

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-cv-02091-BNB

DOUGLAS A. MAYHEW,

Plaintiff,

v.

CHERRY CREEK MORTGAGE CO., INC., et al.,
NORA ZIEL,
DAISEY NANTON,
MIKE SMITH,
HEATHER BRADSHAW,
CHRISTINE RYCHLEC,
SECURITY TITLE GUARANTY CO., et al.,
WHITNEY WINICK,
"MERS," INC., et al.,
NORWEST MORTGAGE, INC., et al.,
WELLS FARGO HOME MORTGAGE, INC., et al.,
WELLS FARGO BANK, N.A., et al.,
JOAN MILLS,
WFMBBS 2005-14., et al.,
BRADLEY DAVIS,
BRICE, VANDER LINDEN & WERNICK, P.C., et al.,
JOE LOZANO, JR.,
WACHOVIA BANK, N.A., et al.,
CASTLE MEINHOLD & STAWIARSKI, LLC., et al.,
BRITNEY BEALL-EDER,
P.C. WOLF,
ERICKA OLSON,
LAUREN SMITH,
JENNIFER ROGERS,
GUARANTY BANK AND TRUST COMPANY, et al.,
ABBY LARSEN,
CIT GROUP/CONSUMER FINANCE, INC., et al.,
NATIONWIDE TITLE CLEARING, INC., et al.,
DUSTI WOODBURY,
INDYMAC BANK HOME EQUITY DIV., F.S.B., and
"JOHN AND JANE DOES" 1-11 . . . , et al.,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

FEB 09 2010

GREGORY C. LANGHAM
CLERK

ORDER DENYING FED. R. CIV. P. 60(b) MOTION

Plaintiff Douglas A. Mayhew currently resides in Denver, Colorado. Mr. Mayhew, acting *pro se*, filed a pleading titled “Plaintiff’s Rule 60(b) Verified Motion for Post Judgment Relief” on January 14, 2010. The Court must construe the Motion liberally because Mr. Mayhew is a *pro se* litigant. *See Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). For the reasons stated below, the Motion will be denied.

The Court dismissed this action without prejudice on January 14, 2009, after Mr. Mayhew failed within the time allowed to file his claims on a Court-approved form. Mr. Mayhew states in the Motion that the order entered on September 29, 2008, directing him to cure noted deficiencies does not specifically direct him to file his claims on a Court-approved form and that the form is only a model to be followed. (Mot. at 6-7.) Although the September 29 Order does not specifically direct Mr. Mayhew to file his claims on a Court-approved form, the minute order entered on October 27, 2008, does.

Furthermore, contrary to Mr. Mayhew’s argument that the Court-approved forms are only intended to be used as a model for filing complaints in this Court, Rule 8.1A. of the United States District Court for the District of Colorado Local Rules of Practice states that a “pro se litigant shall use the forms established by this court to file an action.” Rule 8.1A. is mandatory. Failure to follow Rule 8.1A is grounds for dismissal of an action. Federal Rule of Civil Procedure 83 allows local rules imposing form requirements to be enforced unless the failure to comply is “nonwillful.” Fed. R. Civ. P. 83(a)(2). Mr. Mayhew did not demonstrate that his failure to comply was nonwillful.

Mr. Mayhew concedes that he received a packet from the Court that included Court-approved forms, but he argues that the packet did not include “nearly enough pages for any form of Complaint.” (Mot. at 7.) The Complaint form, nonetheless, also

includes instructions that directs a *pro se* litigant to complete the form and to use additional pages if necessary. Rather than completing the complaint form and using additional pages if necessary, Mr. Mayhew elected not to use the form.

Relief under Fed. R. Civ. P. 60(b) is appropriate only in extraordinary circumstances. *See Massengale v. Oklahoma Bd. of Examiners in Optometry*, 30 F.3d 1325, 1330 (10th Cir. 1994). Mr. Mayhew waited for more than a year to challenge the dismissal of the instant action. Furthermore, Mr. Mayhew asks this Court to reinstate this action even though he has a case, *Mayhew v. Cherry Creek Mortgage Co., Inc., et al.*, No. 09-cv-00219-PAB-CBS (filed Feb. 4, 2009), pending in this Court that raises the same claims. Based on the above findings, Mr. Mayhew fails to demonstrate the existence of any extraordinary circumstances that would justify a decision to reconsider and vacate the order dismissing this action. Accordingly, it is

ORDERED that the Motion (Doc. No. 12) filed on January 14, 2010, pursuant to Fed. R. Civ. P. 60(b) is denied.

DATED at Denver, Colorado, this 5th day of February, 2010.

BY THE COURT:



PHILIP A. BRIMMER
United States District Judge, for
ZITA L. WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 08-cv-02091-ZLW

Douglas A. Mayhew
4979 Perry Street
Denver, CO 80212

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 2/9/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk