

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

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GENET HABTEMARIAM,
Plaintiff,
v.
VIDA CAPITAL GROUP, LLC; US
MORTGAGE RESOLUTION; PNC
BANK; NATIONAL ASSOCIATION;
and DOES 1 to 50, inclusive,
Defendants.

No. 2:16-cv-01189-MCE-GGH

MEMORANDUM AND ORDER

In bringing this lawsuit, Plaintiff Genet Habtemariam alleges that her real property at 7 Shipman Court, Sacramento, California was wrongfully subjected to foreclosure proceedings on a Second Deed of Trust that had been cancelled some five years previously by the owner of the note, Defendant PNC Bank, N.A. Despite that cancellation, Plaintiff alleges the note was sold and ultimately assigned by PNC to Defendant Vida Capital Group who proceeded with the foreclosure. Plaintiff seeks to clear title to her property and further alleges various improprieties against both Defendants. After the resolution of two motions to dismiss from PNC, Plaintiff filed a Second Amended Complaint (“SAC”) on July 25, 2017. ECF No. 44. The next day, she also filed a Motion for Temporary Restraining Order in which she seeks to enjoin an

1 impending August 3, 2017 foreclosure sale by the holder of a promissory note secured
2 by a first priority Deed of Trust by Defendant Gateway Bank, FSB (“Gateway DOT”).
3 ECF No. 45. For the reasons provided below, that motion is GRANTED and a temporary
4 injunction is issued pending a hearing for a preliminary injunction.

5
6 **BACKGROUND¹**
7

8 In 2001, Plaintiff obtained a purchase money loan to buy a house located at
9 7 Shipman Court in Sacramento, California (“the subject property”). Then, in April of
10 2007, she refinanced her initial loan through Gateway Bank FSB and took out a second
11 mortgage from National City Bank, an entity which later merged into PNC. Plaintiff’s
12 second mortgage was secured by a Second Deed of Trust (“SDOT”) recorded on
13 April 17, 2007.

14 Some three years later, PNC notified Plaintiff by mail that its SDOT was
15 discharged, apparently due to a settlement agreement PNC had reached with various
16 agencies of the United States government. PNC effectuated that cancellation by
17 sending a 1099-C form approved by the Internal Revenue Service for cancelling a debt.
18 Plaintiff received the Form 1099-C on or about June 29, 2010. According to Plaintiff,
19 because the Form 1099-C cancelled the amount she owed on the second mortgage, she
20 believed it legally released her from any further obligation to pay the debt. Plaintiff
21 accordingly reported the debt cancellation as income to the Internal Revenue Service for
22 the 2010 calendar year.

23 Unbeknownst to Plaintiff, PNC never recorded a release of lien as to its SDOT
24 and in fact assigned its purported interest in the loan to Defendant US Mortgage
25 Resolution (“UMR”) in approximately March of 2012. UMR, who made no attempt to
26 foreclose on the loan, then sold the SDOT to Vida sometime in 2014. When Vida

27 ¹ Unless otherwise noted, the following recitation of facts is taken, sometimes verbatim, from the
28 allegations contained in Plaintiff’s SAC.

1 contacted Plaintiff in early 2015 in an attempt to collect on the instrument, Plaintiff
2 responded by providing Vida with a copy of the Form 1099-C and asserting that the debt
3 had been cancelled and was not collectable. Vida nonetheless recorded a Notice of
4 Default on the subject property on September 22, 2015, and directed the trustee to
5 transfer title to Vida itself through non-judicial foreclosure proceedings which culminated
6 in title transfer to Vida by a deed recorded on February 16, 2016.

7 Plaintiff responded by commencing this action in state court on April 19, 2016.
8 PNC removed Plaintiff's lawsuit to this Court the same day, citing diversity of citizenship.
9 On May 11, 2016, Vida filed an unlawful detainer action against Plaintiff, and Plaintiff
10 was given a three-day notice to quit the premises. Rather than comply with that notice,
11 Plaintiff removed that second case to this Court and moved to consolidate it with the suit
12 she had commenced. The Court granted the motion.

