

United States District Court
For the Northern District of California

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

EDWARD & ROBIN GRANT,)	Case No.: 10-CV-04788-LHK
)	
Plaintiffs,)	ORDER DENYING MOTION FOR
v.)	TEMPORARY RESTRAINING ORDER
)	
CHASE BANK,)	
)	
Defendant.)	

On October 22, 2010, Plaintiffs Edward and Robin Grant, proceeding *pro se*, filed a Petition for Temporary Injunction and *ex parte* Motion for Temporary Restraining Order to enjoin Defendant Chase Bank from foreclosing on and selling Plaintiffs’ property at 1372 Annapolis Way, San Jose, California 95118. The case was reassigned to this Court on October 29, 2010. Because Plaintiffs failed to comply with the notice requirements in Federal Rule of Civil Procedure 65(b) and Civil Local Rule 65-1(b), the Court DENIES the Motion for Temporary Restraining order without prejudice.

Federal Rule of Civil Procedure 65(b)(1) states that the court may issue a temporary restraining order without notice only if: “A) 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; and B) the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.” Also related to notice, the Court’s Local Rule 65-1(b) states that, unless relieved by the Court for good cause shown, “on

1 or before the day of an *ex parte* motion for a temporary restraining order, counsel applying for the
2 temporary restraining order must deliver notice of such motion to opposing counsel or party.”

3 Plaintiffs allege that the Court should grant a TRO without notice to Defendant because the
4 foreclosure sale scheduled for November 19, 2010, will cause Plaintiffs immediate and irreparable
5 harm before Defendant can be heard. Mem. in Supp. of Req. for TRO 3, ECF No. 4. When
6 Plaintiffs originally filed their motion for a TRO, the scheduled sale was nearly a month away;
7 currently, the sale is nearly three weeks away. Plaintiffs have not alleged “specific facts” that
8 “clearly show” that irreparable injury will occur if the Court permits Defendant to be heard in
9 opposition before the scheduled sale. Thus, the Court finds that issuance of a TRO without notice
10 to Defendant is not appropriate under Federal Rule 65(b)(1) and Civil Local Rule 65-1(b).

11 Accordingly, the Court DENIES Plaintiffs’ motion for a temporary injunction without
12 prejudice. If Plaintiffs wish to proceed with their motion for temporary restraining order, Plaintiffs
13 must provide notice to Defendant, including service of Plaintiffs’ petition, moving papers, and a
14 copy of this Order, and file proof of such notice on or before Wednesday, November 3, 2010. If
15 Plaintiffs proceed with their motion for temporary restraining order, Defendant shall file any
16 response on or before Monday, November 8, 2010. Plaintiff shall file any reply on or before
17 Wednesday, November 10, 2010. Hearing is set for Friday, November 12, 2010 at 1:30 p.m. in
18 Courtroom 4, 5th Floor of the San Jose Courthouse.

19 **IT IS SO ORDERED.**

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21 Dated: November 1, 2010

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24 LUCY H. KOH
25 United States District Judge
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