

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

FRANKLIN CAMILLOS, ET AL.,)	Case No.: 5:11-CV-05228 EJD
)	
Plaintiffs,)	ORDER DENYING AMENDED
)	MOTION FOR A TEMPORARY
v.)	RESTRAINING ORDER
)	
US BANK NATIONAL ASSOCIATION, ET)	(Re: Docket No. 7)
AL.,)	
Defendants.)	

Plaintiff Franklin Camillo and Plaintiff Celina Camillo move for a temporary restraining order enjoining Defendant U.S. Bank National Association (“U.S. Bank”) and Defendant TD Service Company (“TD”) from selling the Plaintiffs’ real property. Having considered the moving papers, the Court DENIES Plaintiffs’ motion for a temporary restraining order because the Complaint fails to adequately plead the existence of subject matter jurisdiction over the case.

I. BACKGROUND

The following facts are alleged in Plaintiffs’ Complaint. Plaintiff owned property at 1136 Cadillac Court, Milpitas, California (“Subject Property”). Compl. ¶ 6. In 2007, Plaintiffs received a loan secured by a deed of trust on the Subject Property. *Id.* ¶¶ 7, 10. U.S. Bank and T.D. are attempting to foreclose against Plaintiffs but are not entitled to enforce the promissory note. *Id.* ¶¶ 8, 14-17. U.S. Bank is a company organized under the laws of Minnesota with its principal place of

1 business in Minnesota. Id. ¶ 2. T.D. is organized under the laws of California with its principal
2 place of business in California. Id.

3 On October 26, 2011, Plaintiffs filed their complaint alleging causes of action for (1)
4 negligence, (2) fraud, (3) “to dismiss and permanently stop trustee’s sale,” (4) wrongful/unlawful
5 foreclosure (5) breach of the implied covenant of good faith and fair dealing, (6) unjust enrichment,
6 and (7) and quiet title.¹ The complaint alleges that the court has jurisdiction because “[t]his case
7 involves a contract for purchase of property located within the boundaries of the County of Santa
8 Clara in the State of California.” Id. at 1. Also on October 26, 2011, Plaintiffs filed a motion for a
9 temporary restraining order. On October 27, 2011, Plaintiffs filed this amended motion for a
10 temporary restraining order.

11 II. DISCUSSION

12 “This Court has the duty to consider subject matter jurisdiction sua sponte in every case,
13 whether the issue is raised by the parties or not.” Spencer Enterprises, Inc. v. United States, 345
14 F.3d 683, 687 (9th 2003); see Fed. R. Civ. P. 12(h)(3) (“[i]f the court determines at any time that it
15 lacks subject-matter jurisdiction, the court must dismiss the action.”). The court presumes a lack of
16 jurisdiction until the party asserting jurisdiction, Plaintiffs here, proves otherwise. See Kokkonen v.
17 Guardian Life Ins. Co. of America, 511 U.S. 375, 377 (1994).

18 The Complaint fails to identify a basis for the court’s subject matter jurisdiction. Because
19 the Complaint raises only state law causes of action, the court clearly lacks federal question
20 jurisdiction under 28 U.S.C. § 1331. The court proceeds by examining whether diversity
21 jurisdiction exists under 28 U.S.C. § 1332.

22 Federal diversity jurisdiction is available under Title 28 U.S.C. § 1332(a) when the matter
23 in controversy is between citizens of different states. A party seeking to invoke diversity
24 jurisdiction bears the burden of establishing absolute diversity of citizenship. Dweck v. Japan CBM
25 Corp., 877 F.2d 790, 792 (9th Cir. 1989) (internal citations omitted). When federal subject matter
26 jurisdiction is predicated upon diversity of citizenship, complete diversity must exist between the
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28 ¹ The Complaint also lists “Count VIII Standing,” “Count IX Demand for Jury Trial,” and “Count X Prayer for Relief.”

1 opposing parties. Owen Equip. & Erection Co. v. Kroger, 437 U.S. 365, 373-74 (1978).

2 The Complaint alleges that T.D. “is a California company, organized . . . under the laws of
3 the State of California” and that it “maintains its principal business in the State of California.”
4 Compl. ¶ 2. Thus, for purposes of diversity of citizenship analysis, T.D. is a citizen of California.
5 See 28 U.S.C. § 1332(c)(1).

6 Plaintiffs fail to allege their own citizenship.² “It is . . . well established that when
7 jurisdiction depends upon diverse citizenship the absence of sufficient averments or of facts in the
8 record showing such required diversity of citizenship is fatal and cannot be overlooked by the
9 court, even if the parties fail to call attention to the defect, or consent that it may be waived.”
10 Thomas v. Bd. of Trs., 195 U.S. 207, 211 (1904). Because the Complaint fails to allege facts
11 regarding the citizenship of Plaintiffs, the court cannot determine whether complete diversity of
12 citizenship exists between the parties and therefore the case is subject to dismissal.

13 In the absence of a complaint setting out the basis for jurisdiction, the court lacks the
14 jurisdiction to grant a temporary restraining order. See Greene v. Phila. Hous. Auth., No. 11-MC-
15 60, 2011 WL 1833011, at *2 (E.D.Pa. May 11, 2011) (citing Powell v. Rios, 241 F. App'x 500, 505
16 n. 4 (10th Cir. 2007)). Thus, the motion for a temporary restraining order is denied. Plaintiffs,
17 however, as a matter of right, may amend their complaint to include facts that would establish
18 subject matter jurisdiction, if they can truthfully do so without contradicting the allegations in their
19 current complaint. See Fed. R. Civ. P. 15(a). If Plaintiffs can successfully amend their complaint to
20 establish subject matter jurisdiction, they may also file again a motion for a temporary restraining
21 order, or they may file and notice for hearing a motion for a preliminary injunction.

22 III. CONCLUSION

23 For the foregoing reasons, Plaintiffs’ motion for a temporary restraining order is DENIED.
24 for lack of subject matter jurisdiction. If Plaintiffs fail to amend the Complaint to plead subject
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² The Court notes that if Plaintiffs are domiciled at either the Subject Property or the address listed
at the top of the Complaint, they are also citizens of California, and therefore the parties would not
be completely diverse.

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matter jurisdiction as permitted by Fed. R. Civ. P. 15(a), the Complaint will be dismissed without prejudice.

IT IS SO ORDERED.

Dated: Qevqdt"49."4233


EDWARD J. DAVILA
United States District Judge