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28UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN BROSNAN,

Plaintiff,

No. C 09-0401 PJH

v.

ORDERMORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, et al.,

Defendants.

Before the court is the motion of pro se plaintiff John Brosnan ("Brosnan") for an order vacating the judgment entered in the above-entitled action on June 2, 2009.

Brosnan filed this action on January 28, 2009, against defendants Mortgage Electronic Registration Systems, Inc.; American Home Mortgage Servicing, Inc.; American Home Mortgage Servicing, Inc. Default Services, Inc.; American Brokers Conduit; and American Home Mortgage, asserting claims under state and federal law.

In the complaint, Brosnan alleges that Cheryl Montero is the owner of real property located at 3279 Mt. Diablo Court, #32, Lafayette, California ("the property"). Brosnan asserts that the property is "in foreclosure," and that Ms. Montero assigned him "her rights to her causes of action which exist regarding defendants." See Complaint ¶¶ 12, 21.

Also on January 28, 2009, Brosnan filed an application for a temporary restraining order ("TRO"), seeking to prevent American Home Mortgage, or American Home Mortgage Servicing, Inc. Default Services, Inc. from conducting a foreclosure sale of the property. At the time that Brosnan filed the TRO application, court staff verbally advised him that a hearing on the application could not be set until he had either filed a proof of service of the

1 summons and complaint on defendants, or filed a declaration in accordance with the
2 Federal Rules of Civil Procedure, establishing cause for issuance of a TRO without notice
3 to the advance parties.

4 On March 2, 2009, Brosnan having filed neither a proof of service or a declaration,
5 the court denied the TRO for failure to comply with Federal Rule of Civil Procedure 65 and
6 the Civil Local Rules of this court.

7 During the short period of time that this case has been pending, Brosnan has
8 followed a pattern of ignoring the Federal Rules of Civil Procedure and the Civil Local Rules
9 of the court, as well as this court's own orders. At the time that Brosnan filed the complaint,
10 he received a copy of the court's Order Setting Initial Case Management Conference and
11 ADR Deadlines. The order stated that the initial case management conference would be
12 held on May 7, 2009, at 2:30 p.m., and that the case management conference statement
13 was required to be filed no later than April 30, 2009. Brosnan did not file a case
14 management conference statement as ordered.

15 On May 4, 2009, the clerk issued a notice advancing the time of the May 7, 2009
16 case management conference from 2:30 p.m. to 1:00 p.m. On May 6, 2009, at
17 approximately 4:15 p.m., Brosnan e-filed a request to continue the case management
18 conference, and also sought permission to appear telephonically.

19 In this request, Brosnan stated that Ms. Montero, "the property owner, which is at
20 the heart of this action, is currently in the Stanford Medical Center ICU. She's been in the
21 hospital for quite some time subsequent to suffering a brain aneurysm." He added that Ms.
22 Montero "handled the service of papers on the defendants in this action and due to her
23 medical situation I'm unable to get any information from her. It's my understanding that her
24 daughter . . . is in the process of gaining conservatorship over her mother. As such I will
25 need to reserve the defendants."

26 The request was made too late for the court to issue an order continuing the
27 hearing. Moreover, the undersigned judge does not permit telephonic appearances at
28 initial case management conferences.

1 On May 7, 2009, half an hour before the time scheduled for the case management
2 conference, Brosnan e-filed a case management conference statement, stating that Ms.
3 Montero “has was [sic] handling the service of the complaint on defendants,” that she had
4 “suffered a brain aneurysm and has been in the hospital,” and that he “has undertaken to
5 get defendants served.” Brosnan did not appear at the May 7, 2009 case management
6 conference.

7 On May 8, 2009, the court issued an order to show cause why the case should not
8 be dismissed for failure to comply with court orders, and for lack of standing. The order
9 recited the facts stated above, noting that Brosnan had failed to file a case management
10 conference statement and had also failed to appear at the case management conference
11 as ordered.

