

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 ANTHONY COLEMAN,)
4)
5 Plaintiff,)
6 vs.)
7 AMERICAN HOME MORTGAGE)
8 SERVICING, INC., also known as)
9 HOMEWARD RESIDENTIAL, INC., et al.)
10 Defendants.)

Case No.: 2:11-cv-00178-GMN-VCF

ORDER

11 This action arises out of the foreclosure proceedings initiated against the property of pro
12 se Plaintiff Anthony Coleman (“Plaintiff”). Before the Court is Plaintiff’s Motion for
13 Preliminary Injunction (ECF No. 69) and Supplemental Memorandum (ECF No. 70).
14 Defendants American Home Mortgage Servicing, Inc., aka Homeward Residential, Inc.
15 (“AHMSI”)¹, Mortgage Electronic Registration Systems, Inc. (“MERS”), Power Default
16 Services, Inc. (“Power Default Services”) (collectively, “Moving Defendants”) have filed a
17 Response (ECF No. 78) in opposition, accompanied by a Declaration and exhibits (ECF No.
18 79). Plaintiff filed a Reply. (ECF No. 90.)

19 I. PROCEDURAL HISTORY

20 Plaintiff initiated this action on February 1, 2011, by filing a Complaint before this
21 Court relating to the property he claimed to own and maintain as his residence, located at 6136
22 Benchmark Way, North Las Vegas, NV, 89031 (“the property”). (ECF No. 1.) After granting
23 Defendants’ first Motion to Dismiss, the Court gave Plaintiff leave to amend his Complaint by

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25 ¹ The Court notes that in this action there are two distinct entities that will be discussed – Defendant American Home Mortgage Servicing, Inc. (“AHMSI”) and AHMSI Default Services, Inc. (“AHMSI Default Services”).

1 January 3, 2012. (Order, Dec. 8, 2011, ECF No. 41.) At that time, the Court noted that “[t]he
2 documents submitted by the parties demonstrate that the foreclosure may have been statutorily
3 invalid,” and gave Plaintiff leave to amend his complaint to allege a statutory defect under
4 Section 107.080 of Nevada Revised Statutes. (Id.)

5 After Plaintiff filed several successive amended complaints, the Court construed
6 Plaintiff’s filings as a request for extension of time to re-file his Amended Complaint pursuant
7 to the Court’s December 8, 2011, Order, and permitted Plaintiff’s Third Amended Complaint
8 (ECF No. 49) to stand as the operative Complaint before the Court. (Order, July 20, 2012, ECF
9 No. 61.) Plaintiff’s causes of action, as amended, are: (1) Statutorily Defective Foreclosure
10 Under N.R.S. § 170.080; and (2) Quiet Title. On January 2, 2013, the Court denied a motion to
11 dismiss Plaintiff’s First Cause of Action, but granted the motion as to Plaintiff’s Second Cause
12 of Action. (ECF No. 77.)

13 Previously, on June 7, 2012, Bank of New York as Trustee filed a Complaint for
14 Unlawful Detainer in the Justice Court of North Las Vegas Township (the “Justice Court”)
15 thereby initiating Case No. 12CN001288 (the “Eviction Action”). (See Def.’s Resp. Br. Ex. P,
16 ECF No. 78-2.) Ultimately, the Justice Court set a hearing on the Eviction Action for
17 November 26, 2012. (Id.) On the day of the hearing, Plaintiff filed the instant motion
18 requesting that this Court enjoin Defendants from pursuing eviction proceedings. (Mot. for
19 Prelim. Inj., ECF No. 69.)

20 **II. DISCUSSION**

21 In their opposition, Moving Defendants first argue that the federal anti-injunction
22 statute, 28 U.S.C. § 2283, prohibits entry of the requested injunction. The Court agrees.

23 The Anti-Injunction Act prohibits a “court of the United States” from granting “an
24 injunction to stay proceedings in a State court.” 28 U.S.C. § 2283. The statute further provides
25 three limited exceptions to its prohibition: (1) where “expressly authorized by Act of

1 Congress”; (2) “where necessary in aid of its jurisdiction”; or (3) “to protect or effectuate its
2 judgments.” 28 U.S.C. § 2283. Furthermore, “[i]t is settled that the prohibition of § 2283
3 cannot be evaded by addressing the order to the parties or prohibiting utilization of the results
4 of a completed state proceeding.” *Atl. Coast Line R. Co. v. Bhd. Of Locomotive Eng’rs*, 398
5 U.S. 281, 287 (1970) (citing *Okla. Packing Co. v. Okla. Gas & Elec. Co.*, 309 U.S. 4, 9 (1940);
6 *Hill v. Martin*, 296 U.S. 393, 403 (1935)).

7 Here, Plaintiff is requesting that this Court enjoin Defendants from acting in any way to
8 deprive or attempt to deprive Plaintiff from the real property that is the subject of this litigation.
9 However, granting the requested relief would require this Court to enjoin the Eviction Action
10 currently underway in the Justice Court. Thus, the requested relief is barred by the anti-
11 injunction statute’s prohibition against enjoining “proceedings in a State court” and the Court
12 must deny Plaintiff’s Motion for a Preliminary Injunction.²

13 **III. CONCLUSION**

14 **IT IS HEREBY ORDERED** that Plaintiff’s Motion for Preliminary Injunction (ECF
15 No. 69) is **DENIED**.

16 **IT IS FURTHER ORDERED** that the Temporary Restraining Order (ECF No. 71) is
17 hereby **DISSOLVED**.

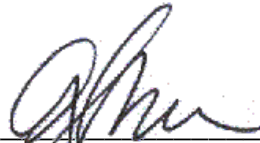
18 **IT IS FURTHER ORDERED** that the Preliminary Injunction Hearing currently
19 scheduled for **Friday, February 1, 2013** is hereby **VACATED**.

20 **IT IS FURTHER ORDERED** that the parties shall file copies of the following orders
21 in the docket of the Eviction Action, or in the docket of any appeal thereof: (1) this Order;

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23 ² Although the Court must deny Plaintiff’s request for an injunction of the state court eviction proceedings, it is
24 important to remember that the Court previously determined that Plaintiff is likely to succeed on the merits of his
25 claim for Statutorily Defective Foreclosure under Nev. Rev. Stat. § 170.080. (Order Grant’g Ex Parte Mot. for
TRO, ECF No. 71.) Furthermore, Plaintiff’s claim for statutorily defective foreclosure has survived the motion
to dismiss stage. (Order, ECF No. 77.) If Plaintiff were to succeed on the merits of this cause of action, the sale
of the real property in dispute would be voided and the subject state eviction proceedings would likely be
nullified.

1 (2) the Court's Order granting the Temporary Restraining Order (ECF No. 71); and (3) the
2 Court's Order granting-in-part and denying-in-part Defendants' Motion to Dismiss (ECF No.
3 77).

4 **DATED** this 31st day of January, 2013.

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8 Gloria M. Navarro
9 United States District Judge
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