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8 UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 MAMMOTH SPECIALTY LODGING,  
11 LLC, a California limited  
liability company,

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13 Petitioner,

NO. CIV. S-10-0864 LKK/JFM

14 v.

O R D E R

15 WE-KA-JASSA INVESTMENT  
16 FUND, LLC, a limited liability  
company organized under the  
laws of the Fort McDowell  
Yavapai Nation,

17  
18 Respondent.  
19 \_\_\_\_\_/

20 Plaintiff seeks a temporary restraining order and preliminary  
21 injunction enjoining the foreclosure sale of its commercial real  
22 estate property. The foreclosure sale is set to occur on April 19,  
23 2010. After hearing on April 16, 2010, the court denies plaintiff's  
24 motion.

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1 preliminary injunction.

2       Also on April 13, 2010, plaintiff filed a motion to compel  
3 arbitration. The loan agreement states that, "Any dispute,  
4 controversy or claim arising out of or relating to this Note or any  
5 agreement entered into pursuant hereto or the performance by the  
6 parties of its or their terms shall be settled by binding  
7 arbitration . . . ." Loan Agreement § 6.23(c). This section  
8 continues to describe the process for arbitration. Id. According  
9 to the agreement, "arbitrators shall have authority to award relief  
10 under legal or equitable principles, including interim or  
11 preliminary relief . . . ." Id. Plaintiff states in its motion to  
12 compel arbitration that the claims it seeks to arbitrate are  
13 whether defendant breached the terms of the loan agreement, whether  
14 defendant violated the implied covenant of good faith and fair  
15 dealing, and whether defendant is wrongfully foreclosing upon the  
16 property at issue.

17       Defendant states that plaintiff has not initiated an  
18 arbitration of these claims, and that plaintiff is, and was, free  
19 to do so by filing its demand and filing fee with the American  
20 Arbitration Association.

## 21                                   **II. STANDARD**

22       Fed. R. Civ. P. 65 provides authority to issue either  
23 preliminary injunctions or temporary restraining orders. The  
24 purpose of such orders is to preserve the relative positions of  
25 the parties--the status quo--until a full trial on the merits  
26 can be conducted. See University of Texas v. Camenisch, 451

1 U.S. 390, 395 (1981). The limited record usually available on  
2 such motions renders a final decision on the merits  
3 inappropriate. See Brown v. Chote, 411 U.S. 452, 456 (1973).

4 In general, the showing required for a temporary  
5 restraining order is the same as that required for a preliminary  
6 injunction. Stuhlberg Int'l Sales Co. v. John D. Brush & Co.,  
7 240 F.3d 832, 839 (9th Cir. 2001); see also Wright and Miller,  
8 11A Fed. Prac. & Proc. Civ. § 2951 (2d ed.). A plaintiff "must  
9 establish that he is [1] likely to succeed on the merits, [2]  
10 that he is likely to suffer irreparable harm in the absence of  
11 preliminary relief, [3] that the balance of equities tips in his  
12 favor, and [4] that an injunction is in the public interest."  
13 Am. Trucking Ass'ns v. City of Los Angeles, 559 F.3d 1046, 1052  
14 (9th Cir. 2009) (quoting Winter v. Natural Res. Def. Council,  
15 \_\_\_\_ U.S. \_\_\_\_, \_\_\_\_, 129 S.Ct. 365, 374 (2008)).

16 A temporary restraining order, unlike a preliminary  
17 injunction, may issue even where the adverse party has not  
18 received notice of the motion. However, such an order may issue  
19 only if "(A) specific facts in an affidavit or a verified  
20 complaint clearly show that immediate and irreparable injury,  
21 loss, or damage will result to the movant before the adverse  
22 party can be heard in opposition; and (B) the movant's attorney  
23 certifies in writing any efforts made to give notice and the  
24 reasons why it should not be required." Fed. R. Civ. P.  
25 65(b)(1).

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**III. ANALYSIS**

Eastern District Local Rule 231(b) states that,

In considering a motion for a temporary restraining order, the Court will consider whether the applicant could have sought relief by motion for preliminary injunction at an earlier date without the necessity for seeking last-minute relief by motion for temporary restraining order. Should the Court find that the applicant unduly delayed in seeking injunctive relief, the Court may conclude that the delay constitutes laches or contradicts the applicant's allegations of irreparable injury and may deny the motion solely on either ground.

Here, plaintiff was aware that defendant filed a notice of default in December 2009. It was further aware that the foreclosure sale was set for April 19, 2010 since March 19, 2010. Plaintiff admits that he could have filed this motion as early as April 2, 2010. However, plaintiff did not file the motion until four business days before the scheduled foreclosure sale. For this reason, the court concludes the delay contradicts plaintiff's allegations of irreparable injury, and plaintiff's motion is denied.


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**IV. CONCLUSION**

For the foregoing reasons, plaintiff's motion for a temporary restraining order and preliminary injunction, Dkt. No. 7, is DENIED.

IT IS SO ORDERED.

DATED: April 16, 2010.

  
LAWRENCE K. KARLTON  
SENIOR JUDGE  
UNITED STATES DISTRICT COURT