

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ILIA CHAROV,

Plaintiff,

vs.

MICHAEL PERRY et al.,

Defendants.

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2:09-cv-02443-RCJ-RJJ

ORDER

This case arises out of the foreclosure of Plaintiff's mortgage. Plaintiff has defaulted on a \$236,000 promissory note secured by a deed of trust to the property located at 886 Blue Rosalie Place, Henderson, NV 89052. Plaintiff has filed a forty-one-page Complaint (#1), as well as a Motion for Preliminary Injunction (#2). Two Defendants have filed a Motion to Dismiss (#3), which another Defendant has joined, (*see* #6). It is not entirely clear what causes of action Plaintiff attempts to plead. The Court can ascertain that certain federal statutes are intended to be pled, but the state law claims are unclear. Much of the Complaint consists of generalized grievances about the mortgage and banking industries, argumentation concerning the law of commercial paper, and reproductions of statutes and the orders of other courts (or mock orders—it is difficult to tell).

As Defendants note, Plaintiff executed and recorded a quitclaim deed to Valeri Charov for zero consideration a day prior to the trustee's sale, (*see* #3, Ex. F), removing his standing to claim an interest in the property. Plaintiff's only plausible claims, therefore, are his federal statutory claims for damages under the Fair Debt Collection Practices Act ("FDCPA"), Fair

1 Credit Reporting Act (“FCRA”), Real Estate Settlement Procedures Act (“RESPA”), and Truth
2 in Lending Act (“TILA”), and the Court need not examine whether foreclosure was proper.¹

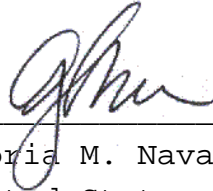
3 Plaintiff obtained his loan on or about June 15, 2006, (*see id.*, Ex. A, at 1), and he filed
4 the Complaint on December 30, 2009, over three years later. Therefore, the TILA and RESPA
5 claims are time-barred. *See* 15 U.S.C. § 1640(e) (one-year limitations period); 12 U.S.C. § 2614
6 (one-year and three-year limitations periods). Next, Plaintiff alleges that “the named defendant”
7 failed to follow statutory notification requirements when it notified him of his debt, in violation
8 of FDCPA and FCRA, 15 U.S.C. § 1692g, but Plaintiff does not allege which defendant failed to
9 notify him, or which defendant he claims is a debt collector under the act. Defendants believe
10 Plaintiff complains that the notice of default and election to sell was itself a debt collection
11 attempt, and they argue that is not the case. The Court agrees. Even if it constitutes a debt
12 collection attempt, which is highly doubtful, recordation of a notice of default cannot violate
13 FDCPA because consent to make such a recordation upon default is necessarily given to a
14 trustee in a deed of trust where state law requires such recordation as part of a non-judicial
15 foreclosure. *See Maynard v. Cannon*, 650 F. Supp. 2d 1138, 1143–44 (D. Utah 2006).

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17 ¹The public records adduced by Defendants, of which the Court takes judicial notice, *see*
18 *Mack v. S. Bay Beer Distribs.*, 798 F.2d 1279, 1282 (9th Cir. 1986), indicate that foreclosure
19 here was proper. IndyMac Bank, F.S.B. was the lender (and therefore the beneficiary), as noted
20 on the deed of trust, (*see* #3, Ex. A, at 2), and IndyMac caused Quality Loan Service Corp. to
21 record the notice of default and election to sell, (*see id.*, Ex. B, at 2). Indy Mac substituted
22 Quality Loan Service Corp. as trustee. (*See id.*, Ex. D, at 1). Finally, Quality Loan Service Corp.
23 filed the notice of sale and conducted the sale. (*See id.*, Exs. E, G). This sequence of events
24 shows a proper foreclosure. IndyMac, the beneficiary, caused all events of foreclosure through
its agent and trustee, Quality Loan Service Corp. *See Nev. Rev. Stat. § 107.080*. This case does
not present a faulty attempt to transfer the beneficial interest by MERS. Although in this case,
the deed of trust purported to make MERS the beneficiary, and MERS subsequently “assigned”
the deed of trust back to IndyMac, (*see* #3, Ex. A, at 2; *id.*, Ex. C), this was unnecessary. MERS
was never in reality the beneficiary and did not need to “assign” the beneficial interest to
IndyMac, which retained the beneficial interest all along. *See, e.g., Gomez v. Countrywide Bank,*
FSB, No. 2:09-cv-01489-RCJ-LRL, 2009 WL 3617650, at *2 (D. Nev. Oct. 26, 2009) (Jones, J.).

1 **CONCLUSION**

2 IT IS HEREBY ORDERED that the Motion to Dismiss (#3) is GRANTED and the
3 Motion for Preliminary Injunction (#2) is DENIED.

4 DATED this 30th day of June, 2010.

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7 Gloria M. Navarro
8 United States District Judge
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