

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

LORENZO PASILLAS, et al,)	Case No.: 12-CV-04123-LHK
)	
Plaintiffs,)	ORDER
v.)	
)	
DEUTSCHE BANK NATIONAL TRUST)	
COMPANY, et al,)	
)	
Defendants.)	

On August 6, 2012, Plaintiffs Lorenzo Pasillas and Amelia Pasillas filed a Complaint seeking to cancel the foreclosure sale and to vacate the trustee’s deed on property located at 7268/7278 Lovers Lane, Hollister, CA 95023. ECF No. 1. Named Defendants are Deutsche Bank National Trust Company (“DBNTC”); Ocwen Loan Servicing, LLC; Aztec Foreclosure Corporation; Robbie “Roberta” L. Weaver; Elaine Malone; Tianna Alvarado; Denise A. Marvel, Leticia N. Arias; and Remington Duque, and Does 1 through 25.¹ On October 5, 2012, Plaintiff filed an Ex Parte Application for a Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should not Issue Pending Final Litigation. ECF No. 8 (“TRO”). The case was reassigned to this Court on October 9, 2012. ECF No. 11. The Court determined that the best way to resolve Plaintiff’s TRO was to refer this action to the Alternative Dispute Resolution

¹ On October 5, 2012, Plaintiffs voluntarily dismissed from suit Perry and Shapiro LLP, Katherine S. Walker, and Evan F. Anderson pursuant to Rule 41(a) of the Federal Rules of Civil Procedure. ECF No. 7.

1 (“ADR”) Unit to assess this case’s suitability for mediation or a settlement conference. See ECF
2 No. 12. Since this referral, the parties have engaged in seven ADR phone conferences on: October
3 22, 2013; October 31, 2012; December 3, 2012; January 25, 2013; February 11, 2013; February 28,
4 2013; and April 17, 2013.

5 On October 23, 2012, Defendants Deutsche Bank, as Trustee, Ocwen, Denise Marvel, and
6 Leticia Arias filed a Motion to Dismiss Plaintiffs’ Complaint, ECF No. 14, which Defendants re-
7 filed on October 24, 2012, ECF No. 15. Pursuant to Civil Local Rule 7-3(a), Plaintiff’s opposition
8 to the Motion to Dismiss was due on November 7, 2012. However, Plaintiff never filed an
9 opposition.

10 On February 18, 2013, the Court granted Plaintiffs’ Motions to Substitute Attorney. See
11 ECF Nos. 22, 23. On April 11, 2013, Plaintiffs filed a First Amended Complaint. ECF No. 27.
12 Plaintiffs then served Deutsche Bank National Trust Company, Ocwen Loan Servicing, and Aztec
13 Foreclosure Corporation, as well as their agents, with a copy of the Summons, Amended
14 Complaint, and related documents on April 18, 2013. ECF Nos. 28, 29, and 30. Plaintiffs then
15 stipulated to allow Defendant Remington Duque, who is not represented by counsel, a 20-day
16 extension to file a response to Plaintiff’s First Amended Complaint. ECF No. 33. The Court
17 granted this stipulation. ECF No. 34.

18 As of the date of this Order, May 14, 2013, there is no indication that Plaintiffs have served
19 Defendants Robbie “Roberta” L. Weaver, Elaine Malone, Tianna Alvarado, Katherine S. Walker,
20 or Evan F. Anderson with a copy of the Summons, First Amended Complaint, or related
21 documents. See Fed. R. Civ. P. 4(m) (“If a defendant is not served within 120 days after the
22 complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss
23 the action without prejudice against that defendant or order that service be made within a specified
24 time.”).

25 Moreover, Defendants Deutsche Bank National Trust Company, Ocwen Loan Servicing,
26 and Aztec Foreclosure Corporation, who have been served, have neither opposed Plaintiffs’ filing
27 of a First Amended Complaint, nor answered the Complaint. But see Fed. R. Civ. P 12(a)(1)(A)(i)
28 (requiring Defendants to serve a responsive pleading within 21 days after being served with a

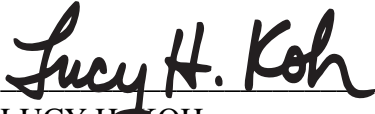
1 summons and complaint). Pursuant to Federal Rule of Civil Procedure 15(a), a party may amend
2 its pleading once as a matter of course within 21 days of serving it. Fed. R. Civ. Pro. 15(a)(1).
3 After that initial period has passed, amendment is permitted only with the opposing party's written
4 consent or leave of the court. Id. 15(a)(2). Rule 15 instructs that "[t]he court should freely give
5 leave when justice so requires." Id.²

6 In addition, Defendants Deutsche Bank National Trust Company and Ocwen Loan
7 Servicing Company have not indicated whether they plan to withdraw their pending Motion to
8 Dismiss, currently set for a hearing on June 6, 2013, and file a new Motion to Dismiss in light of
9 Plaintiff's First Amended Complaint.

10 Accordingly, by May 17, 2013, the parties shall file a joint status report regarding this case
11 including: (1) whether Plaintiffs plan to serve or voluntarily dismiss the remaining Defendants; (2)
12 whether Defendants Deutsche Bank National Trust Company, Ocwen Loan Servicing, and Aztec
13 Foreclosure Corporation plan to answer Plaintiffs' complaint. If Defendants seek to dismiss this
14 action, the Court requests that Defendants voluntarily withdraw their currently pending Motion to
15 Dismiss, ECF No. 14, and file a new Motion to Dismiss based on Plaintiffs' First Amended
16 Complaint.

17 **IT IS SO ORDERED.**

18
19 Dated: May 14, 2013

20 
21 _____
22 LUCY H. KOH
23 United States District Judge

24
25 ² Courts commonly consider four factors when determining whether to grant leave to amend: (1)
26 bad faith on the part of the movant; (2) undue delay; (3) prejudice to the opposing party; and (4)
27 futility of the proposed amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *Lockheed Martin*
28 *Corp. v. Network Solutions, Inc.*, 194 F.3d 980, 986 (9th Cir. 1999). Of these factors, prejudice to
the opposing party is the most important. *Jackson*, 902 F.2d at 1387. In addition, a court may also
consider whether the plaintiff has previously amended his complaint. *DCD Programs, Ltd. v.*
Leighton, 833 F.2d 183, 186 n.3 (9th Cir. 1987).