

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Chief Judge Wiley Y. Daniel

Civil Action No. 11-cv-03184-WYD-KLM

LINDA SUE FICK,

Plaintiff,

v.

US BANK NATIONAL ASSOC.;
CITIGROUP MORTGAGE LOAN TRUST;
WELLS FARGO;
NEW CENTURY MORTGAGE;
AMERICA'S SERVICING COMPANY;
CITIGROUP MORTGAGE LOAN TRUSTS; and
CASTLE STAWIARSKI,

Defendants.

**ORDER AFFIRMING AND ADOPTING RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

THIS MATTER is before the Court in connection with Plaintiff's Complaint for Emergency Temporary Restraining Order and Decla[ra]tory Relief and to Stay Foreclosure Sale [ECF No. 3] ("Motion for TRO"), filed December 7, 2011. Defendant's motion was referred to United States Magistrate Judge Kristen L. Mix for a recommendation by Order of Reference dated December 9, 2011 [ECF No. 7] and the Memorandum dated December 9, 2011 [ECF No. 8]. Magistrate Judge Mix issued a Recommendation on December 15, 2011 [ECF No. 11]. The Recommendation is incorporated herein by reference. See 28 U.S.C. § 636(b)(1)(B), Fed. R. Civ. P. 72(b), D.C.COLO.LR. 72.1.

Magistrate Judge Mix recommends therein that Plaintiff's Motion for TRO be

denied. Specifically, Magistrate Judge Mix finds that Plaintiff has several procedural defects in her request for a temporary restraining order. However, even absent these defects, Plaintiff has failed to establish that there is a substantial likelihood that she will prevail on the merits. Judge Mix notes that Plaintiff is “essentially asking the Court to interfere with the state court proceedings that authorized the sale of her home.” See Recommendation at 6 [ECF No. 11]. Under the *Rooker-Feldman* doctrine, a federal court may not conduct the “appellate type of review of state court judgments” that Plaintiff requests in her motion. *Id.* Accordingly, Plaintiff has not made the necessary showing for a temporary restraining order.

Magistrate Judge Mix advised the parties that written objections were due within fourteen (14) days after service of a copy of the Recommendation. *Id.* at 7. Despite this advisement, no objections were filed to the Recommendation. No objections having been filed, I am vested with discretion to review the Recommendation “under any standard [I] deem[] appropriate.” *Summers v. Utah*, 927 F.2d 1165, 1167 (10th Cir. 1991); see also *Thomas v. Arn*, 474 U.S. 140, 150 (1985) (stating that “[i]t does not appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings”). Nonetheless, though not required to do so, I review the Recommendation to “satisfy [my]self that there is no clear error on the face of the record.”¹ See FED. R. CIV. P. 72(b) Advisory Committee Notes.

Having reviewed the Recommendation, I am satisfied that there is no clear error on

¹ Note, this standard of review is something less than a “clearly erroneous or contrary to law” standard of review, FED. R. CIV. P. 72(a), which in turn is less than a de novo review, FED. R. CIV. P. 72(b).

the face of the record. I find that Magistrate Judge Mix's Recommendation is thorough, well-reasoned and sound. I agree with Magistrate Judge Mix that Plaintiff's Complaint for Emergency Temporary Restraining Order and Decla[ra]tory Relief and to Stay Foreclosure Sale [ECF No. 3], filed December 7, 2011, should be denied for the reasons stated in both the Recommendation and this Order. Based on the foregoing, it is

ORDERED that the Recommendation of United States Magistrate Judge Mix [ECF No. 11], filed December 15, 2011, is **AFFIRMED** and **ADOPTED**. In accordance therewith, it is

FURTHER ORDERED that Plaintiff's Complaint for Emergency Temporary Restraining Order and Decla[ra]tory Relief and to Stay Foreclosure Sale [ECF No. 3], filed December 7, 2011, is **DENIED**.

Dated: January 4, 2012

BY THE COURT:

s/ Wiley Y. Daniel
WILEY Y. DANIEL,
CHIEF UNITED STATES DISTRICT JUDGE