

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

GARY BRITT and JANET BRITT,

Plaintiffs,

1:12-CV-1598-PA

**TEMPORARY RESTRAINING ORDER**

v.

BANK OF AMERICA HOME, N.A. and  
RECONTRUST COMPANY N.A.,

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 September 13, 2012 and defendants have not complied with the legal requirements for a valid non-judicial foreclosure. Amongst other arguments, 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) (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.). 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 plaintiffs' request for a temporary restraining order (#2). 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: 504 NW Berry Lane, Grants Pass, Oregon, from this day until Wednesday, September 20, 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 September 20, 2012, in the James A. Redden Courthouse in Medford.

IT IS SO ORDERED.

DATED this 10 day of September, 2012 at 10 o'clock a.m.



OWEN M. PANNER  
U.S. DISTRICT JUDGE