

E-filed 10/6/10

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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA
9 SAN FRANCISCO DIVISION

10
11 PETER CLARK,

No. C 10-4481 RS

12 Plaintiff,

13 v.

**ORDER DENYING TEMPORARY
RESTRAINING ORDER**14
15 DEUTSCHE BANK NATIONAL TRUST
COMPANY, et al.,16 Defendants.
17 _____/

18 Plaintiff Peter Clark seeks a temporary restraining order enjoining efforts to proceed with an
19 unlawful detainer action pending in Contra Costa Superior Court. An application for preliminary
20 relief requires the plaintiff to “establish that he is likely to succeed on the merits, that he is likely to
21 suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his
22 favor, and that an injunction is in the public interest.” *Winter v. N.R.D.C., Inc.*, 129 S.Ct. 365, 374
23 (2008). The Ninth Circuit has clarified, however, that courts in this circuit should still evaluate the
24 likelihood of success on a “sliding scale.” *Alliance for Wild Rockies v. Cottrell*, ___F.3d ___, 2010
25 WL 3665149, *8 (9th Cir. 2010) (“[T]he ‘serious questions’ version of the sliding scale test for
26 preliminary injunctions remains viable after the Supreme Court’s decision in *Winter*.”) As quoted in
27 *Cottrell*, that test provides that, “[a] preliminary injunction is appropriate when a plaintiff
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1 demonstrates . . . that serious questions going to the merits were raised and the balance of hardships
2 tips sharply in the plaintiff’s favor,” provided, of course, that “plaintiffs must also satisfy the other
3 *Winter* factors, including the likelihood of irreparable harm.” *Id.*

4 In view of these standards, Clark’s motion is denied for all of the following reasons:

5 1. Clark characterizes the relief he seeks as a “halt” to “enforcement” of an order granting a
6 motion for summary judgment entered in Contra Costa Superior Court Case No. CCS10-0170 on
7 September 24, 2010.¹ Clark asserts that the order was mailed to an incorrect address and not
8 received by him until October 2, 2010. Although Clark apparently advised the Clerk’s Office when
9 this action was filed that some event was scheduled to take place on October 11, 2010, the moving
10 papers fail to specify what, if any, “enforcement” of the summary judgment order is imminent.

11 2. More fundamentally, it is not clear that the relief Clark seeks would be available from this
12 Court in any event. The *Rooker-Feldman* doctrine “prohibits a federal district court from exercising
13 subject matter jurisdiction over a suit that is a de facto appeal from a state court judgment.” *Reusser*
14 *v. Wachovia Bank*, 525 F.3d 855, 859 (9th Cir. 2008) (citation and quotations omitted); see also
15 *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482-86 (1983); *Rooker v. Fidelity Trust Co.*, 263
16 U.S. 413, 415-16 (1923). The Ninth Circuit has recognized that the “clearest case for dismissal
17 based on the *Rooker-Feldman* doctrine occurs when a federal plaintiff asserts as a legal wrong an
18 allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on
19 that decision.” *Reusser*, 525 F.3d at 859. While the basis of Clark’s request for injunctive relief is
20 not entirely clear, it appears that the *Rooker-Feldman* doctrine likely presents a substantial hurdle
21 for him, thereby undermining any probability of success on the merits in this action, even if he could
22 establish that the state court decision was erroneous.

23 3. Additionally, the motion appears to be premised, at least in part, on an argument that the
24 Bankruptcy Court has not confirmed that the real property in dispute has been abandoned by the
25 trustee of Clark’s bankruptcy estate. There is no dispute, however, that the automatic stay was lifted
26 with respect to this property. The issue of abandonment appears to relate not to the underlying
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28 ¹ Although Clark’s moving papers assert that a copy of the order is attached, the Court has been
unable to locate it among the materials submitted.

1 unlawful detainer action initiated by Deutsche Bank, but to a separate action pending in Contra
2 Costa Superior Court in which Clark is pursuing affirmative claims for damages against the bank.
3 Clark has failed to show that even assuming his affirmative claims against the bank remain the
4 property of the estate and subject to the control of the bankruptcy trustee, the Bank would thereby be
5 precluded from foreclosing on its security interest in the real property.²

6 4. Even assuming, however, that Deutsche Bank's prosecution of the unlawful detainer
7 somehow violated bankruptcy law, Clark has failed to show that his remedy lies in this Court rather
8 than through an appropriate application for relief in the bankruptcy proceeding.

9 5. Finally, to the extent Clark's motion is based on assertions that Deutsche Bank lacked a
10 legal right to foreclose, he has not met his burden to show through admissible evidence and cogent
11 legal argument that he is likely to prevail on the merits of those claims.

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13 Because the moving papers provide no information as to when any further efforts by
14 Deutsche Bank to take possession of the property may occur, there is no basis for the Court to set
15 the matter for a preliminary injunction hearing on an expedited basis. This order, however, does not
16 preclude Clark from noticing a motion for preliminary injunction pursuant to Civil Local Rule 7, in
17 the event he still contends such relief is warranted. Should Clark elect to continue pursuing this
18 action, he may wish to consult the Court's "Handbook for Litigants Without a Lawyer," available
19 from the Clerk's Office or on the Court's website at
20 <https://ecf.cand.uscourts.gov/cand/ProSe/home.htm>

21
22 IT IS SO ORDERED.

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24 Dated:10/6/10



25 RICHARD SEEBORG
26 UNITED STATES DISTRICT JUDGE

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28 ² Clark argues that, for other reasons, the bank is not the holder of an interest in the property with standing to foreclose, but those arguments go only to the correctness of the state court's decision, not to the intersection of jurisdiction between the state court and the bankruptcy court.

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THIS IS TO CERTIFY THAT A HARD COPY OF THIS ORDER WAS MAILED TO:

Peter C. Clark
1674 A Pleasant Hill Rd.
Pleasant Hill, CA 94523

DATED: 10/6/10

/s/ Chambers Staff
Chambers of Judge Richard Seeborg