

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ELDRICK E. ROBISON,

No. C-13-2443 EMC

Plaintiff,

v.

CITY OF SANTA ROSA, *et al.*,

Defendants.

**ORDER RE BRIEFING SCHEDULE
FOR DEFENDANTS' MOTION TO
STAY; AND DENYING PLAINTIFF'S
MOTIONS TO STRIKE****(Docket Nos. 14, 25, 26)**

Plaintiff filed the instant suit on March 30, 2013, bringing two causes of action in connection with a dispute over the ownership of a property located at 1070 S. Wright Road in Santa Rosa, California. Docket No. 1. Currently pending before the Court is Defendants' motion requesting that the Court stay the instant matter for 60 days or until the court issues an order directing Plaintiff to show cause why this matter should not be dismissed. Docket No. 14. Defendants note that Plaintiff had been declared a vexatious litigant in California Superior Court, and argue that the instant suit is frivolous. In particular, Defendants argue that Plaintiff has no interest in the subject property because the individual who allegedly deeded him the property did not own it at any relevant time. In support of its motion, Defendants attach various documents documenting the chain of title for the subject property. Docket No. 16.

As Defendants' motion attaches evidence outside the pleadings and argues that Plaintiff's case cannot succeed on the merits, this Court treats the motion as a motion for summary judgment pursuant to Fed. R. Civ. P. 56. *Cf.* Fed. R. Civ. P. 12(d) (providing that a court may construe a Rule 12 motion as a motion for summary judgment when it raises matters outside the pleadings).

Accordingly, the Court **VACATES** the hearing currently set for August 29, 2013 and sets the following briefing schedule:

1. By no later than August 27, 2013, Defendants may submit any additional evidence in support of the motion for summary judgment, as well as any additional briefing not to exceed five pages.
2. By no later than September 10, 2013, Plaintiff shall file his opposition to the motion for summary judgment, along with any evidence he wishes the Court to consider, consistent with Fed. R. Civ. P. 56.
3. Defendants may file any reply by no later than September 17, 2013.
4. The motion for summary judgment will be heard at 1:30 p.m. on Thursday, October 3, 2013.

Plaintiff is advised that summary judgment may be granted “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial . . . since a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23 (1986); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (a fact is material if it might affect the outcome of the suit under governing law, and a dispute about a material fact is genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.”). Thus, while Defendants will bear the initial burden of identifying those portions of the record which demonstrate the absence of a genuine issue of material fact, should they do so, the burden then shifts to Plaintiff to introduce evidence indicating that there is a genuine issue for trial. *Celotex*, 477 U.S. at 324 (citations omitted.).


Plaintiff has also filed two motions to strike Defendant’s motion to stay, arguing that the stay and supporting documentation constitute scandalous material irrelevant to the merits of this case. Docket Nos. 25, 26. In light of the above ruling, Plaintiff’s motions are **DENIED**.

1 For Plaintiff's benefit, the Court directs his attention to the Handbook for Pro Se Litigants,
2 which is available along with further information for the parties on the Court's website located at
3 <http://cand.uscourts.gov/proselitigants>. Plaintiff may also contact the Legal Help Center, 450
4 Golden Gate Avenue, 15th Floor, Room 2796, Telephone No. (415) 782-8982, for free legal advice
5 regarding his claims.

6 This order disposes of Docket Nos. 25 and 26.

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8 IT IS SO ORDERED.

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10 Dated: August 20, 2013

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13 EDWARD M. CHEN
14 United States District Judge
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