

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Magistrate Judge Kathleen M. Tafoya

Civil Action No. 14-cv-01578-CMA-KMT

KENNETH R. DAVIDSON,

Plaintiff,

v.

BANK OF AMERICA N.A., and
GREEN TREE SERVICING LLC,

Defendants.

ORDER

This matter is before the court on “Plaintiff’s Ex Parte Motion for a Temporary Restraining Order and Preliminary Injunction with Asset Freeze and Permanent Injunction against Green Tree Servicing LLC to Enjoin their Efforts to Profit from Foreclosure Sale and Dispose of Evidence with the Sale of 10067 Broome Way, Highlands Ranch CO,” which was filed under Level 2 restriction. (Doc. No. 42, filed January 26, 2015.) Through this Motion, Plaintiff seeks to enjoin Defendant Green Tree Servicing LLC (“Green Tree”) from foreclosing on his residence.

To the extent Plaintiff seeks a temporary restraining order on an *ex parte* basis, it is denied. Federal Rule of Civil Procedure 65(b) provides as follows:

The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney 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.

Plaintiff has not submitted an affidavit or verified complaint showing that irreparable harm would result if a temporary restraining order is not issued on an *ex parte* basis. Moreover, Plaintiff has not provided any basis as to why Defendants should not be given notice of the Motion and an opportunity to respond. In fact, Plaintiff's Motion clearly states that he discussed the basis of his Motion with Defendants and sent them a copy of it at the time it was filed.

Therefore, it is


ORDERED that "Plaintiff's Ex Parte Motion for a Temporary Restraining Order and Preliminary Injunction with Asset Freeze and Permanent Injunction against Green Tree Servicing LLC to Enjoin their Efforts to Profit from Foreclosure Sale and Dispose of Evidence with the Sale of 10067 Broome Way, Highlands Ranch CO" (Doc. No. 42) is DENIED in part to the extent it seeks an *ex parte* temporary restraining order, and TAKEN UNDER ADVISEMENT in part to the extent it seeks a preliminary injunction preventing foreclosure on his home. It is further

ORDERED that the Clerk of Court is directed to **unrestrict** Plaintiff's Motion. (Doc. No. 42.) Defendant Green Tree Servicing LLC shall respond to Plaintiff's Motion no later than May 30, 2015. Defendant Bank of America NA may also file a response to Plaintiff Motion

no later than May 30, 2015, if it deems a response to be necessary. Plaintiff may file a reply no later than April 16, 2015.

Dated this 6th day of March, 2015.

BY THE COURT:



Kathleen M Tafoya
United States Magistrate Judge