

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ANDRZEJ MADURA and ANNA
DOLINSKA-MADURA,

Plaintiffs,
v.

Case No. 8:11-cv-2511-T-33TBM

BAC HOME LOANS SERVICING L.P.,
ET AL.,

Defendants.
_____ /

BANK OF AMERICA, N.A.,

Counter-Plaintiff,
v.

ANDRZEJ MADURA and ANNA
DOLINSKA-MADURA,

Counter-Defendants.
_____ /

BANK OF AMERICA, N.A.,

Third Party Plaintiff,
v.

CIT LOAN CORPORATION, ET AL.,

Third Party Defendants.
_____ /

ORDER

This cause comes before the Court pursuant to the Maduras' Emergency Verified Motion to Stay Final Judgment of Foreclosure Pending Appeal (Doc. # 531), which was filed on September 24, 2013. Bank of America responded on October 7,

2013. (Doc. # 537). For the reasons stated below, the Court denies the Motion.

I. Background

An exhaustive discussion of the history of this case is unwarranted at this juncture. On July 17, 2013, the Court entered an Order granting Bank of America's Motion for Summary Judgment as well as addressing a plethora of other pending motions. (Doc. # 496). Among other things, the Court determined that the RESPA claims presented in the Maduras' operative complaint lacked merit and that Bank of America was entitled to summary judgment against the Maduras as to its foreclosure counterclaim. (Id.). The Court directed Bank of America to submit a proposed final judgment for the Court's consideration within ten days thereof. (Id.).

Prior to the entry of a final judgment, the Maduras filed a motion to stay the case based on their submission of a petition for writ of mandamus to the Eleventh Circuit based on the argument that this Court should have entered an Order of recusal. (Doc. # 504). On August 12, 2013, the Court denied the motion to stay based on a number of factors. (Doc. # 520). Among other things, the Court determined that the Maduras were unlikely to prevail on the merits of the petition because the Eleventh Circuit has repeatedly instructed the Maduras that

mandamus relief is inappropriate under the circumstances presented in this case. The Court also noted that while the Maduras have on more than one occasion presented their recusal arguments to the Eleventh Circuit, that court has routinely rejected such arguments.

Thereafter, on August 13, 2013, this Court entered its Final Judgment of Foreclosure. (Doc. # 521). The Maduras filed an appeal of the Judgment (Doc. # 524), and the Eleventh Circuit has granted the Maduras leave to appeal in forma pauperis. (See Case 13-13953). At this juncture, the Maduras seek a stay of the Judgment pending the resolution of the appeal pursuant to Rule 8(a)(1)(A) of the Federal Rules of Appellate Procedure.

II. Discussion

As explained in Hilton v. Braunskill, 481 U.S. 770, 777 (1987):

Different Rules of Procedure govern the power of district courts and courts of appeals to stay an order pending appeal. See Fed. R. Civ. Proc. 62(c); Fed. R. App. Proc. 8(a). Under both Rules, however, the factors regulating the issuance of a stay are generally the same: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Id.

The Maduras' present Motion to Stay is voluminous and catalogues a number of reasons why, from the Maduras' perspective, the Court's final Judgment should be reversed. Although the Maduras' arguments are too numerous to repeat in the present Order, the Court notes that a number of their arguments are focused on the unavailing concept that Bank of America lacked standing to assert the foreclosure counterclaim. After considering the arguments asserted in the Motion to Stay, this Court agrees with Bank of America that: "[t]he arguments raised by the Maduras in their motion to stay have already been rejected by the Court repeatedly, and several have been found to be frivolous. In fact, many of these very same issues have been adjudicated repeatedly for over a decade." (Doc. # 537 at 3). In this Court's view, the Maduras have not set forth any convincing arguments concerning their likelihood of success on appeal.

The Court likewise determines that the Maduras have failed to demonstrate that they risk irreparable injury. Although the Maduras appeal the Court's Judgment authorizing the foreclosure sale of the property at issue in this case, the Maduras have not provided pertinent information, such as when the sale of the property, if any, is scheduled to occur.

Furthermore, the Maduras have not indicated why the equities favor their continued habitation of the property mortgage-free.

The Court also notes that Bank of America has provided cogent and convincing arguments concerning the injury it will face, as a judgment creditor, if the Court stays the Judgment absent a bond, as requested by the Maduras. See United States v. O'Callaghan, 805 F. Supp. 2d 1321 (M.D. Fla. 2011)(denying a motion to stay pending appeal in a foreclosure action when the defendant failed to post a bond and there were no other safeguards available to protect the judgment creditor's interest during the requested stay).

Finally, the Court finds that the Maduras have not addressed whether the requested stay of the Judgment would affect the public interest. Because the Maduras have failed to carry their burden, the Court denies the Motion.¹

Accordingly, it is hereby

ORDERED, ADJUDGED, and DECREED:

The Maduras' Emergency Verified Motion to Stay Final Judgment of Foreclosure Pending Appeal (Doc. # 531) is **DENIED**.

¹The Court notes that upon the denial of their Motion to Stay in this Court by the present Order, the Maduras may seek a stay of the Judgment in the Court of Appeals pursuant to Federal Rule of Appellate Procedure 8(a)(2).

DONE and **ORDERED** in Chambers, in Tampa, Florida, this 8th
day of October, 2013.



VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

Copies: All Counsel and Parties of Record