

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3
4 Ebony Biddle,
5 Plaintiff

6 v.

7 The Bank of New York Mellon,
8 Defendant

2:16-cv-02609-JAD-PAL

Order Granting Motion to Dismiss

ECF No. 4

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10 Plaintiff Ebony Biddle brings this action against the Bank of New York Mellon in an
11 effort to stall foreclosure proceedings after she defaulted on her home mortgage obligation and
12 the Bank obtained a certificate from the State of Nevada's Foreclosure Mediation Program to
13 proceed with the foreclosure process.¹ The Bank moved to dismiss all of Biddle's claims in
14 November 2016.² Biddle filed for bankruptcy protection but has not opposed the motion to
15 dismiss. The deadline for her opposition has long since passed.

16 Local Rule 7-2(d) states that "The failure of an opposing party to file points and
17 authorities in response to any motion," except one for summary judgment or attorneys' fees,
18 "constitutes a consent to the granting of the motion."³ Biddle's failure to oppose the Bank's
19 motion to dismiss constitutes her consent to the granting of this motion to dismiss, and I grant the
20 motion in its entirety on this basis.

21 Biddle's bankruptcy filing does not prevent her claims from being dismissed. Although
22 the filing of a bankruptcy petition triggers an automatic stay under 11 U.S.C. § 362(a), that stay

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24 _____
25 ¹ ECF No. 4-11 at 2.

26 ² ECF No. 4.

27 ³ Nev. L.R. 7-2(d). Biddle was timely provided with the notice required under *Rand v. Rowland*,
28 154 F.3d 952 (9th Cir. 1998) (en banc), *Wyatt v. Terhune*, 315 F.3d 1108 (9th Cir. 2003), and
Klinge v. Eikenberry, 849 F.2d 409 (9th Cir. 1988). ECF No. 5.

1 only prohibits:

2 (1) commencing or continuing actions **against the debtor** that
3 began or could have begun before the bankruptcy was filed, or to
4 recover a pre-petition claim **against the debtor**; and (2) “any act to
5 obtain possession of property of the estate or of property from the
6 estate or to exercise control over the property of the estate.”⁴

7 Although the automatic stay sweeps broadly, it “does not prevent a plaintiff/debtor from
8 continuing to prosecute its own claims nor does it prevent a defendant from protecting its
9 interests against claims brought by the debtor,”⁵ by—for example—procuring a dismissal of the
10 debtor’s affirmative claims.

11 Accordingly, IT IS HEREBY ORDERED that Defendant’s Motion to Dismiss [ECF No.
12 **4] is GRANTED. Biddle’s claims are dismissed, and the Clerk of Court is directed to CLOSE
13 THIS CASE.**

14 DATED: February 7, 2017

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Jennifer A. Dorsey
United States District Judge

25 ⁴ *In re Palmdale Hills Prop., LLC*, 654 F.3d 868, 875 (9th Cir. 2011) (emphasis added) (quoting
26 11 U.S.C. § 362(a)(1) & (3)).

27 ⁵ *Id.* (citing *Gordon v. Whitmore*, 175 B.R. 333, 337–38 (Bankr. App. 9th Cir. 1994)).