

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Wiley Y. Daniel

Civil Action No. 08-cv-00955-WYD-CBS

SECURITY SERVICE FEDERAL CREDIT UNION,

Plaintiff,

v.

FIRST AMERICAN MORTGAGE FUNDING, LLC;
CONSTRUCTION DISBURSEMENT SERVICES, INC.;
KENNETH E. NORTH;
PARADISE VIEW RANCHO MIRAGE, LLC;
GILGER HOMES, LLC;
KIRK GILGER;
NEW CENTURY BUILDERS, INC.;
SUNDANCE MORTGAGE, LLC;
THE ARTISAN GROUP, LLC, d/b/a ARTISAN DEVELOPMENT GROUP;
EHLIN CO.; and
RICHARD EHLIN,

Defendants.

ORDER

THIS MATTER is before the Court on the Motion to Dismiss Plaintiff's Fifth, Sixth, Ninth, Tenth and Eleventh Claims for Relief [doc. #43], filed September 26, 2008 by Defendants Gilger Homes, LLC and Kirk Gilger ("the Gilger Defendants"), which was later converted to a Motion for Summary Judgment. Plaintiff responded to the Motion on October 16, 2008. On October 27, 2008, I issued an Order converting the Motion to a Motion for Summary Judgment and allowing parties until November 24, 2008 to submit additional materials [doc. #53]. On November 24, 2008, I granted the parties an extension to submit these materials by January 15, 2009 [doc. #71]. The parties never

submitted these materials, and the Gilger Defendants never filed a reply.

On November 10, 2008, this case was stayed as to Defendant Kirk Gilger in light of his bankruptcy action, and that stay was lifted on December 23, 2008. Counsel for the Gilger Defendants withdrew on December 3, 2008, and no new counsel has entered an appearance on their behalf. On January 15, 2009, instead of submitting additional materials as ordered, Plaintiff filed a Motion for Leave to Amend First Amended Complaint. Magistrate Judge Shaffer granted the Motion on January 20, 2009, and that same day Plaintiff filed a Second Amended Complaint [doc. #80], in which it added defendants as well as details regarding the alleged fraud.

In a Minute Order dated April 1, 2009, I ordered the parties to file a joint status report with regard to the present Motion not later than April 8, 2009. On April 13, 2009, Plaintiff's counsel filed a status report in which he indicated that he had been unable to reach the Gilger Defendants, as had been the case for some time. He stated, "The Gilger Defendants have failed to participate in this action since the withdrawal of their counsel." Plaintiff's Status Report at 3. That same day, Plaintiff filed a Motion for Clerk's Entry of Default against the Gilger Defendants pursuant to Federal Rule of Civil Procedure 55(a) [doc. #116].

I find that I must dismiss the present Motion without prejudice. Since the filing of the Motion, Plaintiff has filed a Second Amended Complaint, to which the Gilger Defendants have not responded. Further, the Gilger Defendants appear to have abandoned the Motion, as they did not file supplemental materials or a status report when ordered or a reply. It is hereby

ORDERED that Defendants Gilger Homes, LLC and Kirk Gilger's Motion to Dismiss Plaintiff's Fifth, Sixth, Ninth, Tenth and Eleventh Claims for Relief [doc. #43, filed September 26, 2008], which was later converted to a Motion for Summary Judgment, is **DENIED WITHOUT PREJUDICE**.

Dated: April 16, 2009

BY THE COURT:

s/ Wiley Y. Daniel
Wiley Y. Daniel
Chief United States District Judge