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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 DAVID C. ANDREWS, et al.,

11 Plaintiffs,

12 v.

13 COUNTRYWIDE BANK, NA, et al.,

14 Defendants.

CASE NO. C15-0428JLR

ORDER DENYING MOTION  
FOR INJUNCTION PENDING  
APPEAL

15 **I. INTRODUCTION**

16 This matter comes before the court on pro se Plaintiffs David C. and Melinda C.  
17 Andrews' ("the Andrews") "Motion to Stay All Proceedings of this Court, pending  
18 Plaintiffs' Appeal with the Court of Appeals of the State of Washington." (Mot. (Dkt.  
19 # 19).) In keeping with its obligation to liberally construe pro se pleadings, *see*  
20 *Bernhardt v. L.A. Cnty.*, 339 F.3d 920, 925 (9th Cir. 2003), the court construes the  
21 Andrews' motion as a motion under Federal Rule of Civil Procedure 62(c) for an  
22 injunction pending appeal to the Ninth Circuit Court of Appeals. Having considered the

1 motion, the balance of the record, and the relevant law, the court DENIES the Andrews'  
2 motion for an injunction pending appeal.

## 3 II. BACKGROUND

4 On April 1, 2015, the court denied the Andrews' motion for a temporary  
5 restraining order, which sought to prevent Defendants from conducting a trustee's sale of  
6 the Andrews' property. (*See* 4/1/15 Order (Dkt. # 15); Mot. for TRO (Dkt. # 13).) That  
7 sale is apparently set to occur on April 10, 2015. (*See* Mot. for TRO at 1.) The Andrews  
8 then filed a motion for reconsideration, but the court denied that motion on April 7, 2015.  
9 (*See* Mot. for Reconsid. (Dkt. # 16); 4/7/15 Order (Dkt. # 18).) The Andrews now wish  
10 to appeal the court's denial of their motion for a temporary restraining order. To that end,  
11 they have filed a notice of appeal as well as the present motion. (*See* Notice (Dkt. # 20)<sup>1</sup>;  
12 Mot.)

13 The present motion asks the court to stay all proceedings in this matter pending the  
14 Andrew's appeal. (*See* Mot. at 1.) It is apparent that the object of this request is to halt  
15 the sale of the Andrews' property while their appeal is pending. (*See id.* at 1-3.) A stay  
16 would not accomplish that goal, however, because this action is not an action for  
17 foreclosure. (*See* Compl. (Dkt. # 1-1).) The court's prior rulings have not ordered the  
18 sale of the Andrews' property and so staying the effect of those rulings would not prevent

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20 <sup>1</sup> The notice of appeal states that the Andrews are appealing the court's prior order to the  
21 Court of Appeals of the State of Washington. (*See* Notice at 1.) This court is a federal district  
22 court, however, and its orders are appealable not to the appellate courts of Washington State but,  
as a general matter, to the United States Court of Appeals for the Ninth Circuit. Accordingly, the  
Clerk has docketed the Andrews' notice of appeal as a notice of appeal to the Ninth Circuit. (*See*  
Dkt. # 20.)

1 the sale of the Andrews' property. Only an injunction pending appeal would achieve that  
2 end. Thus, in keeping with the court's obligation to liberally construe pro se pleadings,  
3 *see Bernhardt*, 339 F.3d at 925, the court construes the Andrews' motion as a motion for  
4 an injunction pending appeal under Federal Rule of Civil Procedure 62(c).

### 5 III. DISCUSSION

6 As a general rule, the filing of a notice of appeal divests the trial court of  
7 jurisdiction over the matters being appealed. *Natural Res. Def. Council v. Sw. Marine*  
8 *Inc.*, 242 F.3d 1163, 1166 (9th Cir. 2001). That principal is not absolute, however, as the  
9 trial court retains "the inherent power during the pendency of an appeal to act to preserve  
10 the status quo to ensure the effectiveness of the eventual judgment." *Foster v. SCME*  
11 *Mortgage Bankers, Inc.*, No. CIV. 2:10-518 WBS GGH, 2010 WL 2679943, at \*1 (E.D.  
12 Cal. July 2, 2010) (citing *Sw. Marine*, 242 F.3d at 1166; *Tribal Village of Akutan v.*  
13 *Hodel*, 859 F.2d 662, 663 (9th Cir. 1988)). Federal Rule of Civil Procedure 62(c)  
14 codifies this exception to exclusive appellate jurisdiction, providing in relevant part that  
15 "[w]hile an appeal is pending from an interlocutory order . . . that . . . denies an  
16 injunction, the court may . . . grant an injunction on terms for bond or other terms that  
17 secure the opposing party's rights." Fed. R. Civ. P. 62(c).<sup>2</sup> Nevertheless, Rule 62(c)  
18 "does not restore jurisdiction to the district court to adjudicate anew the merits of the  
19 case[.]" *McClatchy Newspapers v. Cent. Valley Typographical Union No. 46*, 686 F.2d  
20 731, 734 (9th Cir. 1982).

