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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

SUZANNE A. NORTH, an individual,)
)
Plaintiff,)
)
vs.)
)
BANK OF AMERICAL CORP., a foreign)
corporation; RECONTRUST COMPANY, a)
foreign corporation; PRLAP, INC., a foreign)
registered corporation; BAC HOME LOAN)
SERVICING, LP, a foreign registered L.P.,)
)
Defendants.

Case No.: 2:11-cv-00136-RLH-PAL

ORDER

(Emergency Motion to Dissolve or, in the
Alternative, Modify Temporary
Restraining Order and Preliminary
Injunction #4)

Before the Court is Defendants Bank of America, Corp., ReconTrust Company, PRLAP, Inc., and BAC Home Loan Servicing L.P.’s **Emergency Motion to Dissolve or, in the Alternative, Modify Temporary Restraining Order and Preliminary Injunction (#4)**, filed January 27, 2011.

BACKGROUND

This dispute arises from Plaintiff Suzanne A. North’s allegations that her mortgage lenders committed illegal acts and are now attempting to wrongfully foreclose upon her property located at 220 E. Bronco Street, Pahrump, Nevada 89048 (the “Property”). (Dkt. #1, Pet. for

1 Removal Ex. C., Am. Compl; Ex. D Second Am. Compl.) After North defaulted on her loan and
2 was refused loan modification, Defendants initiated foreclosure proceedings in September 2010.

3 On January 10, 2011, North filed a petition for judicial review in the Fifth Judicial
4 District Court of the State of Nevada (the “State Court”). She subsequently amended her petition
5 into a complaint, which she has since amended twice. The State Court then issued a “Temporary
6 Restraining Order / Preliminary Injunction” on January 20 that was to last until February 28. (Dkt.
7 #1, Ex. F, Order.) Defendants removed the case to this Court on January 25 under diversity
8 jurisdiction. Defendants now bring a motion seeking to have the State Court injunction dissolved.
9 Defendants argue that the injunction was improperly granted and over broad. For the reasons
10 discussed below, the Court grants the motion and dissolves the injunction.

11 DISCUSSION

12 Dissolving a preliminary injunction or temporary restraining order is within the
13 sound discretion of the district court. *Owen v. Perkins Oil Well Cementing Co.*, 2 F.2d 247, 247
14 (9th Cir. 1924). Furthermore, 28 U.S.C. § 1450 provides that an injunction issued by a state court
15 prior to removal will remain in effect after removal “until dissolved or modified by the district
16 court.” The district court then has the same power to modify or dissolve the order as the state
17 court would have had the case not been removed. *Am. Jur. Federal Courts* § 1469. The Federal
18 Rules of Civil Procedure then govern the dissolution of an injunction after removal. *See Granny*
19 *Goose Foods, Inc. v. Brotherhood of Teamsters*, 415 U.S. 423, 437–438 (1974). Therefore, the
20 Court may dissolve the State Court injunction if, after review, the Court determines that a TRO is
21 not warranted. *See Fed. R. Civ. P. 65; 28 U.S.C. § 1450; see also Qualitybuilt.com v. Coast to*
22 *Coast Eng’r Serv., Inc.*, No. 07–cv–627 WGH (AJB), 2007 WL 1159968 (S.D. Cal. April 18,
23 2007) (dissolving a TRO after removal because the plaintiff did not meet the requirements for a
24 TRO); *North Dakota v. U.S. Army Corps of Eng’rs*, 264 F. Sup. 2d 871 (D. N.D. 2003) (dissolving
25 a TRO after removal because the plaintiff did not show a likelihood of irreparable harm).

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1 Under Rule 65(b) of the Federal Rules of Civil Procedure, a temporary restraining
2 order requires a showing of: (1) a likelihood of success on the merits, (2) a likelihood of
3 irreparable harm in the absence of preliminary relief, (3) the balance of equities tips in their favor,
4 and (4) an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 129 S. Ct.
5 365, 374 (2008). Applying *Winter*, the Ninth Circuit has since held that, to the extent previous
6 cases suggested a lesser standard, "they are no longer controlling, or even viable." *Stormans, Inc.*
7 *v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009). Thus, a party must satisfy each of these four
8 requirements.

9 Plaintiff asked the State Court to enjoin the foreclosure sale of her home and all
10 other homes where ReconTrust is party to the proceedings. The State Court subsequently granted
11 a TRO and preliminary injunction. The Court now reviews this order. Temporary restraining
12 orders and preliminary injunctions are extraordinary forms of relief, and the Court cannot
13 issue—or maintain in this case—such relief without Plaintiff demonstrating a likelihood of success
14 on the merits. Plaintiff's amended complaint does not show a likelihood of success because this
15 Court has repeatedly ruled against claims such as those Plaintiff brings. *See, e.g., Berilo v. HSBC*
16 *Mortg. Corp., USA*, No. 2:09-cv-02353-RLH-PAL, 2010 WL 1544097 (D. Nev. April 16, 2010).
17 The ever-expanding body of case law within this district holds that the Nevada law governing non-
18 judicial foreclosure, NRS § 107.080, does not require a lender to produce the original note nor
19 does it require that ReconTrust be substituted as trustee under the deed of trust as prerequisites to
20 non-judicial foreclosure proceedings. *See Weingartner v. Chase Home Finance, LLC*, 702 F.
21 Supp. 2d 1276, 1280 (D. Nev. 2010).¹

22
23
24 ¹ *See also, Birkland v. Silver State Fin. Services, Inc.*, No. 2:10-cv-00035-KJD-LRL, 2010 WL 3419372
25 (D. Nev. Aug. 25, 2010); *Moon v. Countrywide Home Loans, Inc.*, No. 3:09-cv-00298-ECR-VPC, 2010 WL
26 522753 (D. Nev. Feb. 9, 2010); *Gomez v. Countrywide Bank, FSB.*, No. 2:09-cv-01489-RCJ-LRL, 2009 WL
3617650 (D. Nev. Oct.26, 2009), *Ernestberg v. Mortgage Investors Group*, No. 2:08-cv-01304-RCJ-RJJ, 2009
WL 160241 (D. Nev. Jan. 22, 2009); *Wayne v. HomeEq Servicing, Inc.*, No. 2:08-cv-00781 RCJ-LRL, 2008 WL
4642595 (D. Nev. Oct. 16, 2008).

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Furthermore, the State Court did not require Plaintiff to post a bond, which under Nevada law renders the TRO void. *See Dangberg Holdings Nev., L.L.C. v. Douglas Cnty.*, 978 P.2d 311, 320–21 (Nev. 1999) (“the district court’s failure to require the applicant to post security voids an order imposing a preliminary injunction” where the same rule applies to TROs).

CONCLUSION

Accordingly, and for good cause appearing,

IT IS HEREBY ORDERED that Defendants’ Emergency Motion to Dissolve or, in the Alternative, Modify Temporary Restraining Order and Preliminary Injunction (#4) is GRANTED and the State Court order is dissolved.

Dated: January 31, 2011.



ROGER L. HUNT
Chief United States District Judge