

1 U.S. BANKRUPTCY COURT  
2 FOR THE DISTRICT OF ARIZONA

3  
4 **In re:** )  
5 **HELEN A. ESQUILIN,** ) In Chapter 7 proceedings  
6 **Debtors.** ) Case No.: 2:11-bk-27264-CGC  
7 \_\_\_\_\_ )  
8 **HELEN A. ESQUILIN,** )  
9 **Plaintiff.** ) **Adv. No.: 2:12-ap-00731-CGC**  
10 **v.** )  
11 **GMAC MORTGAGE, INC., et al.,** ) **MEMORANDUM DECISION RE:**  
12 **Defendants.** ) **DISMISSAL OF ADVERSARY**  
13 ) **PROCEEDING**  
14 )  
15 )  
16 )  
17 )

18 The Debtor filed for Chapter 13 bankruptcy protection on September 26, 2011,  
19 and converted to a Chapter 7 on December 26, 2011. She initiated the instant adversary  
20 proceeding on April 17, 2012, suing Defendants for (1) unfair debt collection practices;  
21 (2) predatory lending practices; and (3) RICO Violations. On May 17, 2012, Defendants,  
22 Mortgage Electronic Registration Systems, Inc. and Federal Home Loan Mortgage  
23 Corporation (collectively the “Movants”) filed a 12(b)(6) motion to dismiss the Debtor’s  
24 complaint arguing that the Debtor lacks standing to file the complaint and has failed to  
25 state a claim under the Fair Debt Collection Practices Acts (“FDCPA”), Arizona  
26 Consumer Fraud Act (“Arizona CFA”), Real Estate Settlement Procedures Act  
27 (“RESPA”), Racketeer Influenced and Corrupt Organizations Act (“RICO”), and for  
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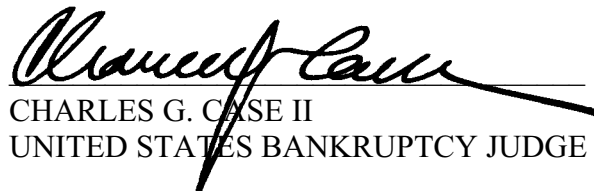
1 predatory lending practices. The motion was properly noticed for a hearing, which was  
2 held on July 5, 2012 at 10:00AM.

3 At the hearing, the Court ruled on the record, granting the Movants' 12(b)(6)  
4 motion and noting that a brief written order would be provided. See July 5, 2012 Hr'g  
5 Min. Entry 1; ECF No.: 16. On that same day, at 2:23PM, the Debtor filed her expedited  
6 motion to dismiss the adversary complaint without prejudice under Rule 41(a)(1). See  
7 Debtor's Mot. to Dismiss 1; ECF No.: 15. The Debtor's 41(a)(1) motion was untimely,  
8 as it was received after the Court had already entered its ruling granting the Movants'  
9 motion to dismiss for failure to state a claim before the Debtor filed her 41(a)(1) motion.  
10 Thus, to the extent this was an effort by the Debtor to avoid a ruling on the merits in this  
11 adversary proceeding by seeking dismissal without prejudice, it was too little, too late.  
12 Accordingly,

13 **IT IS THEREFORE ORDERED** that the Debtor's expedited motion for  
14 dismissal of adversary complaint without prejudice is denied.

15  
16 **So ordered.**

17 Dated: July 23, 2012.

18   
19 CHARLES G. CHASE II  
20 UNITED STATES BANKRUPTCY JUDGE

21  
22 COPY of the foregoing mailed by the BNC and/or  
23 sent by auto-generated mail to:

24 all interested creditors and parties.  
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