

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

JACK W. BURNS and LAURA J.  
BURNS,

Plaintiffs,

Civ. No. 11-3153-CL

**TEMPORARY RESTRAINING ORDER**

v.

SUNTRUST MORTGAGE, INC, and  
FIRST AMERICAN TITLE  
INSURANCE COMPANY,

Defendants.

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**PANNER, J.**

Plaintiffs seek an ex parte temporary restraining order to enjoin the foreclosure sale of their house. Plaintiffs allege the house is scheduled for a foreclosure sale on December 28, 2011 and defendants have not complied with the legal requirements for a valid non-judicial foreclosure. Specifically, plaintiffs allege defendants failed to record all assignments of the trust deed in the county land records prior to initiating the foreclosure proceedings. In Oregon, a party initiating non-judicial

foreclosure proceedings must record all assignments of the trust deed. ORS 86.735(1); Hooker v. Northwest Trustee Services, Inc., 2011 WL 2119103, \*3 (D. Or. May 25) (citing Burgett v. MERS, 2010 WL 4282105, at \*2 (D. Or. Oct. 20) and In re McCoy, 2011 WL 477820, at \*3-4 (Bankr. D. Or. Feb. 7)). Plaintiffs allege MERS is listed as the beneficiary on the deed of trust at issue.

Because of the alleged imminent foreclosure sale, and because the presence of MERS demonstrates a high probability that defendants did not comply with the recording requirements of the Oregon Trust Deed Act, I grant plaintiff's request for a temporary restraining order (#3). Defendants, and their officers, agents, etc..., and other persons in active concert or participation with defendants, who receive actual notice of this order, are restrained from conducting a foreclosure sale for the following property: 2843 Dark Hollow Road, Medford, Oregon, from this day until January 4, 2012, at 5:00 p.m. This court will hold a hearing on whether to issue a preliminary injunction at 10:00 a.m. on January 4, 2012, in Medford.

IT IS SO ORDERED.

DATED this 23 day of December, 2011 at 10:00 a.m.



OWEN M. PANNER  
U.S. DISTRICT JUDGE