

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 RUFINO Q. AQUINO,)
4)
5 Plaintiff,)
6 vs.)
7 PNC BANK NATIONAL ASSOCIATION, et)
8 al.,)
9 Defendants.)

Case No.: 2:19-cv-00929-GMN-VCF

ORDER

10 Pending before the Court is the Motion to Dismiss, (ECF No. 3), filed by Defendant
11 PNC Bank National Association (“PNC”). Defendant Clear Recon (“Clear”) filed a Joinder,
12 (ECF No. 8), to the Motion to Dismiss. Pro se Plaintiff Rufino Aquino (“Plaintiff”) untimely
13 filed a Response, (ECF No. 18), to the Motion to Dismiss and PNC filed a Reply, (ECF No.
14 20).

15 Also pending before the Court is Plaintiff’s Motion for Hearing, (ECF No. 12). Clear
16 and PNC (collectively “Defendants”) filed Responses, (ECF No. 15, 17), and Plaintiff did not
17 file a reply.

18 Also pending before the Court is Plaintiff’s Motion for Trial, (ECF No. 13). Defendants
19 filed Responses, (ECF No. 16, 17), and Plaintiff did not file a reply.

20 **I. BACKGROUND**

21 The present case involves a dispute over real property located at 395 W. Wigwam
22 Avenue, Las Vegas, Nevada 89123 (the “Property”). (Compl. at 1–2, ECF No. 1-1). Plaintiff
23 alleges that in 2007, his common law wife, Luz Aquino, obtained a mortgage secured by a deed
24 of trust against the Property (the “Loan”). (*Id.*). Plaintiff further alleges that he has an interest
25 in the Property by way of his common law marriage. (*Id.* at 2). In 2019, the Property was sold

1 at a foreclosure sale and the title reverted to PNC. (*See id.*). Plaintiff contends he was never
2 properly notified of the foreclosure and trustee sale. (*Id.*).

3 On May 9, 2019, Plaintiff filed his Complaint, (ECF No. 1-1), in state court. PNC
4 subsequently removed to federal court on the basis of diversity jurisdiction. (Pet. Removal,
5 ECF No. 1).

6 In his Complaint, Plaintiff requests that the Court void the Loan and reconvey the
7 Property to Plaintiff. (Compl. at 3). On June 7, 2019, PNC filed a Motion to Dismiss, (ECF
8 No. 3), arguing, *inter alia*, that Plaintiff fails to assert a legally cognizable claim; that Plaintiff
9 lacks standing to bring the instant action; and that *res judicata* and collateral estoppel bar
10 Plaintiff from alleging any claims for relief against PNC as related to the Property and the Loan
11 because Luz Aquino has “previously filed at least two lawsuits and one Ninth Circuit appeal
12 against PNC, alleging almost identical claims relating to the Loan and Property.” (Mot.
13 Dismiss. at 3–6, ECF No. 3).

14 Plaintiff’s Response to the Motion to Dismiss was due by June 21, 2019. However,
15 Plaintiff failed to respond by the deadline. Nevertheless, on June 21, 2019, Plaintiff filed a
16 Motion for Hearing, (ECF No. 12), and a Motion for Trial, (ECF No. 13).

17 On July 2, 2019, PNC filed a Notice of Non-Opposition, (ECF No. 14), to its Motion to
18 Dismiss. Then on July 15, 2019—more than 3 weeks after the response deadline—Plaintiff
19 filed a Response, (ECF No. 18), to the Motion to Dismiss.

20 **II. DISCUSSION**

21 PNC moves to dismiss Plaintiff’s Complaint under Federal Rule of Civil Procedure
22 12(b)(6). PNC also argues that Plaintiff’s Complaint should be dismissed pursuant to this
23 Court’s local rules.

