

Eastern District of California

November 6, 2014 at 1:30 p.m.

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granting the withdrawal of William F. Abbot as counsel for Plaintiff-Debtor and substituting Naomi LeBus in *propria persona* in his place in this Adversary Proceeding.

3. [14-23471](#)-E-11 ERROL/SUZANNE BURR CONTINUED MOTION FOR REMAND
[14-2184](#) BSK-1 7-14-14 [[12](#)]
BURR ET AL V. SHINE ET AL

Final Ruling: No appearance at the November 6, 2014 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and parties requesting special notice on July 14, 2014. By the court's calculation, 45 days' notice was provided. 28 days' notice is required.

The Motion for Remand has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Remand is continued to 1:30 p.m. on December 11, 2014.

Errol and Suzanne Burr ("Plaintiff-Debtors") removed a state court action to this court by Notice of Removal filed on June 24, 2014. Dckt. 1.

On July 14, 2014, Raymond Shine ("Defendant-Shine") filed a Motion to Remand. Dckt. 12.

On August 12, 2014, the Chapter 11 Trustee, as the successor plaintiff to the Plaintiff-Debtors, ("Plaintiff-Trustee") filed a Motion by which Plaintiff-Trustee and Defendant-Shine requested that the hearing on the Motion to Remand be continued. Motion, Dckt. 20. The court granted the Motion and continued the hearing to 1:30 p.m. on October 9, 2014. Dckt. 22.

On August 12, 2014, the Plaintiff-Trustee filed a Motion by which

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Plaintiff-Trustee and Defendant-Shine requested that the hearing on the Motion to Remand be continued. Motion, Dckt. 20. On September 26, 2014, the court granted the Motion and continued the hearing to 1:30 p.m. on November 6, 2014. Dckt. 28.

On August 12, 2014, the Plaintiff-Trustee filed a Motion by which Plaintiff-Trustee and Defendant-Shine requested that the hearing on the Motion to Remand be continued. Motion, Dckt. 20. The court grants this third motion and continues the hearing on the Motion to Remand to 1:30 p.m. on December 11, 2014.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Remand filed by Raymond E. Shine having been presented to the court, the Parties having requested that the hearing be continued, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Motion to Remand is continued to 1:30 p.m. on December 11, 2014.

4. [14-22679-E-7](#) DENNIS FLORES
[14-2193](#) RHS-1
FLORES V. NATIONSTAR MORTGAGE,
LLC ET AL

ORDER TO SHOW CAUSE
9-19-14 [[13](#)]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Dennis Flores ("Debtor"), Debtor's attorney, Trustee, and other parties in interest on September 24, 2014. The court computes that 43 day's notice has been provided.

The Order to Show Cause was issued to have Plaintiff-Debtor's counsel, Mark Lapham, show: (1) why the court should not dismiss this adversary proceeding; or (2) why the Chapter 7 Trustee should not be substituted as the real party in interest.

The court's decision is to continue the hearing on the Order to Show Cause to 10:30 a.m. on December 11, 2014.

On September 19, 2014, the court issued an Order to Show Cause. Dckt.

13. The court ordered that Debtor-Plaintiff's attorney, Mark Lapham, to appear and show cause as to: (1) why the Adversary Proceeding should not be dismissed for lack of prosecution; or (2) why the Chapter 7 Trustee should not be substituted as the Plaintiff real party in interest.

The Plaintiff-Debtor and the Chapter 7 Trustee have filed a stipulation continuing the hearing on the Plaintiff-Debtor's motion to reconvert his Chapter 7 bankruptcy case to one under Chapter 13. In this Adversary Proceeding the Chapter 7 Trustee (who has not substituted in as the successor plaintiff) and Bank of America, N.A. have filed a stipulation extending the Bank's time to respond to the Complaint. Stipulation, Dckt. 17.

On October 31, 2014, the Plaintiff-Debtor and Bank of America, N.A. filed a stipulation to have the hearing on this Order to Show Cause continued. The Chapter 7 Trustee, who is the successor to the former Chapter 13 debtor, the Plaintiff-Debtor, for any claims of the estate being asserted in the Adversary Proceeding, is not a party to the Stipulation.

Though the court has grave doubts concerning the prosecution of this Adversary Proceeding, the hearing on the Order to Show Cause is continued to 10:30 a.m. on December 11, 2014.

The Clerk of the Court shall serve copies of this Order on the Chapter 7 Trustee, Counsel for Bank of America, N.A. and counsel for the Plaintiff-Debtor.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The hearing on the court's Order to Show Cause having been scheduled for November 6, 2014; Bank of America, N.A. and Dennis Y. Flores (the former Chapter 13 debtor who commenced this Adversary Proceeding, ("Plaintiff-Debtor") having filed a Stipulation requesting that the hearing be continued; Bank of America, N.A. entering into a separate stipulation with John Bell, the successor Chapter 7 Trustee, for an extension of time to file responsive pleadings to the Complaint; John Bell not having substituted in as the successor plaintiff; and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Order to Show Cause is continued to 10:30 a.m. on December 11, 2014. Substantive responses to the Order to Show Cause, by any party asserting an interest in this Adversary Proceeding, shall be filed on or before December 1, 2014. Failure to respond will be taken as that person's concurrence that this Adversary Proceeding should be dismissed pursuant to the Order to Show Cause.

The Clerk of the Court shall serve a paper copy of this Order Continuing the Hearing and requiring the filing of

substantive responses, in addition to any electronic service,
on the following persons:

John Bell, Chapter 7 Trustee
PO Box 950
Woodbridge, California 95258

Roxana Vatanparast, Esq.
Bryan Cave LLP
560 Mission Street, 25th Floor
San Francisco, California 94105

Mark W. Lapham, Esq.
Law Offices of Mark W. Lapham
751 Diablo Rd
Danville, California 94526