



1 property located at 14530 Deer Park Court, Los Gatos, California (the “Property”). Based on the  
2 court’s order, Defendants have now scheduled a Trustee’s Sale of the Property to be held on  
3 December 5, 2012. Plaintiffs intend to appeal the November 26 order and therefore move for  
4 injunction barring any trustee’s sale pending appeal.<sup>2</sup> According to Plaintiffs, failing to enjoin the  
5 sale will irreparably harm them because they will have lost their home, approximately \$3-4 million  
6 in equity, and any improvements they have made. Plaintiffs note that real property is unique and  
7 money damages would be inadequate to make them whole in the event they prevail on appeal.<sup>3</sup>  
8 Plaintiffs also note that California’s non-judicial foreclosure statutes would make it exceedingly  
9 difficult for them to set aside a trustee’s sale.<sup>4</sup>

10 Defendants respond that Plaintiffs have not met the requirements for the court to grant an  
11 injunction. Because the November 26, 2012 order relies essentially on factual findings, the Ninth  
12 Circuit would apply a “clearly erroneous” standard of review. Plaintiffs have not even identified  
13 what it considers to be clearly erroneous in the court’s November 26 order and instead focus  
14 exclusively on the alleged irreparable harm that would follow from the sale. This deficiency alone  
15 is fatal to Plaintiffs’ motion for injunction. Even if this were not so, none of the other requirements  
16 for an injunction have been met either. First, Plaintiffs will not be irreparably harmed because they  
17 may simply reinstate the loan by paying the deficiency in payments totaling \$407,701.20.  
18 Plaintiffs’ bank records reflect that they have at least \$1.4 million in cash. Second, the balance of  
19 equities favor Defendants. Plaintiffs’ 2008 appraisal report suggesting they have \$3-4 million in  
20 equity that would be lost in the sale is no longer valid. The market conditions in the real estate  
21 market have since changed substantially since 2008 and a more recent appraisal of the Property  
22 prepared on February 17, 2012 values the Property at \$5,472,750. In fact, Plaintiffs themselves  
23 have conceded that their home is worth no more than \$4 million, probably less. Plaintiffs’

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25 <sup>2</sup> At the time of their motion and hearing on the motion, Plaintiffs had yet to file their Notice of  
26 Appeal, but have since done so. *See* Docket No. 44. The court will proceed to address the merits of  
the pending motion without deciding whether a notice was in fact required in advance.

27 <sup>3</sup> *See Sundance Land Corp. v. Community First Federal Sav. And Loan Ass’n*, 840 F.2d 653, 661  
(9th Cir. 1988).

28 <sup>4</sup> *See* Cal. Civ. Code Section 2924.

1 argument that they should be permitted to sell their Property in excess of the debt to preserve their  
2 equity is therefore unfounded. Third, Plaintiffs do not even address the public interest in their  
3 motion.

4 The court agrees with Defendants. Before issuing an injunction pending appeal pursuant to  
5 Fed. R. App. P. 8(a), trial courts in the Ninth Circuit must consider the following factors: (1) a  
6 strong likelihood of success on the merits; (2) the balance of irreparable harm and (3) the public  
7 interest in granting the injunction.<sup>5</sup> As to the first factor – likelihood of success on the merits – the  
8 court addressed this factor at length in the November 26 order and concluded that Plaintiffs could  
9 not establish a likelihood of success on any of their claims.<sup>6</sup> Significantly, either in their papers or  
10 at the hearing on November 30, Plaintiffs did not identify even one legal or factual error in the  
11 November 26 order. Nor did Plaintiffs identify any previous instance of the Ninth Circuit or any  
12 trial court issuing any injunction pending appeal in the absence of any demonstration of error in the  
13 underlying order’s analysis. As to the second factor – whether the balance of irreparable harm  
14 favors movants – the court also addressed this factor in the November 26 order and concluded that  
15 if Defendants foreclosed, Plaintiffs may suffer irreparable harm in that they might lose their initial  
16 equity in the form of their down payment and the value of any improvements they have made on  
17 their home. But in response to Defendants’ evidence that any such equity no longer exists, based on  
18 the substantial decline in the value of the property, Plaintiffs offered no response. As to the third  
19 factor – whether the public interest favors granting the injunction – the court previously found that  
20 even if Plaintiffs could establish irreparable harm, Plaintiffs had not established that any other  
21 factors weighed in their interest. Having again considered the merits of Plaintiffs’ motion for  
22 preliminary injunction and determined again that they cannot establish a likelihood of success on  
23 their claims, the court must once again conclude that the public’s interest does not favor granting  
24 an injunction and further delaying foreclosure proceedings.

25 <sup>5</sup> See *Warm Springs Dam Task Force v. Gribble*, 565 F.2d 549, 551 (9th Cir. 1977). See also  
26 *Digital Communications Network, Inc. v. AB Cellular Holding LLC dba AT&T Wireless Services*,  
27 No. 99-5418 CM (AJWX), 1999 WL 1044234, at \*3 (C.D. Cal. Aug. 19, 1999) (referring to two  
standards, the standard for granting a stay pending appeal and the standard for issuance of an  
injunction pending appeal, to evaluate a motion for injunction pending appeal).

28 <sup>6</sup> See Docket No. 36 at 8-14.

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In sum, all of the factors mandated by the Ninth Circuit when considering an injunction pending appeal weigh in Defendants' favor. No matter the unfortunate effect of the proposed sale, these factors must be respected. Based on the record presented to the court, an injunction simply is not warranted.

**IT IS SO ORDERED.**

Dated: 12/3/2012

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PAUL S. GREWAL  
United States Magistrate Judge