

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

KAMRAN IRSHAD,  
Plaintiff,  
v.  
ARGENT MORTGAGE, et al.,  
Defendants.

No. 10-01532 CW  
ORDER DENYING  
PLAINTIFF'S EX  
PARTE APPLICATION  
FOR A TEMPORARY  
RESTRAINING ORDER

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Plaintiff Kamran Irshad moves ex parte for a temporary restraining order prohibiting Defendants from conducting a trustee sale of his property located at 126 Red Cedar Lane, Union City, California on April 12, 2010.

A temporary restraining order may be issued without providing the opposing party an opportunity to be heard only if "specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition." Fed. R. Civ. P. 65(b)(1)(A). "The standard for issuance of a temporary restraining order is the same as that for issuance of a preliminary injunction." Burgess v. Forbes, 2009 WL 416843, at \*2 (N.D. Cal.). To obtain a preliminary injunction, the moving party must "establish that he is likely to succeed on the merits, that he

1 is likely to suffer irreparable harm in the absence of preliminary  
2 relief, that the balance of equities tips in his favor, and that an  
3 injunction is in the public interest." Winter v. Natural Res. Def.  
4 Council, Inc., \_\_\_ U.S. \_\_\_, 129 S. Ct. 365, 374 (2008).

5 Defendant Cal-Western Reconveyance Corp. (CWRC), the  
6 foreclosing trustee, recorded a Notice of Default against the said  
7 property on September 28, 2009. Comp. ¶ 21. Plaintiff received a  
8 Notice of Sale by CWRC on January 7, 2010. Id. ¶ 22. However,  
9 Plaintiff waited until three days before the trustee sale to file  
10 an ex parte application for an order to halt the sale. The timing  
11 of this application weighs against his request. Further, although  
12 the balance of the harm tips toward Plaintiff, he has not presented  
13 the requisite showing of meritoriousness required for the Court to  
14 issue an injunction. Plaintiff's request for immediate ex parte  
15 relief is therefore DENIED. If Plaintiff's request does not become  
16 moot by the trustee sale, Plaintiff may file a regularly noticed  
17 motion for a preliminary injunction. See N.D. Cal. Civ. R. 7-2.

18 IT IS SO ORDERED.

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20 Dated: 04/15/10



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21 CLAUDIA WILKEN  
22 United States District Judge  
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