

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

DOUGLAS REED,

Plaintiff,

v.

BANK OF AMERICA
CORPORATION; BAC LOAN
SERVICING, LP; FEDERAL
NATIONAL MORTGAGE
ASSOCIATION,

Defendants.

Case No. 1:11-CV-00124-BLW

ORDER

The Court has before it the Defendants' motions to dismiss (Dkt. 8) and for judicial notice (Dkt. 9), and Plaintiff's motion for leave to amend his complaint (Dkt. 13). The motions for judicial notice and to amend the complaint are unopposed.

Federal Rule of Civil Procedure 15(a)(2) provides that leave to amend shall be freely granted "when justice so requires." Leave may be denied for reasons such as undue delay, bad faith, futility of amendment, or prejudice to the opposing party. *Hurn v. Retirement Fund Trust*, 648 F.2d 1252, 1254 (9th Cir. 1981). The Court finds that none of these reasons are present in this case; accordingly, leave to amend is granted.

In turn, the Court finds that leave to amend moots the Defendants' pending motion to dismiss because it addresses the original complaint. Defendants may file another

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motion to dismiss if necessary, but it should address the amended complaint.

In their motion for judicial notice, the Defendants ask the court to take notice of three documents relevant to this case: (1) the deed of trust, (2) the trustee's deed, and (3) the promissory note. The deed of trust and trustee's deed have been recorded in the public records of Ada County; the promissory note is signed by Mr. Reed and its veracity is not disputed.

As a general rule, "a district court may not consider any material beyond the pleadings in ruling on a Rule 12(b)(6) motion." *Hal Roach Studios, Inc v. Richard Feiner and Co., Inc.*, 896 F.2d 1542, 1555 n.19 (9th Cir. 1990). However, under Federal Rule of Evidence 201, a court may take judicial notice of "matters of public record," *Mack v. South Bay Beer Distrib.*, 798 F.2d 1279, 1282 (9th Cir. 1986), and documents the authenticity of which is not contested, *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001).

The first two documents are matters of public record, and no party disputes the authenticity of any of the documents. Even though the Defendants' pending motion to dismiss has been mooted, judicial notice of these documents remains appropriate.

ORDER

IT IS ORDERED:

1. Plaintiff's motion for leave to amend (Dkt. 13) is **granted**.
2. Defendants' motion to dismiss (Dkt. 8) is **deemed moot**.
3. The hearing scheduled for July 25, 2011 is **vacated**.

4. Defendants' motion for judicial notice (Dkt. 9) is **granted**.



DATED: **July 6, 2011**

A handwritten signature in black ink that reads "B. Lynn Winmill". The signature is written in a cursive style and is positioned above a horizontal line.

Honorable B. Lynn Winmill
Chief U. S. District Judge