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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

ROBERT ROCQUE,

vs.

FIRST MAGNUS FINANCIAL
CORPORATON, et al.,

Defendants.

CASE NO. 10CV1973-LAB (JMA)
ORDER OF DISMISSAL

On September 21, 2010, Plaintiff Rocque filed his complaint seeking to prevent or reverse a foreclosure on real property in San Diego that he claims to own. Though the complaint cites to federal law, the theories under which Rocque seeks relief appear to arise under California state law only. The complaint alleges Rocque is a resident DuPage County, Illinois, so apparently the property at issue is not his primary residence. A directory search shows that the property is a condominium in a downtown high-rise. The value is unknown and the complaint does not allege it.

On October 19, Defendants Award, Inc. and Judy Bohlen moved to dismiss for lack of subject matter jurisdiction and for failure to state a claim. Defendant Aurora Loan Services, LLC then moved to dismiss for failure to state a claim. The hearing on these motions was set for December 6, 2010. The one remaining Defendant, Cal-Western

1 Reconveyance Corporation, filed a statement of non-monetary status, representing that it
2 was named solely as a necessary party because it served as trustee for the property deed.

3 Because the hearing date was set for December 6, under Civil Local Rule 7.1(e)(2),
4 Rocque's opposition to the motions was due two weeks earlier, on Monday, November 22,
5 2010.

6 Rocque filed no opposition. He did send two *ex parte* letters to the Court purporting
7 to remove opposing counsel and require them to submit various types of accountings and
8 credentials to him, but the Court by an order issued November 22 directed him to cease
9 attempting to make *ex parte* contact with the Court. That order also pointed out, however,
10 that the letters raised an additional problem by representing that Rocque himself was not the
11 owner of the property in question, but rather that it was being held in a trust or estate for his
12 benefit. This created even more doubt about Rocque's capacity to pursue this action. Some
13 of the exhibits attached to the complaint similarly suggest that a trust identified only as
14 "Sancon" is the legal owner of the property and that someone named Ania or Anna Binkul,
15 not Rocque, is Sancon's trustee. See Exs. E, G, I.

16 The complaint appears to be a patchwork of allegations cut and pasted from other
17 sources. It consists primarily of legal conclusions and is very thin on factual allegations. For
18 example, it mentions a mortgage but doesn't say whether it was a purchase money
19 mortgage, the amount of the loan, whether Rocque made payments when due, and if not
20 why not. Apparently a non-judicial foreclosure sale has already taken place and some
21 unknown party (not named here) bought it. While federal laws are mentioned, no factual
22 allegations support any federal claims. For example, Rocque says Defendants violated
23 HOEPA, RESPA, TILA, and Regulation Z by engaging in "predatory lending practices," but
24 never alleges what they did or explains why whatever they did would give rise to a claim.
25 The basic contention appears to be that Defendants don't really own the deed of trust and
26 therefore have no right to foreclose. But if that's so, his claims arise under state law, not
27 federal law.

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