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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA  
FRESNO DIVISION

FILED

June 8, 2020

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UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re ) Case No. 19-14170-B-7  
)  
JOHNNY GONZALES, )  
)  
Debtor. )  
)  
\_\_\_\_\_)  
)  
JOHNNY GONZALES, ) Adv. Proceeding No. 20-1018  
)  
Plaintiff, )  
)  
v. )  
)  
MID VALLEY SERVICES, INC. a CA )  
Corp. dba MID VALLEY FINANCIAL )  
SERVICES, )  
)  
Defendant. )  
\_\_\_\_\_)

**FINDINGS RE: DISMISSAL OF ADVERSARY PROCEEDING**

Pertinent Facts

Johnny Gonzales ("Debtor" or "Gonzales") filed a chapter 7  
bankruptcy case *pro se* in October 2019. Peter Fear was appointed  
Trustee ("Trustee"). Gonzales listed real property in Fresno,  
California located at 4755 E. Braly Ave. ("Property") among his  
assets. He also owns other property in the area, 4767 E. Braly Ave.

Five months after filing, Gonzales filed a complaint in the  
Fresno County Superior Court (Case No. 20 ECG 00910) against his  
lender, Mid-Valley Services, Inc. ("MVS") Gonzales alleged that in

1 2007 MVS lent him \$114,000.00 secured by the Property. The loan was  
2 due in 2012.

3 Two deeds of trust are attached to the complaint. MVS is the  
4 original beneficiary identified on both. One describes the Property;  
5 the other describes the other parcel, 4767 E. Braly Ave.

6 According to the complaint, MVS assigned the beneficial interest  
7 under the Deed of Trust securing the loan to the Turner Trust. The  
8 interest was later re-assigned to MVS. In May 2019 MVS recorded a  
9 Notice of Default starting foreclosure proceedings. A Notice of Sale  
10 was recorded in August 2019. Gonzales' bankruptcy petition stayed the  
11 foreclosure.

12 The complaint alleges that after the Notice of Sale was recorded,  
13 another entity, the Baker Trust, re-assigned the beneficial interest  
14 under a deed of trust to MVS. This "re-assignment," a copy is  
15 attached as an exhibit, references the recording number of the  
16 original deed of trust encumbering the Property. Apparently that  
17 reference is wrong. The Baker trust was the assignee of the deed of  
18 trust encumbering 4767 E. Braly; not the Property.

19 The complaint alleges the assignment is void and MVS is not the  
20 beneficial holder of the relevant deed of trust. Also, the complaint  
21 alleges Gonzales was damaged because his credit was negatively  
22 affected, he suffered emotional distress and he was entitled to  
23 statutory damages. The legal theories plead were: MVS failed to  
24 provide statutory foreclosure alternatives within five days; MVS was  
25 negligent because it used a beneficiary lacking legal authority to  
26 foreclose and failed to notify Gonzales about foreclosure  
27 alternatives; MVS engaged in unlawful business practices; and the  
28 Notices of Default and Sale should be cancelled.

1 MVS was served. MVS promptly removed the Superior Court  
2 proceeding to the bankruptcy court under 28 U.S.C. § 1452 and Fed. R.  
3 Bankr. P. 9027. MVS then filed a motion to dismiss the complaint  
4 under Fed. R. Civ. P. 12(b)(6) [failure to state a claim upon which  
5 relief can be granted] and (7) [failure to join a party]. Fed. R.  
6 Bankr. P. 7012.

7 MVS's motion argued:

- 8 • the statute Gonzales relied upon for relief provides no  
9 private right of action under California law.
- 10 • Gonzales failed to allege the Property was "owner occupied"  
11 even if a private right of action existed so Gonzales had  
12 no statutory standing.
- 13 • MVS owed no duty of care to Gonzales.
- 14 • Gonzales did not allege any economic injury triggering  
15 liability for unlawful business practices.
- 16 • Gonzales insufficiently pled fraud.
- 17 • The Chapter 7 Trustee had to be joined as a proper party.

