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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

ERIC HAEFNER,

Plaintiff,

v.

MORTGAGE ELECTRONIC REGIS-
TRATION SYSTEMS, INC., et al.,

Defendants.

2:12-CV-10 JCM (CWH)

ORDER

Presently before the court is defendant NV West Servicing, LLC’s (“NV West”) motion to dismiss. (Doc. #10). Defendants Cal-Western, CitiMortgage, Inc., and Mortgage Electronic Registration Systems, Inc. joined this motion. (Docs. #13 and #24). Plaintiff Eric Haefner filed an opposition. (Doc. #26). NV West then filed a reply (doc. #29), and Cal-Western joined the reply. (Doc. #32).

The property at issue in this case is located at 6824 War Eagle Circle, Las Vegas, Nevada. (Doc. #2, Ex. A). On July 29, 2005, plaintiff executed a \$200,000 note, secured by a deed of trust, to purchase the property. (Doc. #2, Ex. A). On September 10, 2010, Cal-Western recorded a notice of breach and default and of election to cause sale of real property under deed of trust. (Doc. #2, Ex. A). Cal-Western then recorded a notice of trustee’s sale on January 4, 2011. (Doc. #2, Ex. A). The property was sold at a trustee’s sale on January 24, 2011, and the trustee’s deed upon sale was recorded on February 16, 2011. (Doc. #2, Ex. A).

**James C. Mahan
U.S. District Judge**

1 Two months after the trustee's sale of the property, plaintiff filed a voluntary chapter 7
2 petition with the United States Bankruptcy Court, District of Nevada. (Doc. #10, Ex. A). NV West
3 asserts that once plaintiff filed the bankruptcy petition, "any and all claims related to the foreclosure
4 . . . became property of the plaintiff's bankruptcy estate and passed to the trustee." (Doc. #10). NV
5 West argues that plaintiff failed to disclose the claims related to the foreclosure in his bankruptcy
6 schedules and, therefore, is now estopped from prosecuting these causes of action. (Doc. #10).

7 In response, plaintiff argues that the chapter 7 trustee abandoned the bankruptcy estate's
8 interest in the property to plaintiff. Therefore, plaintiff is the real party in interest and this court has
9 subject matter jurisdiction over the instant complaint. (Doc. #26). Specifically, plaintiff notes that
10 he listed the real property on schedule A of his bankruptcy petition. (Doc. #26, Ex. 1). Plaintiff
11 further asserts that he discussed his nonjudicial foreclosure claims with the chapter 7 trustee at a
12 meeting with creditors. (Doc. #26, Ex. 2). Finally, plaintiff states that the chapter 7 trustee filed a
13 report of no distribution on May 17, 2011. (Doc. #26, Ex. 3). In this report, the chapter 7 trustee
14 abandoned \$151,000.00 in assets, which plaintiff asserts was the current value of the plaintiff's
15 interest in the real property. (Doc. #26).

16 "The Bankruptcy Code and Rules 'impose upon the bankruptcy debtors an express,
17 affirmative duty to disclose all assets, *including contingent and unliquidated claims.*'" *Hamilton v.*
18 *State Farm Fire & Cas. Co.*, 270 F.3d 778, 785 (9th Cir. 2001) (quoting *In re Coastal Plains*, 179
19 F.3d 197, 207-08 (5th Cir. 1999) (emphasis in original)). Title 11 U.S.C. § 554 governs
20 abandonment, which results in restoration of a debtor's interest in property. "[C]laims must be
21 scheduled in order to be abandoned." *In re Kreisel*, 399 B.R. 679, 687 (Bankr. C.D. Cal. 2008). "In
22 the bankruptcy context, a party is judicially estopped from asserting a cause of action not raised in
23 a reorganization plan or otherwise mentioned in the debtor's schedules or disclosure statements."
24 *Hamilton*, 270 F.3d at 784 (citing *Hay v. First Interstate Bank of Kalispell, N.A.*, 978 F.2d 555, 557
25 (9th Cir. 1992)).

26 Here, there is no dispute that plaintiff listed his interest in the real property on schedule A
27 of his bankruptcy petition. However, NV West argues that this fact "is wholly irrelevant to the
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1 determination of whether the personal property *claims* in this case currently belong to the plaintiff's
2 bankruptcy estate." (Doc. #29). NV West argues that plaintiff should have listed the claims at issue
3 in the instant litigation on schedule B of his bankruptcy petition because the "*claims* themselves are
4 *personal property assets* of the bankruptcy estate." (Doc. #29).


5 The allegedly wrongful foreclosure at issue in this case occurred prior to plaintiff's voluntary
6 chapter 7 bankruptcy petition. Therefore, these claims are pre-petition causes of action which belong
7 to the bankruptcy estate. *See Hamilton*, 270 F.3d at 785. Plaintiff did not schedule the foreclosure-
8 related *claims* in his bankruptcy petition. Because the claims were not scheduled in the bankruptcy
9 petition, plaintiff is barred from prosecuting these claims in this court. *Id.*

10 Accordingly,

11 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant NV West
12 Servicing, LLC's ("NV West") motion to dismiss (doc. #10) be, and the same hereby is, GRANTED.

13 IT IS FURTHER ORDERED that the clerk of court shall close the above-captioned case and
14 enter final judgment accordingly.

15 DATED April 13, 2012.

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UNITED STATES DISTRICT JUDGE