

E-Filed 9/14/2010

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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11
12 FRANCISCO VASQUEZ and JOSE VASQUEZ,

13 Plaintiffs,

14 v.

15 CAL WESTERN RECONVEYANCE
16 CORPORATION as Trustee for U.S. Bank
17 National Association as Trustee for First Franklin
18 Loan Trust through Certificate Series 2006-FF10,
19 et al.,

20 Defendant.

Case No. 10-3411-JF/HRL

ORDER¹ DENYING MOTIONS TO
PROCEED *IN FORMA PAUPERIS*
AND DENYING MOTION FOR STAY
OF ENFORCEMENT

[re: document no. 3, 4, 10]

21 **I. BACKGROUND**

22 Plaintiffs suffered an adverse judgment in an unlawful detainer action in the San Benito
23 Superior Court, and that judgment has been affirmed on appeal. *See U.S. Bank National v.*
24 *Vasquez*, No. CL-09-00140, Superior Court of California, San Benito County, Appellate
25 Division, Minute Order from Appeal (April 5, 2010). On April 19, 2010, Plaintiffs, proceeding
26 *pro se*, filed a complaint in this Court seeking to “remove” the case from the San Benito Superior

27 ¹ This disposition is not designated for publication in the official reports.

1 Court. *Vasquez v. Cal Western Reconveyance Corp.*, 5:10-cv-01679-JF (N.D. Cal. filed Apr. 19,
2 2010). On August 9, the Court dismissed the case for lack of subject matter jurisdiction, noting
3 that federal courts do not have jurisdiction to review state court judgments. *Vasquez v. Cal*
4 *Western Reconveyance Corp.*, 5:10-cv-01679-JF (N.D. Cal. Aug. 9, 2010). On August 3, 2010,
5 even before the related case was dismissed, Plaintiffs filed the instant separate action for
6 damages resulting from “forcible and fraudulent eviction,” claiming that the Defendants engaged
7 in fraud and conspiracy before the state court. Complaint at 3-4. Plaintiffs each have filed
8 motions to proceed *in forma pauperis* and also have filed an *ex parte* motion for “a stay of
9 enforcement” to prevent Defendants from entering the property at issue.

10 II. DISCUSSION

11 A. Motion To Proceed *In Forma Pauperis*

12 Pursuant to 28 U.S.C. § 1915, a district court may authorize the commencement of a civil
13 action *in forma pauperis* if the court is satisfied that the would-be plaintiff cannot pay the filing
14 fees necessary to pursue the action. 28 U.S.C. § 1915(a)(1). The court may deny *in forma*
15 *pauperis* status, however, if it appears from the face of the proposed complaint that the action is
16 frivolous or without merit. *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990); *Tripati v.*
17 *First National Bank & Trust*, 821 F.2d 1368, 1370 (9th Cir. 1987).

18 As presently drafted, Plaintiffs’ complaint appears to be without merit in that it fails to
19 set forth a cognizable claim. To the extent that Plaintiffs seek to overturn state court judgments,
20 the Court is without jurisdiction to hear the action. As the Court noted with respect to Plaintiff’s
21 previous action, “federal district courts lack jurisdiction to review the final determinations of a
22 state court in judicial proceedings.” *Doe & Assocs. Law Offices v. Napolitano*, 252 F.3d 1026,
23 1029 (9th Cir. Ariz. 2001) (citing *Branson v. Nott*, 62 F.3d 287, 291 (9th Cir. 1995); *D.C. Ct. of*
24 *App. v. Feldman*, 460 U.S. 462, 476 (1983)). A federal court similarly is barred from exercising
25 jurisdiction over *de facto* appeals from state court where “claims raised in the federal court
26 action are ‘inextricably intertwined’ with the state court’s decision such that the adjudication of
27 the federal claims would undercut the state court’s ruling.” *Reusser v. Wachovia Bank, N.A.*,

1 525 F.3d 855 (9th Cir. 2008).

2 To the extent that Plaintiffs allege that Defendants committed extrinsic fraud, that is,
3 conduct that prevented Plaintiffs from presenting their claims in state court, Plaintiffs' claims
4 would not necessarily be barred by the *Rooker-Feldman* doctrine articulated above. *See*
5 *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004). As presently drafted, however,
6 Plaintiffs complaint only makes bare allegations of fraud. These allegations are insufficient to
7 satisfy Federal Rule of Civil Procedure 9(b), which requires that allegations of fraud must "state
8 with particularity the circumstances constituting fraud," nor do they make out a claim for
9 extrinsic fraud sufficient to overcome the jurisdictional bar of *Rooker-Feldman*. Accordingly,
10 Plaintiffs' requests to proceed *in forma pauperis* are denied without prejudice. If Plaintiffs do
11 not pay the filing fee within thirty days of the date of this order, the Court will dismiss the action
12 without prejudice.

13 **B. Application For *Ex Parte* Order A Stay Of Enforcement**

14 The Court considers Plaintiffs *ex parte* motion for an order "staying any enforcement or
15 entering into the real property subject to this proceeding" under the standard applicable to a
16 preliminary injunction. *See Brown Jordan International, Inc. v. Mind's Eye Interiors, Inc.*, 236
17 F. Supp. 2d 1152, 1154 (D. Hawaii 2002). A preliminary injunction is "an extraordinary remedy
18 that may only be awarded upon a clear showing that the plaintiff is entitled to such relief."
19 *Winter v. Natural Res. Def. Council, Inc.*, 129 S.Ct. 365, 376 (2008). "The proper legal standard
20 for preliminary injunctive relief requires a party to demonstrate [1] 'that he is likely to succeed
21 on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief,
22 [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public
23 interest.'" *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (citation omitted).

24 As noted above, Plaintiffs' have not demonstrated a likelihood of success on the merits.

25 **III. ORDER**

26 Plaintiffs' motions to proceed *in forma pauperis* are DENIED. If Plaintiffs do not pay
27 the filing fee in this action within thirty (30) days of the date of this order, the action will be
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1 dismissed without prejudice. Plaintiffs' *ex parte* motion to prevent Defendants from entering the
2 property at issue is DENIED.

3 **IT IS SO ORDERED.**

4 DATED: 9/14/2010



JEREMY FOGEL
United States District Judge

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1 Copies of this Order have been served on the following persons:

2 Francisco Vasquez
3 P.O. Box 420
4 Salinas, CA 93902

5 Jose Vasquez
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