

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WILLIAM H. GROSSMAN,)	Case No. 12-3532 SC
)	
Plaintiff,)	ORDER DENYING PLAINTIFF'S EX
)	PARTE APPLICATION FOR A
v.)	<u>TEMPORARY RESTRAINING ORDER</u>
)	
JP MORGAN CHASE, WELLS FARGO,)	
NA; CHASE HOME FINANCE, LLC;)	
WASHINGTON MUTUAL BANK, FA;)	
CALIFORNIA RECONVEYANCE)	
COMPANY; FINANCIAL TITLE)	
COMPANY; and all persons)	
unknown claiming any legal or)	
equitable right, title, estate,)	
lien or interest in the)	
property described in the)	
complaint adverse to)	
plaintiff's title or any cloud)	
on Plaintiff's title thereto)	
and DOES 1 through 100,)	
inclusive,)	
)	
Defendants.)	

I. INTRODUCTION

Plaintiff William H. Grossman ("Grossman" or "Plaintiff") brings this action in connection with the foreclosure of his property (the "Property") on June 28, 2011. Now before the Court is Plaintiff's ex parte application for a temporary restraining order ("TRO") to cancel the allegedly invalid foreclosure sale and enjoin Defendants from selling the property or evicting Plaintiff.

1 ECF No. 3 ("TRO App."). Pursuant to Civil Local Rule 7-1(b), the
2 Court finds this matter appropriate for determination without oral
3 argument. For the reasons set forth below, the Court DENIES the
4 Application.

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6 **II. BACKGROUND**

7 Plaintiff purchased the Property, which is located in Alamo,
8 California, in 1986. ECF No. 1 ("Compl.") at 5. In December 2007,
9 Plaintiff took out a \$1,220,000 loan from Defendant Washington
10 Mutual Bank ("WaMu"), which was secured by the Property pursuant to
11 a Deed of Trust. App. Ex. A. In October 2010, Defendant
12 California Reconveyance Company, the trustee under the Deed of
13 Trust, recorded a Notice of Trustee Sale, setting a sale date of
14 November 16, 2010. App. Ex. B. According to the notice, the
15 unpaid balance and other charges on Plaintiff's loan totaled
16 \$1,383,206.66. Id. The trustee sale was postponed but eventually
17 took place on June 28, 2011. ECF No. 4 ("Grossman Decl.") ¶ 3.

18 Plaintiff filed the instant action in federal court on July 6,
19 2012, asserting causes of action for (1) quiet title; (2)
20 fraudulent and wrongful foreclosure; (3) declaratory relief; (4)
21 violation of California's Unfair Competition Law ("UCL"), Cal. Bus.
22 & Prof. Code § 17200; (5) "injunction"; (6) cancellation of
23 instruments; (7) unjust enrichment; (8) violation of the Truth-in-
24 Lending Act, 15 U.S.C. § 1601 et seq.; (9) violation of the Real
25 Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. § 2605; and
26 (10) violation of California Civil Code section 2932.5. FAC at 12-
27 22. On the same day, Plaintiff filed his Application for a TRO.
28 The gravamen of the Complaint and the TRO application is that

1 Defendants lacked standing to conduct the foreclosure sale since
2 none of them can demonstrate they were a holder in due course of
3 the promissory note endorsed by WaMu in connection with Plaintiff's
4 loan. See TRO App. at 7-14; Compl. at 12.

5 There is no indication that Defendants have yet been served
6 with process.

7 **III. DISCUSSION**

8 Under Federal Rule of Civil Procedure 65, a district court may
9 issue a TRO without notice to the adverse party only if:

10 (A) specific facts in an affidavit or a verified
11 complaint clearly show that immediate and irreparable
12 injury, loss, or damage will result to the movant before
the adverse party can be heard in opposition; and

13 (B) the movant's attorney certifies in writing any
14 efforts made to give notice and the reasons why it should
not be required.

15 Fed. R. Civ. P. 65(b)(1). "[C]ourts have recognized very few
16 circumstances justifying the issuance of an ex parte TRO." Reno
17 Air Racing Ass'n, Inc. v. McCord, 452 F.3d 1126, 1131 (9th Cir.
18 2006). An ex parte TRO may be appropriate "where notice to the
19 adverse party is impossible either because the identity of the
20 adverse party is unknown or because a known party cannot be located
21 in time for a hearing." Id. (quoting Am. Can Co. v. Mansukhani,
22 742 F.2d 314, 322 (7th Cir. 1984). Further, an ex parte order may
23 be proper when "notice to the defendant would render fruitless the
24 further prosecution of the action." Id. (quoting Am. Can Co., 742
25 F.2d at 322).

26 Here, Plaintiff has failed to establish a compelling reason
27 for the Court to proceed ex parte. Plaintiff's attorney has not
28 certified that he has made an effort to give notice to Defendants.

1 There is no indication that providing notice to Defendants would be
2 impossible or that such notice would frustrate the prosecution of
3 this action. There is also no indication that immediate action is
4 necessary to avoid irreparable harm. Plaintiff's property was sold
5 through a foreclosure sale over one year ago and Plaintiff was
6 notified of Defendant's intention to proceed with the sale about
7 two years ago. Thus, Plaintiff has had ample time to apply for a
8 preliminary injunction. Additionally, as the foreclosure sale has
9 already taken place, it is unclear what harm would result if the
10 Court were to wait to hear from Defendants on this matter. Even if
11 Plaintiff has retained possession of the Property, he has offered
12 no indication that an unlawful detainer action is pending against
13 him or that Defendants have any plans to evict him in the immediate
14 future.

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16 **IV. CONCLUSION**

17 For the reasons set forth above, the Plaintiff William H.
18 Grossman's Application for a Temporary Restraining Order is DENIED.

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20 IT IS SO ORDERED.

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22 Dated: July 24, 2012

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UNITED STATES DISTRICT JUDGE

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