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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GREGORY HOUSE and
JENNIFER HOUSE,

No. 2:09-cv-02796-MCE-DAD

Plaintiffs,

v.

TEMPORARY RESTRAINING ORDER

PAUL SANDNER MOLLER, ROSA
MARIE MOLLER, DANA FOSS and
EDWARD R. FOSS,

Defendants.

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On November 2, 2011, Plaintiffs Gregory House and Jennifer House ("Plaintiffs") filed a Application for Temporary Restraining Order in this matter, after a Trustee's Sale on Deeds of Trust for the property that is the subject of this litigation was scheduled for November 15, 2011.

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1 Plaintiffs allege that if Defendants Dana and Edward Foss are
2 permitted to proceed with that foreclosure sale, Plaintiffs will
3 be precluded from obtaining specific performance on their right
4 of first refusal (as specified in their agricultural lease with
5 Defendant Paul Moller dated February 5, 2002) should the property
6 at issue be sold. The present temporary restraining order was
7 filed to prevent any foreclosure sale from occurring until after
8 Plaintiffs' Motion for Preliminary Injunction (ECF No. 27),
9 presently scheduled to be heard on December 1, 2011, has been
10 ruled upon.

11 The Temporary Restraining Order Checklist attached to
12 Plaintiffs' Application indicates that counsel for Defendants
13 Foss, Douglas Akay, never responded to Plaintiffs' request that
14 he stipulate to delay the foreclosure sale until after the
15 preliminary injunction is adjudicated, thus obviating any need
16 for a temporary restraining order. By Minute Order filed
17 November 3, 2011, (ECF No. 39) this Court ordered that Defendants
18 either oppose, or file a Statement of Non-Opposition to
19 Plaintiffs' request for temporary restraining order, not later
20 than November 7, 2011 at 12:00 p.m. Despite that unequivocal
21 order, Defendants have filed nothing in response to Plaintiffs'
22 Application. The Court will construe the absence of any
23 opposition as consent to Plaintiffs' temporary restraining order
24 request. Plaintiff's Application for Temporary Restraining Order
25 (ECF No. 35) is therefore GRANTED. The November 10, 2011 hearing
26 date for the Application for Temporary Restraining Order is
27 hereby vacated.

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1 Defendants Edward and Dana Foss, either in their individual
2 capacity or in their capacity or capacities as trustees on their
3 notes of deed of trust, are ordered not to conduct or prepare for
4 a Trustee's Sale on the Deeds of Trust, until further order from
5 this Court, for the property that is the subject of the instant
6 lawsuit. The sale currently calendared for November 15, 2011, as
7 described in the Notice of Trustees Sale (see Exhibit 8 to the
8 Decl. of Greg House, ECF No. 29), shall not be conducted, and
9 shall be and hereby is vacated. This temporary restraining order
10 will remain in effect until after Plaintiffs' Motion for
11 Preliminary Injunction (ECF No. 27) has been adjudicated
12 following the hearing on that Motion on December 1, 2011.

13 No bond will be required.

14 This Order is issued on the date below at 4:30 p.m.

15 IT IS SO ORDERED.

16 Dated: November 9, 2011

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19 MORRISON C. ENGLAND, JR.
20 UNITED STATES DISTRICT JUDGE
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