24 The local rules have the force of law. *See United States v. Hvass*, 355 U.S. 570, 574–75
25 (1958). Under the Local Rules for the United States District Court for the District of Nevada,

1 “the deadline to file and serve any points and authorities in response to [a motion to dismiss] is
2 14 days after service of the motion.” *See* D. Nev. LR 7-2(b). “The failure to of an opposing
3 party to file points and authorities in response to any motion . . . constitutes a consent to the
4 granting of the motion.” D. Nev. LR 7-2(d).

5 The Ninth Circuit instructs that a district court must weigh several factors before
6 granting a motion filed pursuant to Federal Rule of Civil Procedure 12 because a party
7 failed to comply with a local rule: “(1) the public’s interest in expeditious resolution of
8 litigation; (2) the court’s need to manage its docket; (3) the risk of prejudice to the
9 defendants; (4) the public policy favoring disposition of cases o[n] their merits; and (5) the
10 availability of less drastic sanctions.” *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995)
11 (quoting *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)) (discussing a Nevada
12 local rule construing a failure to oppose a motion as effectively consenting to the granting
13 of that motion); *see also* *Martinez v. Stanford*, 323 F.3d 1178, 1183 (9th Cir. 2003)
14 (indicating that *Ghazali* provides the applicable rule for evaluating a Rule 12 motion to
15 dismiss in light of a local rule authorizing dismissal).

16 Here, Plaintiff’s deadline to respond to PNC’s Motion to Dismiss was June 21, 2019.
17 Although Plaintiff filed two motions on June 21, 2019, Plaintiff nevertheless failed to timely
18 respond to PNC’s Motion. Indeed, at no point did Plaintiff attempt to obtain an extension from
19 the Court, despite Local Rules permitting parties to file motions seeking deadline extensions.
20 *Cf.* D. Nev. LR IA 6-1 (“A request [for extension] made after the expiration of the specified
21 period will not be granted unless the movant or attorney demonstrates that the failure to file the
22 motion before the deadline expired was the result of excusable neglect.”); *see* D. Nev. LR 26-4.

23 Notably, not only was Plaintiff more than three weeks late in filing his Response, (ECF
24 No. 18), but as PNC points out, the Response does not address any of the arguments raised in
25 PNC’s Motion to Dismiss. (Reply at 2, ECF No. 20). Plaintiff’s 2-page Response references

1 only Plaintiff's Motion for Trial and Motion for Hearing; contains no citation to legal authority;
2 and offers no substantive argument. Accordingly, notwithstanding Plaintiff's failure to
3 comply with the June 21, 2019 deadline, Plaintiff has nevertheless failed to file points and
4 authorities in response to PNC's Motion. *See* D. Nev. LR 7-2(d); *see also Faretta v. Cal.*,
5 422 U.S. 806, 834 (1975) (“[t]he right of self-representation is not a license to abuse the
6 dignity of the courtroom. Neither is it a license not to comply with relevant rules of
7 procedural and substantive law.”).

8 Considering the *Ghazali* factors, this Court finds that dismissal of this case: (1)
9 would further the public's interest in the resolution of cases; (2) would aid the Court's
10 management of its docket; (3) would result in no prejudice to Defendants; and (4) no less-
11 drastic sanctions are available in light of the arguments raised in the Motion to Dismiss and
12 its requested relief. *See Ghazali*, 46 F.3d at 53; (*see also* Mot. Dismiss 3–7). Additionally,
13 the policy encouraging the consideration of cases on their merits does not overcome the
14 countervailing factors. Accordingly, based on the *Ghazali* factors and Plaintiff's violation
15 of Local Rule 7-2(d), PNC's Motion to Dismiss is granted.

16 **III. CONCLUSION**

17 **IT IS HEREBY ORDERED** that the Motion to Dismiss, (ECF No. 3), filed by PNC
18 and joined by Clear is **GRANTED**. Plaintiff's case is therefore dismissed with prejudice.

19 **IT IS FURTHER ORDERED** that all pending motions are **DENIED as moot**.

20 The Clerk of the Court shall enter judgment accordingly and close the case.

21 **DATED** this 11 day of March, 2020.

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Gloria M. Navarro, District Judge
United States District Court