

United States District Court
For the Northern District of California

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JAMES SACAYANAN, AMELIA SACAYANAN, and DAVID WYNN MILLER,

Plaintiffs,

v.

INDYMAC BANK, FSB, and STEWART TITLE INSURANCE COMPANY,

Defendants.

Case No.: 12-CV-04107-LHK

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

For the reasons stated herein, the Court ORDERS Plaintiffs James Sacayanan, Amelia Sacayanan, and David Wynn Miller (“Plaintiffs”) to show cause why this case should not be dismissed for failure to prosecute.

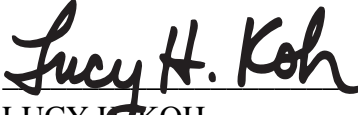
Plaintiffs have not been diligent in serving the Defendants in this case. Plaintiffs filed a first document captioned “Complaint for: [sic] :Quo-Warranto Complaint” on August 3, 2012, naming as Defendants Indymac Bank, F.S.B., and Stewart Title Insurance Company (“Defendants”). ECF No. 1. On October 31, 2012, Plaintiffs filed a second document captioned “Complaint for: [sic] :Quo-Warranto Complaint and: Lis Pendens,” naming the same Defendants, and filed under the same case number. ECF No. 6. However, Plaintiffs have failed to submit any documentation demonstrating that they have properly served Defendants with copies of either document.

1 Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, “[i]f a defendant is not
2 served within 120 days after the complaint is filed, the court---on motion or on its own after notice
3 to the plaintiff—must dismiss the action with prejudice against the defendant or order that service
4 be made within a specified time.” Fed. R. Civ. P. 4(m). Accordingly, Plaintiffs were required to
5 have filed proof of service of the original complaint by December 1, 2012. Assuming that ECF
6 No. 6 is to be construed as Plaintiffs’ amended complaint, Plaintiffs were required to have filed
7 proof of service of that complaint by February 28, 2013.

8 Thus, the Court ORDERS Plaintiffs to show cause why this action should not be dismissed
9 for failure to prosecute. Plaintiffs have until June 12, 2013, to file a response to this Order to Show
10 Cause. A hearing on this Order to Show Cause is set for Wednesday, July 17, 2013, at 2:00 p.m.
11 Plaintiffs’ failure to respond to this Order and to appear at the July 17, 2013 hearing will result in
12 dismissal without prejudice for failure to prosecute.

13 **IT IS SO ORDERED.**

14
15 Dated: May 28, 2013



LUCY H. KOH
United States District Judge