18 Gonzales did not oppose the motion. The court granted MVS's  
19 motion to dismiss on April 30, 2020 and gave Gonzales 14 days leave to  
20 amend. Doc. 17. No amendment was filed. The scheduled status  
21 conference was a month later. Then the court dismissed the adversary  
22 proceeding under Fed. R. Civ. P. 41(b) and dropped the status  
23 conference from calendar.

## 24 Discussion

### 25 1. Authority to dismiss adversary proceeding

26 Federal courts have inherent power to control their dockets.  
27 They can exercise that power by dismissing a complaint for failure to  
28

1 comply with any order of the court including failure to submit an  
2 amended complaint in a timely manner. Ferdik v. Bonzelet, 963 F.2d  
3 1258, 1260 (9th Cir. 1992). In bankruptcy cases, a court may take any  
4 action *sua sponte* even though a statute provides a party in interest  
5 may raise the issue. 11 U.S.C. § 105(a).<sup>1</sup>

6 When considering whether to dismiss a proceeding under Fed. R.  
7 Civ. P. 41(b), courts generally consider five factors:

- 8 • The public interest in expeditious resolution of litigation.
- 9 • The court's need to manage its docket.
- 10 • The risk of prejudice to defendants.
- 11 • Public policy favoring disposition of cases on their merits.
- 12 • The availability of less drastic alternatives. Ferdik, 963 F.2d  
13 at 1260-61.

14 The court will examine those factors now.

15 2. Dismissal is appropriate in this case.

16 *Expeditious resolution of litigation.* This factor weighs in  
17 favor of dismissal. The lawsuit was filed about three months ago and  
18 removed to this court almost immediately. The motion to dismiss was  
19 promptly filed. There is no lengthy delay involved here.

20 Also, the complaint and the exhibits establish that MVS did have  
21 full authority to foreclose the deed of trust encumbering the  
22 property. Though Gonzales could have amended the complaint, there was  
23 a "high hurdle" to cross to pursue his central theory: MVS did not  
24 have the authority to foreclose. The other claims fail since they  
25 were dependent on that theory. Resolution of this claim should have  
26 been swift since there were few factual disputes – most issues can be  
27 determined by the public record.

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28 <sup>1</sup> Fed. R. Civ. P. 41(b) states a defendant may file a motion to dismiss  
if the plaintiff violates a court order.

1 Plus, the case Trustee was attempting to perform his duties by  
2 administering the assets of the estate including the sale of the  
3 property. There was a significant public interest in allowing the  
4 Trustee to do his job.

5 *Docket management.* This factor favors dismissal. Unless the  
6 case was dismissed, the docket would remain "in limbo" until a  
7 disposition occurred. Gonzales did not amend evidencing a lack of  
8 interest in pursuing the claim. Also significant is the Trustee's  
9 lack of interest in pursuing the claim since the claim is an asset of  
10 the estate. This further suggests that without dismissal the  
11 proceeding could remain open for no realistic reason.

12 *Prejudice to defendant.* This factor favors dismissal. MVS  
13 having to respond to a lawsuit is not "prejudice." But a perpetually  
14 open adversary proceeding can be. It may need to be reported or  
15 otherwise negatively affect other aspects of MVS's business  
16 relationships.

17 *Policy favoring disposition on the merits.* This factor weighs  
18 against dismissal. But for reasons stated, the complaint and exhibits  
19 suggest there was little merit to the claim. True enough, the merits  
20 were not tested in a trial or dispositive motion setting. But the  
21 legal arguments raised against the claim were significant.


22 *Less drastic alternatives.* The court in Ferdik held that given  
23 the plaintiff an opportunity to amend is a less drastic alternative.  
24 Ferdik, 963 F.2d at 1262. The court gave that alternative here.  
25 Gonzales chose not to act on the alternative. Dismissal is  
26 appropriate because the court considered and implemented a less  
27 drastic alternative before dismissing the adversary proceeding.  
28

1 Conclusion

2 For these reasons and those set forth in the minutes (Doc. #16),  
3 the adversary proceeding is dismissed under Fed. R. Civ. P. 41(b).  
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5  
6

7 **Dated:** Jun 08, 2020

By the Court

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10 René Lastreto II, Judge  
11 United States Bankruptcy Court  
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