

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
NORTHERN DISTRICT OF CALIFORNIA

PAUL CHRISTENSEN,

Plaintiff,

v.

JP MORGAN CHASE BANK NA, et al.,

Defendants.

Case No. 16-cv-0976-PJH

**ORDER DENYING PETITION TO
RESTRAIN FORECLOSURE SALE**

On March 30, 2016, plaintiff Paul Christensen (“plaintiff”) filed his second “ex parte petition and memorandum of points and authorities in support of petition to restrain defendants’ foreclosure sale of plaintiff’s home.”¹ Because the court does not issue restraining orders without notice to the other party absent the circumstances set forth in Federal Rule of Civil Procedure 65(b)(1) (which were not met in this case), the court ordered plaintiff to serve a copy of the petition upon defendants, and also set dates for an opposition brief and for a hearing.

On March 31, 2016, plaintiff filed a proof of service indicating that his counsel had served, via fax, the petition for a restraining order and the complaint. See Dkt. 12. The proof of service also stated “fax confirmation pages on file,” though no confirmation pages were actually filed with the court. Id. at 2. In a previous declaration, plaintiff’s

¹ Plaintiff’s first petition was filed on February 29, 2016. On the same day, the court ordered that the petition be served on defendants by noon on March 1, 2016, to be followed by a hearing on March 2, 2016. On March 1, 2016, plaintiff withdrew his petition because he had filed a petition for Chapter 11 bankruptcy and had obtained an automatic stay of the foreclosure sale. See Dkt. 9.

1 counsel stated both that he “served the agents for service of process for defendants,” and
2 also that he “received defendants’ facsimile number” from “defendants’ customer service
3 phone number that is posted on defendants’ website and through defendant’s agent for
4 process of service which I located through the Secretary of State of California.” See Dkt.
5 10-2. This declaration is unclear as to whether service was effected upon defendants
6 themselves or upon defendants’ agents for service of process – and moreover, plaintiff
7 provides no indication that defendants (or its agents) consented to service by fax, as
8 required by Federal Rule of Civil Procedure 5(b)(2).

9 At the hearing on April 5, 2016, an attorney named Scott Peebles appeared on
10 plaintiff’s behalf. He is not counsel of record, but was making what he referred to as a
11 “special appearance” because Peter Kutrubes was out of town. No explanation was
12 offered for the non-appearance of Stephen Lin, who signed the ex parte petition and
13 submitted a declaration in support thereof. In any event, Mr. Peebles could not answer
14 the court’s questions regarding the adequacy of the service of process, nor why an
15 appropriate declaration was not filed per Rule 65(b)(1) if service were to be excused. In
16 short, plaintiff has not shown that service was adequate, and for that reason alone, his
17 petition must be DENIED.

18 Additionally, even putting aside the deficiencies with respect to service, plaintiff’s
19 papers do not even attempt to meet the legal standard for temporary restraining orders –
20 namely, that plaintiff is likely to succeed on the merits, that he is likely to suffer
21 irreparable harm in the absence of preliminary relief, that the balance of equities tips in
22 his favor, and that an injunction is in the public interest. Winter v. Natural Resources
23 Defense Council, Inc., 129 S.Ct. 365, 374 (2008); see also Stuhlberg Int’l Sales Co., Inc.
24 v. John D. Brush & Co., Inc., 240 F.3d 832, 839 n. 7 (9th Cir. 2001) (applying the
25 preliminary injunction standard to TROs). Plaintiff’s “memorandum of points and
26 authorities” contains neither points nor authorities; there is no discussion of the relevant
27 legal standard, nor any attempt to explain why he is likely to succeed on the merits of any
28 of the seven causes of action asserted in the complaint. Accordingly, putting aside the

1 service deficiencies and evaluating the merits of plaintiff's request, the petition must be
2 DENIED.

3

4 **IT IS SO ORDERED.**

5 Dated: April 5, 2016

6



PHYLLIS J. HAMILTON
United States District Judge

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28