

Julia P. Lagalle v. Bank of America, N.A. et al. 14CVP0325

Re: Motion for Terminating Sanctions

Date: January 16, 2018

Plaintiff Julia Lagalle's First Amended Complaint was filed on June 18, 2015 ("FAC") against defendants Bank of America, N.A., U.S. Bank, N.A. ("U.S. Bank"), Recontrust, N.A., Nationstar Mortgage, LLC ("Nationstar") and Midstate Properties LLC ("Midstate"). The FAC includes causes of action for wrongful foreclosure, negligent misrepresentation, quiet title, and declaratory relief. After demurrer, Nationstar and U.S. Bank were dismissed from the action. As to Bank of America, N.A. and Recontrust, N.A. (collectively "Defendants"), only Plaintiff's first cause of action for wrongful foreclosure survived demurrer. Defendant Midstate did not demur to the complaint, but the only two causes of action alleged against it are the third cause of action for quiet title, and the fourth cause of action for declaratory relief. Midstate bought the property at issue at the REO sale after the alleged wrongful foreclosure.

On January 31, 2017, Defendants served their first set of Requests for Admission, Special Interrogatories, Form Interrogatories and Requests for Production on Plaintiff.

Defendants granted Plaintiff three extensions of time to respond, but no responses were received. Defendants moved to compel responses to the discovery requests, and for the Requests for Admission to be deemed admitted. Plaintiff failed to file an opposition to the motion, and the motion was granted on August 16, 2017. Plaintiff was ordered to provide defendant with responses by September 21, 2017, and to date no responses have been received. Defendants now bring this motion for terminating sanctions ("Motion"), based on Plaintiff's continued failure to comply with the discovery rules and this Court's discovery order. Plaintiff has not filed an opposition to the Motion.

Pursuant to Code of Civil Procedure sections 2023.010 and 2023.030, the Court has the authority to issue terminating sanctions in the form of a dismissal for a party's misuse of the discovery process based upon the party's failure to respond to an authorized method of discovery, and for failure to comply with a discovery order. (Code Civ. Proc §2023.030.) Terminating sanctions require a showing that the failure is willful. (R.S. Creative, Inc. v. Creative Cotton, Ltd. (1999) 75 Cal.App.4th 486, 495-496.)

Here, the unanswered discovery was served nearly a full year ago, Defendants have granted multiple extensions of time, and Plaintiff has been ordered by this Court to respond. Plaintiff's complete failure to respond to reasonable and proper discovery requests, failure to comply with this Court's discovery order and failure to oppose this Motion support the argument that she is willfully abusing the discovery process and disobeying the Court. Defendants Motion for terminating sanctions is granted and the FAC is ordered dismissed with prejudice as to Bank of America, N.A. and Recontrust, N.A..