

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

VICTORIA P. MAGANA, an individual,

Plaintiff,

v.

WELLS FARGO BANK, N.A.; LSI TITLE COMPANY, a California Corporation; and NDEX WEST LLC, a Delaware limited liability corporation,

Defendants.

No. C 11-3993 CW

ORDER GRANTING ATTORNEY'S MOTION TO WITHDRAW, SETTING BRIEFING SCHEDULE FOR MOTION TO DISMISS AND MOTION TO STRIKE, RESETTING ADR DEADLINE AND RESETTING CASE MANAGEMENT CONFERENCE

United States District Court
For the Northern District of California

Movant Nick Pacheco, Esq., of Nick Pacheco Law Group, APC, counsel for Plaintiff Victoria P. Magana, seeks leave of this Court, pursuant to Local Rule 11-5(a), and under California Rules of Professional Conduct 3-700, to withdraw as counsel for Plaintiff. Plaintiff opposes the motion. The matter was heard on October 6, 2011. Having considered all of the parties' submissions and oral argument on the motion, the Court GRANTS the motion to withdraw.

Civil Local Rule 11-4(a)(1) requires attorneys practicing in this district to "comply with the standards of professional conduct required of members of the State Bar of California." The California Rules of Professional Conduct allow members of the California Bar to withdraw from representation with leave of the Court for several reasons, including if a client "renders it unreasonably difficult for the member to carry out the employment effectively," if the client "breaches an agreement or obligation

1 to the member as to expenses or fees," or for "other good cause."
2 Cal. R. Prof. Conduct 3-700(C)(1)(d),(f), 3-700(C)(6). Before
3 withdrawing, an attorney must take "reasonable steps to avoid
4 reasonably foreseeable prejudice to the rights of the client,
5 including due notice to the client, [and] allowing time for
6 employment of other counsel[.]" Cal. R. Prof. Conduct
7 3-700(A)(2).

8 In the present case, Movant argues that there is good cause
9 for withdrawal under each of these subsections. Movant contends,
10 and Plaintiff admits, that Plaintiff has stopped payment on the
11 retainer check and has refused to pay Movant. Plaintiff asserts
12 that she is not required to pay Movant at this time, because she
13 employed Movant to perform a loan modification for her and she
14 does not have to pay Movant until he has obtained a loan
15 modification for her. However, the record demonstrates that
16 Plaintiff employed Movant to pursue the instant action to prevent
17 the foreclosure of her house. Movant also asserts that Plaintiff
18 has been uncommunicative with him and his firm, and that
19 Plaintiff's husband or boyfriend has harassed the firm.
20 Accordingly, the Court finds that Plaintiff's failure to pay for
21 legal services and the breakdown of the attorney-client
22 relationship, which renders representation unreasonably difficult,
23 constitute good cause for withdrawal. Further, the Court finds
24 that Movant taken reasonable steps to avoid reasonably foreseeable
25 prejudice to Plaintiff, including providing Plaintiff with timely
26 notice of his intent to withdraw and of this Motion, allowing
27 ample time to secure alternate counsel, and continuing to
28 represent her in obtaining a preliminary injunction.

1 The motion to withdraw is GRANTED. If Plaintiff wishes to
2 pursue this litigation, she must retain new counsel or represent
3 herself in propria persona. Until and unless Plaintiff retains
4 new counsel, Defendants must serve a paper copy on Plaintiff of
5 any documents that Defendants file on the court's Electronic Case
6 Filing system.

7 The current briefing and hearing schedules for Defendants'
8 pending Motion to Dismiss and Motion to Strike are vacated.
9 Plaintiff's opposition to those motions is due on November 17,
10 2011. Defendants' reply, if any, is due on November 28, 2011. The
11 motions will be decided on the papers. If Plaintiff fails to file
12 an opposition to these motions, this case will be dismissed for
13 failure to prosecute.

14 In an order dated August 29, 2011, this Court referred the
15 parties to the Alternative Dispute Resolution (ADR) Unit for an
16 initial assessment by telephone by September 16, 2011. The
17 parties have participated in one telephone call with the ADR unit
18 and have represented to the Court that they need to participate in
19 a second call to complete the initial assessment. The parties
20 shall participate in a further telephone conference to be
21 scheduled by the ADR Unit for a date before November 10, 2011.

22 The parties are currently set to appear for a case management
23 conference on November 8, 2011 at 2:00 p.m. This case management
24 conference is continued to December 20, 2011 at 2:00 p.m.
25 Pursuant to this Court's Local Rule 16-9(a) and the Standing Order
26 for All Judges of the Northern District of California, the parties
27 are to submit a Joint Case Management Statement, or separate
28 statements, on or before December 13, 2011. In the event that

1 Plaintiff fails to file a statement or does not appear at the
2 conference in person or through counsel, her claims will be
3 dismissed for failure to prosecute.

4 IT IS SO ORDERED.

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6 Dated: 10/18/2011

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8 CLAUDIA WILKEN
9 United States District Judge
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