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

United States District Court
Northern District of California

LPP MORTGAGE LTD.,

Plaintiff,

v.

ONDYN HERSCHELLE,

Defendant.

Case No.: C-13-4330 JSC

**ORDER GRANTING PLAINTIFF'S
MOTION TO MODIFY THE
COURT'S FEBRUARY 12, 2014
ORDER AND PLAINTIFF'S
RENEWED MOTION UNDER CAL.
CIV. CODE § 2929.5 (Dkt. Nos. 18, 19)**

Plaintiff LPP Mortgage Ltd., the beneficiary of a Deed of Trust encumbering Defendant's property, brings this action for judicial foreclosure and specific performance of the Deed of Trust. (Dkt. No. 17.) Plaintiff alleges Defendant breached both the Deed of Trust and the underlying Note by failing to make monthly payments under the Note, pay property taxes, and maintain fire insurance on the property. (Dkt. No. 17 at ¶ 14.) Plaintiff seeks to enforce its right under California Civil Code section 2929.5(a)(2) to enter and inspect Defendant's property after commencement of foreclosure proceedings "for the purpose of determining the existence, location, nature, and magnitude of any past or present release or threatened release of any hazardous substance into, onto, beneath, or from the real property security."

1 Plaintiff previously moved the Court for an order pursuant to section 2929.5(d), under which
2 “a secured lender [who] is refused the right of entry and inspection by the borrower or tenant of the
3 property, or is otherwise unable to enter and inspect the property without a breach of the peace,”
4 may obtain an order allowing it to exercise its rights under 2929.5(a). (Dkt. No. 13). On February
5 12, 2014, the Court denied Plaintiff’s motion without prejudice to renewal upon a showing that (1)
6 Defendant “refused” Plaintiff the right of entry or inspection; and (2) diversity jurisdiction is proper.
7 (Dkt. No. 16.) Plaintiff has renewed its motion and addressed these two issues. (Dkt. No. 19.)
8 Because Plaintiff has established that Defendant refused Plaintiff entry, Plaintiff’s motion is
9 GRANTED.

10 DISCUSSION

11 As an initial matter, the First Amended Complaint sufficiently establishes diversity
12 jurisdiction by alleging complete diversity among Plaintiff’s member partners and Defendant. (Dkt.
13 No. 12 at ¶¶ 1-3.)

14 Plaintiff has also met the requirements of section 2929.5(d). Plaintiff indicates Defendant
15 initially agreed to its request to conduct an environmental inspection in July 2013, before this action
16 was filed, but later requested more information about why the inspection was necessary. (Dkt. 19 at
17 10-11, ¶¶ 9-10.) In response, Plaintiff explained that contaminants from neighboring auto repair
18 businesses could have entered the property. (*Id.*) After that conversation, Defendant did not respond
19 to multiple attempts by Terracon, Plaintiff’s inspection company, to schedule an inspection, or to
20 Plaintiff’s request via email. (*Id.* at 11.) In August 2013, while not responding to Plaintiff,
21 Defendant sent Plaintiff a “Courtesy Notice” stating, in part, that she “DOES NOT CONSENT to
22 any unlawful and illegal devaluing, diminishing, abrogating, subjugating, subordinating, usurping,
23 invading, violating or theft of [Defendant’s] duly secured BE’ing, any and all creations therefrom
24 and property thereof.” (Dkt. No. 19 at 11, ¶12; Dkt. No. 19-1 at 1.) Since Plaintiff filed this action,
25 Defendant has not responded to the Complaint (Dkt. No. 12), to Plaintiff’s request for an inspection
26 via letter (Dkt. No. 19 at 13, ¶ 2), or to its phone calls (*id.* at ¶ 3). Defendant did, however, send
27 Plaintiff an “Invoice,” purporting to charge Plaintiff 35,000 ounces of troy ounce silver for its failure
28 to rebut the facts Defendant asserted in its “Courtesy Notice.” (Dkt. 19-2.)

