain circumstances, including when the allegation of poverty is untrue or the underlying complaint sought to be filed is frivolous or when it fails to state a claim upon which relief may be granted. 28 U.S.C. § 1915(e)(2).

First, the Court finds that Plaintiff John R. Wilson's ("Wilson") claim of poverty is untrue. Wilson owns a home which he estimates is worth \$500,000. Therefore, the Court finds his claim of poverty unconvincing. On this basis alone, the application to proceed *in forma pauperis* is DENIED.

In addition, in contravention of Federal Rule of Civil Procedure 8(a), Plaintiff failed to file a pleading setting forth the grounds upon which this Court has jurisdiction, "a short and plain statement of the claim showing that the pleader is entitled to relief, . . . and a demand for judgment for the relief the pleader seeks." Plaintiff's complaint is disjointed to the point of

1 being incoherent and unintelligible. It is impossible to discern from his complaint: (1) the
2 underlying factual basis for his suit; (2) the legal theories under which he seeks relief; or (3)
3 what relief he is requesting.

4 Additionally, it is not clear from the complaint who the Plaintiffs are. To the extent
5 Magnolia's Fine Homes & Estates, Inc. is a plaintiff, there are no facts alleged in the complaint
6 to support claims by Magnolia's Fine Homes & Estates, Inc. Moreover, Magnolia's Fine
7 Homes & Estates, Inc is a corporation, and therefore, cannot represent itself. *See Rowland v.*
8 *California Men's Colony*, 506 U.S. 194, 201-02 (1993); Civ. L. R. 3-9(b). Nor can Wilson, as a
9 non-attorney, represent other parties, including Magnolia's Fine Homes & Estates, Inc. The
10 complaint alleges that Jose and Mayra Rodriquez purchased a home with Wilson, but Jose and
11 Mayra Rodriquez do not appear to be listed as plaintiffs. To the extent Jose and Mayra
12 Rodriquez are also plaintiffs in this case, they should be clearly stated as plaintiffs and must
13 either represent themselves or be represented by an attorney. Again, Wilson, as a non-attorney,
14 cannot represent them.

15 The complaint is also unclear as to who has been evicted from any home and when any
16 defendants evicted such persons. Nor is it clear if the home has already been sold or is about to
17 be sold or foreclosed upon. Although the complaint alleges that a sale occurred on May 7,
18 2008, Wilson moves for a preliminary injunction and a temporary restraining order relating to
19 the home being put up for sale. Wilson does not state when the sale or foreclosure is scheduled
20 to occur, if it has not already happened.


21 For these reasons, Plaintiff's application to proceed *in forma pauperis* is HEREBY
22 DENIED WITHOUT PREJUDICE and the Complaint is DISMISSED WITH LEAVE TO
23 AMEND. If Wilson or any other plaintiffs wish to pursue this action, they must file an
24 amended complaint setting forth a cognizable legal claim by **January 4, 2010**. If they file an
25 amended complaint in compliance with this order, Wilson or any other plaintiffs may also file
26 an amended motion for a preliminary injunction and an amended application for a temporary
27 restraining order. However, any motion must be properly noticed in compliance with the
28 Northern District Civil Local Rules. Wilson may not file another application to proceed *in*

1 *forma pauperis* as the Court finds his claim of poverty to be untrue. Failure to file a cognizable
2 legal claim by this date shall result in **dismissal** of this action. The Court advises Wilson that a
3 Handbook for Pro Se Litigants, which contains helpful information about proceeding without an
4 attorney, is available through the Court's website or in the Clerk's office. In addition, without
5 making any endorsement in this regard, Wilson advised that the San Francisco Bar Association
6 operates a lawyer referral service which may be helpful in securing pro bono counsel.
7 Moreover, Wilson may wish to seek assistance from the Legal Help Center, located on the 15th
8 Floor of the Courthouse, Room 2796, where Wilson may sign up for a free appointment with an
9 attorney who may be able to provide basic legal help, but not legal representation.

10 In light of this Order, the date for the Case Management Conference, previously set for
11 March 12, 2010 at 1:30 p.m., is VACATED and will be reset by the Court at a later date if
12 necessary.

13 **IT IS SO ORDERED.**

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15 Dated: December 1, 2009



JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

MAGNOLIA'S FINE HOMES &
ESTATES, INC. PRESIDENT/CEO
JOHN R WILSON,

Case Number: CV09-05600 JSW

CERTIFICATE OF SERVICE

Plaintiff,

v.

LASALLE BANK NA et al,

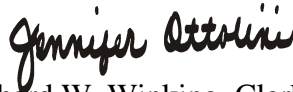
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on December 1, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Magnolia's Fine Homes & Estates, Inc.
President / CEO John R. Wilson
30230 Cedar brook Road
Hayward, CA 94544

Dated: December 1, 2009



Richard W. Winking, Clerk
By: Jennifer Ottolini, Deputy Clerk