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22 <sup>2</sup> See also Fed. R. App. P. 8(a)(1)(C) (providing that a party seeking an injunction  
pending appeal in a federal appellate court "must ordinarily move first in the district court").

1 In deciding whether to grant an injunction pending appeal, courts apply the same  
2 standard employed when considering a motion for a preliminary injunction or a  
3 temporary restraining order. *See Foster*, 2010 WL 2679943, at \*1 (citing *Akutan*, 859  
4 F.2d at 663; *Lopez v. Heckler*, 713 F.2d 1432, 1435 (9th Cir. 1983); *Humane Soc’y of*  
5 *U.S. v. Gutierrez*, 558 F.3d 896, 896 (9th Cir. 2009)); *see also Stuhlbarg Int’l Sales Co. v.*  
6 *John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). As stated in the court’s  
7 previous orders in this case, that standard requires the moving party to establish that (1) it  
8 is likely to succeed on the merits, (2) it is likely to suffer irreparable harm in the absence  
9 of preliminary relief, (3) the balance of equities tips in its favor, and (4) an injunction is  
10 in the public interest. *See Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20  
11 (2008). Alternatively, the moving party may demonstrate its entitlement to a preliminary  
12 injunction by showing “that serious questions going to the merits were raised and the  
13 balance of hardships tips sharply in [its] favor,” provided the moving party also  
14 demonstrates that irreparable harm is likely and that the injunction is in the public  
15 interest. *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134-35 (9th Cir.  
16 2011); (*see* 4/1/15 Order at 3-4.)

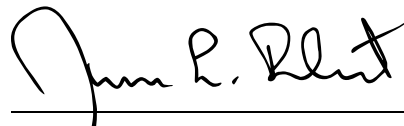
17 For the reasons stated in the court’s previous orders (*see* 4/1/15 Order; 4/7/15  
18 Order), the Andrews have failed to show serious questions or a likelihood of success on  
19 the merits of any of their claims. The court realizes that rigid application of the success-  
20 on-the-merits requirement may make little sense in the context of a motion for an  
21 injunction pending appeal, because such an approach would mean that injunctions under  
22 Rule 62(c) would issue only if the district court concluded that it was probably incorrect

1 in its evaluation of the merits. *See Protect Our Water v. Flowers*, 377 F. Supp. 2d 882,  
2 884 (E.D. Cal. 2004). Recognizing this situation, district courts have noted that an  
3 injunction pending appeal may nevertheless be appropriate when the court has ruled on  
4 “an admittedly difficult legal question,” *id.*, or made “a novel interpretation of the law,”  
5 *id.* (quoting *Stop H-3 Ass’n v. Volpe*, 353 F. Supp. 14, 16 (D. Haw. 1972)). Here, the  
6 Andrews do not argue that either of those circumstances is present. Their motion states  
7 only that they have a “meritorious claim on appeal, and have a good chance of prevailing,  
8 based on issues . . . that will be raised on appeal[.]” (Mot. at 2.) Further, the court  
9 concludes that its prior orders involve neither difficult legal questions nor any novel  
10 interpretations of the law. As such, the court stands by its previous determination that the  
11 Andrews have failed to establish serious questions or a likelihood of success on the  
12 merits. (*See* 4/1/15 Order; 4/7/15 Order.) Therefore, the Andrews are not entitled to an  
13 injunction pending appeal.

#### 14 IV. CONCLUSION

15 For the foregoing reasons, the court DENIES the Andrews’ motion for an  
16 injunction pending appeal (Dkt. # 19).

17 Dated this 9th day of April, 2015.

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20 JAMES L. ROBART  
21 United States District Judge  
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