

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES W SCHUBERT,

Plaintiff,

v.

THE BANK OF NEW YORK MELLON, et
al.,

Defendants.

Case No. 17-cv-00856-KAW

**ORDER DISMISSING CASE WITH
PREJUDICE**

Re: Dkt. No. 48

On February 8, 2017, Plaintiff James W. Schubert brought the instant suit in the state court against Defendants The Bank of New York Mellon and Bank of America, N.A., asserting claims for quiet title and declaratory relief. (Dkt. No. 1-1.) While pending before the state court, the state court issued a temporary restraining order enjoining the trustee's sale set for February 15, 2017, and set a briefing schedule for Plaintiff's motion for a preliminary injunction. (Dkt. No. 1-1 at 43-44.¹) On February 21, 2017, Defendants removed the instant case. (Dkt. No. 1.) Plaintiff then filed an ex parte application, seeking "clarification . . . that no trustee's sale may take place in the interim prior to a hearing on the merits of his request for a preliminary injunction." (Dkt. No. 12 at 2.) The Court granted Plaintiff's ex parte application, stating that the temporary restraining order issued by the state court would remain in effect until the Court ruled on Plaintiff's motion for a preliminary injunction. (Dkt. No. 13 at 1.)

Defendants subsequently moved to dismiss the case. (Dkt. No. 14.) On June 14, 2017, the Court granted Defendants' motion to dismiss, but gave Plaintiff leave to file an amended complaint to add claims based on an alleged breach of the settlement agreement. (Dkt. No. 42 at 18.) The

¹ The referenced page numbers are based on the ECF header.


1 Court deferred ruling on Plaintiff's motion for a preliminary injunction, and ordered the parties to
2 meet and confer and to stipulate to a briefing schedule on Plaintiff's motion for a preliminary
3 injunction. (Id.) The parties stipulated to a briefing schedule accordingly. (Dkt. No. 43.)

4 Plaintiff did not file an amended complaint or his motion for preliminary injunction.
5 Instead, on July 13, 2017, Plaintiff filed a request that the Court amend its dismissal order to deny
6 leave to amend, "in order to facilitate the finality of judgment" and to allow Plaintiff to appeal the
7 Court's dismissal. (Dkt. No. 45 at 1-2.) On July 14, 2017, the Court denied Plaintiff's request,
8 finding that Plaintiff provided no legal basis for amending the dismissal order. The Court
9 explained that the proper procedure would be for Plaintiff to file a written notice of intent not to
10 file an amended complaint, which would allow the Court to enter final judgment dismissing all
11 claims with prejudice under Federal Rule of Civil Procedure 12(b)(6). (Dkt. No. 47 at 2.)

12 On July 17, 2017, Plaintiff filed his notice of intention not to file an amended complaint.
13 (Dkt. No. 48.) Accordingly, the Court DISMISSES Plaintiff's claims with prejudice under Federal
14 Rule of Civil Procedure 12(b)(6), and will enter judgment in favor of Defendants and close the
15 case. Because Plaintiff's action is dismissed in full and there are no underlying claims to support a
16 temporary restraining order or preliminary injunction, the Court DENIES Plaintiff's motion for a
17 preliminary injunction and DISSOLVES the temporary restraining order. See U.S. Philips Corp.
18 v. KBC Bank N.V., 590 F.3d 1091, 1093 (9th Cir. 2010) ("A preliminary injunction imposed . . .
19 dissolves ipso facto when a final judgment is entered in the ca[s]e"); see also id. at 1095
20 (explaining that "the temporary restraining order and preliminary injunction dissolved when the
21 default judgment issued"). The Court DENIES Defendants' ex parte application to dissolve the
22 temporary restraining order as moot. (Dkt. No. 49.)

23 IT IS SO ORDERED.

24 Dated: July 18, 2017

25 
26 KANDIS A. WESTMORE
27 United States Magistrate Judge
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