

## IN THE UNITED STATES DISTRICT COURT

## FOR THE DISTRICT OF HAWAII

BURTON SWARTZ and NANCY D.	)	CIVIL NO. 10-00651 LEK-RLP
SWARTZ,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
CITY MORTGAGE, INC.; ABN AMRO	)	
MORTGAGE GROUP, INC.;	)	
AMERICAN GUARDIAN FINANCIAL	)	
GROUP, INC.; FIRST NATIONAL	)	
MORTGAGE SERVICES, LLC; JOHN	)	
DOES 1-10; JANE ROES 1-10;	)	
DOE CORPORATIONS,	)	
PARTNERSHIPS OR OTHER	)	
ENTITIES 1-10,	)	
	)	
Defendants.	)	
	)	

**ORDER DISMISSING COMPLAINT AS TO UNSERVED DEFENDANTS**

Plaintiffs Burton F. Swartz and Nancy D. Swartz ("Plaintiffs") filed the instant action on November 8, 2010 against Defendants Citi Mortgage, Inc. ("CMI"), ABN Amro Mortgage Group, Inc. ("ABN"), American Guardian Financial Group, Inc. ("American Guardian"), and First National Mortgage Services, LLC ("First National"). On November 28, 2012, this Court issued an order granting summary judgment in favor of CMI and ABN as to all claims against them. CMI and ABN were terminated as parties on the same day. Plaintiffs never filed evidence that they effected service of the Complaint on American Guardian and First National, and those entities have never entered an appearance in this

action.

Fed. R. Civ. P. 4(m) states, in pertinent part:

If a defendant is not served within 120 days after the complaint is filed, the court--on motion or on its own after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period. . . .

Over two years have passed since the filing of Plaintiffs' Complaint, and Plaintiffs have never articulated a reason for their failure to serve the Complaint on American Guardian and First National. This Court therefore FINDS that an extension of time to serve the Complaint is not warranted in this case.

Pursuant to Rule 4(m), this Court HEREBY DISMISSES Plaintiffs' Complaint against American Guardian and First National. The dismissal is WITHOUT PREJUDICE to the filing of a new action against American Guardian and First National. This Court expresses no opinion as to the merits or the timeliness of such action.

Insofar as there are no claims remaining in this case, this Court DIRECTS the Clerk's Office to enter judgment and close the case.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, December 3, 2012.



/S/ Leslie E. Kobayashi

Leslie E. Kobayashi

United States District Judge

**BURTON SWARTZ, ET AL. V. CITI MORTGAGE, INC., ET AL; CIVIL NO.**  
**10-00651 LEK-RLP; ORDER DISMISSING COMPLAINT AS TO UNSERVED**  
**DEFENDANTS**