

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

DARLENE M. MILLER,
and ROES 1 through 5,000,

Plaintiffs,

v.

BANK OF AMERICA; CONTRYWIDE
HOME LOAN SERVICER, LP;
RECONTRUST COMPANY; FEDERAL
NATIONAL MORTGAGE
ASSOCIATION; POWER HOUSE
REALITY; and DOES 1 through 100,

Defendants.

) 1:11-CV-1775 AWI GSA
)
) ORDER DENYING
) PLAINTIFFS' REQUEST FOR
) TEMPORARY RESTRAINING
) ORDER AND ORDER TO
) SHOW CAUSE

This is an action for damages, declaratory relief and injunctive relief arising from the foreclosure by defendants Bank of America, et al. ("Defendants") on property securing a loan by plaintiff Darlene M. Miller and her husband (hereinafter, "Miller") located in Turlock, California (the "Property"). Currently before the court is an *ex parte* request for temporary restraining order ("TRO") by Plaintiff to prevent imminent eviction from her home by defendant Power House Reality. Miller contends that jurisdiction over this action exists pursuant to 28 U.S.C. § 1331. For the reasons that follow, the court will find that Miller presumptively lacks standing to bring this action and will order Plaintiff to show cause why jurisdiction over this action should be maintained in this court.

1 Miller's 67-page complaint becomes more impenetrable with each reading but
2 sufficient facts can be gleaned to determine the probable status of Plaintiff's action. On or
3 about September 19, 2006, the Millers took out what appears to be a re-finance loan (the
4 "Loan") in the sum of \$281,600.00 on the Property and executed a promissory note and deed
5 of trust in favor of Country Wide Home Loan Servicing. Doc. # 1 ¶¶ 69 and 70. On or about
6 June 2010 the Loan became delinquent. Although Miller engaged a law firm to obtain a loan
7 modification, a notice of foreclosure was filed on March 28, 2011. Id. at § 80. On April 11,
8 2011, Defendant Recontrust Company recorded a Trustee's Deed Upon Sale in favor of
9 Defendant Federal National Mortgage Association reflecting the sale of the foreclosed
10 Property. On September 23, 2011, Miller filed for bankruptcy under Chapter 7 of the
11 Bankruptcy Code in the Modesto branch Bankruptcy Court in case number 11-93375.

12 The automatic bankruptcy stay applies to actions "brought against the debtor." 11
13 U.S.C. § 362(a). The automatic stay provisions do not apply to lawsuits brought by the
14 debtor. See Snavelly v. Miller, 397 F.3d 726, 729 (9th Cir. 2005). However, once a person
15 files for bankruptcy, a bankruptcy estate is created and that estate includes causes of action
16 that accrued prior to the filing of bankruptcy. See DePomar v. Equifirst Corp., 2010 U.S.
17 Dist. LEXIS 143216 (C.D. Cal. Feb. 2, 2010); Basilio v. TDR Servicing, 2009 U.S. LEXIS
18 120583 (E.D. Cal. Dec. 29, 2009). The bankruptcy trustee becomes the real party in interest
19 with respect to the bankruptcy estate assets. Those assets include any causes of action
20 belonging to the debtor that accrued prior to the filing of bankruptcy. DePomar, 2010 U.S.
21 Dist. LEXIS 143216.

22 Since the underlying claims in this case attack the validity of the foreclosure and
23 Trustee's sale of the property, those claims accrued not later than the date of the Trustee's
24 sale, which was on or before April 11, 2011; well before Miller's bankruptcy filing. Because
25 the claims asserted in Miller's action accrued before the bankruptcy filing, the claims now
26 belong to the bankruptcy estate, not to Miller. The trustee of Miller's bankruptcy estate is
27

1 currently the real party in interest and the only person who may bring an action on behalf of
2 the estate. The court concludes Miller presumptively lacks standing to bring the action that
3 was filed in this court on October 25, 2011. Prior to dismissal of this action for lack of
4 jurisdiction, the court will require the parties to brief the issue of Miller's standing. Because
5 it appears to the court that the underlying case must ultimately be dismissed because Miller is
6 not the real party in interest, Miller's request for temporary restraining order will be denied.

7 As something of an aside, the court questions whether Miller's request for temporary
8 restraining order is proper in this court in any event, given that the action Miller seeks to
9 prevent – her eviction – is probably a proceeding now before the Stanislaus County Superior
10 Court, not this court.

11
12 Pursuant to the foregoing discussion, it is hereby ORDERED that:

- 13 1. Miller shall file and serve a brief showing cause why this court should not dismiss the
14 instant action for lack of jurisdiction because Miller is not the real party in interest in
15 light of her bankruptcy filing and therefore lacks standing. Miller's brief showing
16 cause shall be filed and served not later than fourteen (14) days from the date of
17 service of this order.
- 18 2. Not later than twenty-one (21) days from the date of this order defendant Bank of
19 America shall file a response to Miller's brief. If Miller does not file a brief in the
20 allotted period of time, Defendant Bank of America shall so notify the court and shall
21 request dismissal of this action.
- 22 3. Miller's *ex parte* request for temporary restraining order is hereby DENIED.

23
24 IT IS SO ORDERED.

25 Dated: October 28, 2011

26 
27 CHIEF UNITED STATES DISTRICT JUDGE