

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

ERIC J. WIMMER,

Plaintiff,

1:12-cv-498-CL

TEMPORARY RESTRAINING ORDER

v.

THE BANK OF NEW YORK MELLON,
AS TRUSTEE FOR THE CERTIFICATE
HOLDERS OF CWMBS, INC., CHL
MORTGAGE PASS-THROUGH TRUST
CERTIFICATES, SERIES 2007-3 and
RECONTRUST COMPANY, N.A.,

Defendants.

PANNER, J.

Plaintiff seeks an ex parte temporary restraining order to enjoin the foreclosure sale of his house. Plaintiff alleges the house is scheduled for a foreclosure sale on April 2, 2012 and defendants have not complied with the legal requirements for a valid non-judicial foreclosure. Amongst other arguments, plaintiff alleges 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) (internal citation omitted; In re McCoy, 2011 WL 477820, at *3-4 (Bankr. D. Or. Feb. 7)); James v. Recontrust Co., et al, 2012 WL 653871, at *19-20 (D. Or.). Plaintiff alleges 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: 591 West Valley View Road, Ashland, Oregon, from this day until Tuesday, April 10, 2012, at 5:00 p.m. This court will hold a hearing on whether to issue a preliminary injunction at 10:30 a.m. on April 10, 2012, in the James A. Redden Courthouse in Medford.

IT IS SO ORDERED.

DATED this 28 day of March, 2012 at 8:30 clock a.m.



OWEN M. PANNER
U.S. DISTRICT JUDGE