13 Gateway has now posted a Notice of Trustee Sale, which sets a sale date of
14 August 3, 2017. Pl.'s Br. in Supp. of Mot. for TRO, ECF No. 45, at 3. No payments have
15 been made on the Gateway DOT since February 2016 when Vida conducted a trustee
16 sale and title to the property passed to Vida. Decl. of Cathy Devlin, ECF No. 46-1, ¶ 4.
17 Plaintiff contends that "[o]nce V[ida] foreclosed as a second lien holder, it was required
18 to service G[ateway]'s first mortgage." Pl.'s Br. in Supp. of Mot. for TRO, at 5.
19 Furthermore, Plaintiff states that she "did not make payments on the G[ateway]
20 mortgage . . . as Plaintiff [is] no longer on the title to the property." Id. Plaintiff and
21 Gateway also apparently entered into an agreement by which Gateway would
22 "postpo[]ne filing recording, and/or publishing a Notice of Trustee's sale on the
23 7 Shipman Court, Sacramento, California property until at least ten days after the
24 Court . . . issues its ruling on the Defendants' Motion to Dismiss." Decl. of Patricia H.
25 Lyon, Ex. A, ECF No. 46-2, at 5. The Court ruled on that motion on February 14, 2017.

26 ///

27 ///

28 ///

1 (concluding that the “serious questions” version of the sliding scale test for preliminary
2 injunctions remains viable after Winter).

3
4 **ANALYSIS**

5
6 Gateway argues that Plaintiff cannot demonstrate a likelihood of success on the
7 merits because “Plaintiff has not alleged any claims against Gateway in the Complaint
8 and has not submitted any evidence to support a claim against Gateway.” Gateway’s
9 Opp’n, ECF No. 46, at 5 (emphasis removed). However, Plaintiff has raised serious
10 questions concerning the rights and responsibilities of the parties, which supports the
11 issuance of a temporary restraining order under the sliding scale approach.
12 Furthermore, Plaintiff has demonstrated a likelihood of irreparable harm by alleging that
13 she will lose her primary residence if Gateway’s trustee’s sale goes forward.

14 Plaintiff has also demonstrated that an injunction is in the public interest, and that
15 the balance of hardships tips sharply in her favor. An injunction is in the public interest
16 because as it is being used to ensure compliance with an alleged settlement entered into
17 by the federal government for the benefit of the public and to ensure compliance with
18 state foreclosure law intended to protect the public. The balance of equities tips sharply
19 in Plaintiff’s favor as the temporary restraining order merely delays Gateway’s right to
20 pursue a trustee’s sale until all parties have been given an opportunity to be fully heard
21 on the relative positions of the parties vis-à-vis the Gateway DOT. Similarly, though Vida
22 complains that “it has been deprived of any rental income from Plaintiff,” Vida’s Opp’n,
23 ECF No. 50, at 3, Vida does not explain how forestalling a foreclosure by Gateway will
24 harm Vida.

25 Finally, Vida asks the Court to order Plaintiff to put up a bond for the rental value
26 of the property. See id. at 4. However, because of uncertainties in the record, the Court
27 declines to order a bond prior to a hearing on the matter. Though Plaintiff maintains the
28 fair market rental value of the property is \$2,000 per month, see Pl.’s Br. in Supp. of Mot.

1 for TRO, at 7, the evidence she provides in support is contested, see Gateway's Opp'n,
2 at 6–7. Furthermore, both Gateway and Vida argue that a temporary restraining order
3 would deprive them of their right to collect rent from the property, but Vida argues that
4 any bond be made payable to it. See Vida's Opp'n, at 5.

5
6 **CONCLUSION**
7

8 For the reasons provided, the Court GRANTS Plaintiff's Motion for Temporary
9 Restraining Order. ECF No. 45. Pending the Court's determination regarding a
10 preliminary injunction, Gateway is hereby enjoined from engaging in or performing,
11 directly or indirectly, any of the following acts: advertising, selling, transferring,
12 conveying, foreclosing upon, evicting, or any other conduct adverse to Plaintiff regarding
13 the real property located at 7 Shipman Court in Sacramento, California 95823. No bond
14 shall be required.

15 Furthermore, Plaintiff is hereby ordered to file a motion for preliminary injunction
16 on or before **August 3, 2017**. Defendants shall file a written response on or before
17 **August 10, 2017**, and any reply from Plaintiff shall be filed on or before **August 15,**
18 **2017**. A hearing on this matter will take place on **August 17, 2017, at 11:00 a.m.** in
19 Courtroom 7.

20 IT IS SO ORDERED.

21 Dated: July 28, 2017

22
23 
24 MORRISON C. ENGLAND, JR.
25 UNITED STATES DISTRICT JUDGE
26
27
28