

United States District Court
For the Northern District of California

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E-FILED on 12/14/09

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CHRISREY NERA, an Individual, and
CHARITO NERA, an Individual,

Plaintiffs,

v.

AMERICAN HOME MORTGAGE
SERVICING, INC., a Delaware Corporation;
SADEK, INC., a California Corporation; and
DOES 1 through 10, inclusive,

Defendants.

No. C-09-2025 RMW

ORDER GRANTING DEFENDANT
AMERICAN HOME MORTGAGE
SERVICING, INC.'S MOTION TO DISMISS
AND GRANTING MOTION TO EXPUNGE
LIS PENDENS;

ORDER TO SHOW CAUSE WHY THIS
ACTION SHOULD NOT BE DISMISSED
FOR FAILURE TO PROSECUTE

[Re Docket Nos. 16 and 17]

Defendant American Home Mortgage Servicing, Inc.'s motion to dismiss the First Amended Complaint and motion to expunge a lis pendens came on for hearing before the court on December 11, 2009. Plaintiffs' opposition papers, although due 21 days before the hearing under Civil Local Rule 7-2(a), were not filed until the afternoon of December 10, 2009, the day before the hearing. Plaintiffs' counsel did not appear at the hearing.¹

Plaintiffs have a demonstrated history in this action of failing to comply with the court's deadlines. They apparently have not served defendant Sadek, Inc., even though this action was filed

¹ Plaintiffs also failed to attend the hearing on the previous motion to dismiss.


1 on May 8, 2009. Plaintiffs filed late opposition papers in response to defendant American Home
2 Mortgage Servicing's initial motion to dismiss, and did not appear at the hearing on that motion.
3 Although granted leave to amend, plaintiffs' amended complaint was not filed within the deadline
4 set forth in the court's order granting leave to amend. Plaintiffs failed to comply with their
5 obligation to meet and confer in good faith in connection with the preparation of the Joint Case
6 Management Conference Statement required by Civil Local Rule 16-9 and the court's standing
7 order. Finally, plaintiffs did not file a timely opposition to the present motions, nor did plaintiffs
8 appear at the hearing on the motions or at the case management conference.

9 Accordingly, plaintiffs are ordered to show cause why this action should not be dismissed for
10 their failure to diligently prosecute. A show cause hearing shall be conducted on January 8, 2010 at
11 9:00. Plaintiffs shall file a response to this order setting forth what they consider to be good cause
12 no later than Friday, December 18, 2009.

13 With regard to defendant's motion to dismiss, the motion is granted with leave to amend.
14 Plaintiffs shall file an amended complaint on or before December 18, 2009 stating specific facts
15 separately demonstrating how each defendant is liable for the claims asserted against it. Failure to
16 timely do so will result in a dismissal with prejudice.

17 With regard to defendant's motion to expunge the lis pendens, plaintiffs have failed to carry
18 their burden of establishing that they have a probability of succeeding on their real property claim.
19 Cal. C. Civ. P. §405.32. Therefore, the Notice of Pendency of Action recorded on May 18, 2009 in
20 the Office of the Recorder of Monterey County as Document No. 2009030398 in connection with
21 this action is hereby expunged. Plaintiffs may not record another notice of pendency of action (lis
22 pendens) without leave of court. Cal. Civ. P. §405.36. Defendant may pursue its attorney's fees and
23 costs of making its motion by filing and serving proof of its attorney's fees and costs on or before
24 December 24, 2009. Plaintiffs' response, if any, shall be filed and served no later than Friday,
25 January 8, 2010.

26 DATED: 12/14/09



RONALD M. WHYTE
United States District Judge

1 **Notice of this document has been electronically sent to:**

2 **Counsel for Plaintiff:**

3 Carlo Ocampo Reyes carloreyes@att.net
4

5 **Counsel for Defendants:**

6 Nina Huerta nhuerta@lockelord.com
7

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9 Counsel are responsible for distributing copies of this document to co-counsel that have not
10 registered for e-filing under the court's CM/ECF program.
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13 **Dated:** 12/14/09 _____

TER _____

Chambers of Judge Whyte

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