

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JULIO C. OLARTE,

Plaintiff,

vs.

DHI MORTGAGE, et al.,

Defendants.

Case No. 2:13-cv-00044-LDG-PAL

ORDER

(Mtn to Deposit - Dkt. #18)

This matter is before the court on Plaintiff Julio C. Olarte’s Motion for Deposit of Current Mortgage Payments Into the Court Registry Pending the Outcome of Plaintiff’s Quiet Title Action (Dkt. #18). The court has considered the Motion, and Defendant DHI Mortgage Company, Ltd.’s (“Defendant”) Response (Dkt. #21). Plaintiff did not file a reply, and the time for filing one has now run.

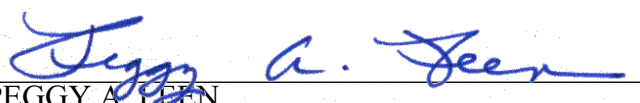
Plaintiff filed this quiet title action in state court, and it was removed to federal court by Defendant on January 9, 2013. DHI filed a Motion to Dismiss on January 16, 2013, which is currently under submission to the district judge. The instant Motion seeks an order permitting Plaintiff to deposit his mortgage payments into the court registry during the pendency of this case. Plaintiff states that he is and has been current in his mortgage payments and wants to ensure the court can “set aside his current mortgage payments, pending the outcome of this action.” Motion at ¶ 6. Defendant responds that Plaintiff’s Motion admits the subject property is encumbered by a mortgage, and the court should grant the Motion to Dismiss. Defendant’s Motion to Dismiss (Dkt. #4), represents it no longer owns the mortgage on the subject property because it sold the loan and transferred the servicing rights to Wells Fargo Home Mortgage, effective November 1, 2011. Defendant claims it no longer has any interest in the note or deed of trust that secures the subject property and does not service the loan, and therefore

1 Plaintiff cannot state a claim on which relief may be granted against it. The motion to dismiss
2 acknowledges that Plaintiff has an ownership interest in the real property involved in this case subject
3 to the terms and conditions of the promissory note and deed of trust Plaintiff executed when he
4 purchased the property. Wells Fargo Home Mortgage is not named in Plaintiff's Complaint and is not a
5 party to this case.

6 Local Rule of Civil Practice 7-2(d) provides that the failure of a moving party to file points and
7 authorities in support of a motion constitutes a consent to the denial of the motion. LR 7-2(d). Plaintiff
8 states he is current in his mortgage obligations, and does not claim he does not claim that he does not
9 know to whom to send payments. Rather, Plaintiff states that he wants "to ensure there is no further
10 action beyond the consideration of Plaintiff's quiet title action that Defendant use against Plaintiff for
11 any reason whatsoever and that Defendant is estopped from pursuing any further action in this case,
12 until all triable issues in this case are resolved." It appears he wants to have his mortgage payments
13 deposited with the registry of the court so that if he is successful in this quiet title action the mortgage
14 payments will be repaid to him. As Plaintiff cites no legal authority for his request it will be denied.

15 **IT IS ORDERED** that Plaintiff's Motion for Deposit of Current Mortgage Payments (Dkt. #18)
16 is DENIED.

17 Dated this 12th day of July, 2013.

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21 PEGGY A. LEEN
22 UNITED STATES MAGISTRATE JUDGE
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