12 In addition, the court noted that based on Brosnan’s representation that Ms. Montero
13 had “assigned” him her “rights to her causes of action which exist regarding defendants,”
14 Brosnan was responsible for insuring that the summons and complaint were served in
15 accordance with Federal Rule of Civil Procedure 4 (if indeed there had been a valid
16 assignment). The court emphasized that the fact of Ms. Montero’s illness was irrelevant to
17 Brosnan’s obligations as a plaintiff in this action, and directed him to establish that he had
18 standing to proceed as a plaintiff.

19 Brosnan appeared as ordered on May 20, 2009. He produced a piece of paper
20 which he claimed established that Ms. Montero had “assigned” her causes of action to him.
21 He also stated that he had been unaware that the court had changed the time of the case
22 management conference because he had not checked his e-mail (notwithstanding his
23 obligation as a registered e-filer to check his e-mail regularly for notices from the court),
24 and that he had in fact been physically present in the Federal Building at the time originally
25 set.

26 While the court found Brosnan’s claim that he was unaware of the change in the
27 time of the case management conference to be a bit incredible, given that he had e-filed
28 two documents on two different occasions after the notice regarding the change in the time

1 had been posted by the clerk, the court nevertheless discharged the order to show cause.
2 In addition, however, the court ordered Brosnan to effectuate service on defendants no
3 later than May 29, 2009, and to file a proof of service showing service of the summons and
4 complaint on all defendants. On June 2, 2009, Brosnan having failed to file the required
5 proof of service, the court dismissed the case and entered a judgment of dismissal.

6 On June 4, 2009, Brosnan e-filed a letter stating that records of the California
7 Secretary of State show that defendant Mortgage Electronic Registration Systems
8 (“MERS”) has since November 2004 been a suspended corporation, and that it is currently
9 without an agent for service of process in California. He requests the court to “vacate” the
10 dismissal to permit him to serve the California Secretary of State with the complaint on
11 behalf of MERS. He does not mention any of the remaining four defendants.

12 The court interprets this request as a motion to vacate the judgment of dismissal,
13 pursuant to Federal Rule of Civil Procedure 60(b). Rule 60(b) provides, in relevant part,

14 On motion and just terms, the court may relieve a party or its legal
15 representative from a final judgment, order, or proceeding for the following
16 reasons:

16 (1) mistake, inadvertence, surprise, or excusable neglect;

17 (2) newly discovered evidence that, with reasonable diligence, could not have
18 been discovered in time to move for a new trial under Rule 59(b);

18 (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation,
19 or other misconduct by an opposing party;

20 (4) the judgment is void;

21 (5) the judgment has been satisfied, released, or discharged; it is based on an
22 earlier judgment that has been reversed or vacated; or applying it
23 prospectively is no longer equitable; or

23 6) any other reason that justifies relief.

24 Fed. R. Civ. P. 60(b).

25 Here, Brosnan has not provided any good cause for relief from the judgment. He
26 makes no showing of mistake, inadvertence, surprise, excusable neglect, newly discovered
27 evidence, fraud, or any of the other grounds specified in Rule 60.

28 Under Federal Rule of Civil Procedure 4(m), “[i]f a defendant is not served within 120

1 days after the complaint is filed, the court must dismiss the action without prejudice against
2 that defendant or order that service be made within a specified time.” (Emphasis added).
3 The complaint in the present action was filed on January 28, 2009. Thus, all defendants
4 were required to be served by May 28, 2009, and the court in fact ordered that service be
5 completed by May 29, 2009.


6 Any person appearing pro se in this court “is bound by the Federal Rules, as well as
7 by all applicable local rules.” Civ. L.R. 309(a). Brosnan, who has extensive prior
8 experience with filing lawsuits in this district, admittedly failed to comply with Rule 4(m) and
9 with the order of the court. Accordingly the court dismissed the complaint and entered
10 judgment. The request to vacate the dismissal is DENIED.

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12 **IT IS SO ORDERED.**

13 Dated: June 19, 2009

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PHYLLIS J. HAMILTON
United States District Judge

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