

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

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

In Re: No. C 10-05138 WHA
BRIDGETTE NEWELL,
Debtor.

DAN NEWELL and BRIDGETTE NEWELL,
Plaintiffs, Adversary Case No. 10-04110
Bankruptcy Case No. 10-44111

v.

WELLS FARGO BANK, N.A.,
Defendant.

**ORDER GRANTING
UNOPPOSED MOTION
TO WITHDRAW
BANKRUPTCY REFERENCE
AND VACATING HEARING**

INTRODUCTION

In this bankruptcy adversary proceeding, defendant Wells Fargo Bank, N.A. requests that reference of the action to bankruptcy court be withdrawn. For the reasons stated below, defendant’s motion is **GRANTED**.

STATEMENT

On April 30, 2010, Plaintiffs Dan Newell and Bridgette Newell filed a complaint to quiet title in a bankruptcy adversary proceeding before the United States Bankruptcy Court for the Northern District of California. The adversary proceeding (No. 10-04110) is related to a bankruptcy proceeding in which Bridgette Newell is the debtor (No. 10-44111). The adversary complaint alleges that Wells Fargo and Wachovia Mortgage “with the intent of evading their

1 responsibilities under HAMP and CC §2923.53, devised their program to fail” (Compl. ¶ 8). In
2 particular, Wells Fargo allegedly administered its loan modification program in ways that failed
3 to fulfill the spirit of its duties under the federal Home Affordable Modification Program.

4 On October 12, 2010, Wells Fargo filed a motion to withdraw reference of the adversary
5 complaint to bankruptcy court; this filing was made in the bankruptcy court. Wells Fargo also
6 filed and re-filed its motion in this Court on November 12 and November 16, respectively.
7 Plaintiffs’ counsel was served with notice of all three filings. Plaintiffs’ opposition or statement
8 of nonopposition to the motion was due on December 9, but no such filing has been made.

9 After filing the instant motion, Wells Fargo also filed a motion to dismiss the adversary
10 complaint and a motion to stay the adversary action until the instant motion is resolved. Both of
11 these motions were filed in the bankruptcy court, and both are still pending.

12 ANALYSIS

13 A United States District Court may refer bankruptcy cases to federal bankruptcy judges.
14 28 U.S.C. 157(a). In some circumstances, however, the District Court is permitted or required to
15 withdraw the reference. 28 U.S.C. 157(d). The statute provides for mandatory withdrawal as
16 follows: “The district court shall, on timely motion of a party, so withdraw a proceeding if the
17 court determines that resolution of the proceeding requires consideration of both title 11 and other
18 laws of the United States regulating organizations or activities affecting interstate commerce.”
19 *Ibid.* The Ninth Circuit has interpreted this statute to mandate withdrawal “in cases requiring
20 material consideration of non-bankruptcy federal law.” *Sec. Farms v. Int’l Bhd. of Teamsters,*
21 *Chauffers, Warehousemen & Helpers*, 124 F. 3d 999, 1008 (9th Cir. 1997).

22 The adversary complaint centers on allegations that Wells Fargo violated the Home
23 Affordable Modification Program — a non-bankruptcy set of federal laws. Plaintiffs have not
24 advanced any arguments to the contrary. Accordingly, reference of the adversary complaint to
25 bankruptcy court must be withdrawn.

26 CONCLUSION

27 Defendant Wells Fargo’s unopposed motion to withdraw reference of this adversary
28 action to Bankruptcy Court is **GRANTED**. All further proceedings in this adversary action shall be

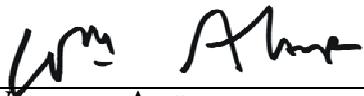
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

before this Court. The hearing on this motion set for December 30, 2010 is **VACATED**.

Defendant's request for judicial notice is **DENIED AS MOOT**.

IT IS SO ORDERED.

Dated: December 23, 2010.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE