

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

JAMES SACAYANAN, AMELIA SACAYANAN, and DAVID WYNN MILLER,)	Case No.: 12-CV-04107-LHK
)	
Plaintiffs,)	ORDER DISMISSING CASE
)	
v.)	
)	
INDYMAC BANK, FSB, and STEWART TITLE INSURANCE COMPANY,)	
)	
Defendants.)	

For the reasons stated herein, the Court DISMISSES this case without prejudice for failure to prosecute.

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.

Pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, “[i]f a defendant is not served within 120 days after the complaint is filed, the court---on motion or on its own after notice

1 to the plaintiff—must dismiss the action without prejudice against that defendant or order that
2 service be made within a specified time.” Fed. R. Civ. P. 4(m). Accordingly, Plaintiffs were
3 required to have filed proof of service of the original complaint by December 1, 2012. Assuming
4 that ECF No. 6 is to be construed as Plaintiffs’ amended complaint, Plaintiffs were required to have
5 filed proof of service of that complaint by February 28, 2013.

6 On May 28, 2013, the Court ordered Plaintiffs to show cause why this action should not be
7 dismissed for failure to prosecute. ECF No. 7. The Court ordered that Plaintiffs were required to
8 file a response to the Order to Show Cause by June 12, 2013, and set a hearing on the Order to
9 Show Cause for July 17, 2013, at 2:00 p.m. The Court also cautioned that Plaintiffs’ failure to
10 respond to that Order to Show Cause and to appear at the July 17, 2013 hearing would result in
11 dismissal without prejudice for failure to prosecute.

12 Plaintiffs did not respond to the Order to Show Cause, or appear at the Order to Show
13 Cause hearing. Accordingly, the Court hereby DISMISSES this case without prejudice for failure
14 to prosecute.

15 The Clerk shall close the file.

16 **IT IS SO ORDERED.**

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18 Dated: July 17, 2013

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20 LUCY H. KOH
21 United States District Judge
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