

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ERIN P. SMITH & TANESHA N. SMITH,

Plaintiffs,

v.

NORTHWEST TRUSTEE SERVICES, INC.,
et al.,

Defendants.

No. CV11-5364RBL

ORDER DENYING MOTIONS FOR
TRO AND PRELIMINARY
INJUNCTION
[Dkt. #s 2, 3, & 9]

This matter is before the court on the Plaintiffs’ Motions for a Temporary Restraining Order [Dkt. #s 2 & 9], and for a Preliminary Injunction [Dkt. #3]. Plaintiffs seek to restrain and enjoin the Defendants from pursuing foreclosure on their Property. Plaintiffs’ Complaint and Motions claim a variety of improprieties and violations in the manner in which the Defendants acquired and seek to foreclose on their Note and Deed of Trust.

Plaintiffs¹ claim to be the party of record ownership of Property commonly known as 1425 south 76th Street, Tacoma, WA, 98445. They apparently owned the Property outright until 1990. They admit that, in 1998, they executed a \$92,250 Promissory Note and Deed of Trust on the Property, and attach a copy of the Deed of Trust to the Compliant. [Dkt. #1, Ex. B].

Plaintiffs allege a variety of subsequent transfers of the Deed of trust, and that the Note did not

¹ Plaintiff Erin Smith is apparently Plaintiff Tanesha Smith’s mother. Tanesha Smith apparently resides on the Property. Carl Smith, whose name appears on the loan documents as Erin Smith’s husband, is not a party and his absence is not explained. They are referred to as “Plaintiffs,” even though it is not clear that Tanesha is a party to the loan documents.

1 “follow” the Deed of Trust, as is “customary.” They allege that the various transfers were “late,”
2 based apparently on the “cut off” dates for various “Trusts.” Plaintiffs also include [Dkt. #1, Ex.
3 G] evidence suggesting that they were informed they were in arrears on their loan in July 2008.
4 They claim that under *Bain v. OneWest*, No. C09-0149JCC (Western District of Washington), it
5 is unclear whether MERS has a valid role in the foreclosure. [Dkt. #1]

6 Plaintiff’s Motions [Dkt. #s 2, 3, and 9] contain the following general and conclusory
7 contentions:

- 8 • They have not defaulted on the subject loan, and no default can be proven.
- 9 • Defendants have produced no valid security interest in the Property.
- 10 • They will be irreparably harmed by foreclosure.
- 11 • They are likely to prevail on the merits of their complaint.
- 12 • Enjoining the foreclosure is in the Public Interest.
- 13 • The hardship to the Defendants of enjoining the sale is not as great as the hardship
14 to the Plaintiffs in allowing the foreclosure to proceed.
- 15 • No loan was ever performed.

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17 **Discussion.**

18 The purpose of a TRO is “preserving the status quo and preventing irreparable harm just
19 so long as is necessary to hold a hearing [on the preliminary injunction application], and no
20 longer.” *Granny Goose Foods, Inc. v. Brotherhood of Teamsters & Auto Truck Drivers*, 415
21 U.S. 423 (1974); *see also Reno Air Racing Ass’n v. McCord*, 452 F.3d 1126, 1130-31 (9th Cir.
22 2006). To obtain a TRO or a preliminary injunction, the moving party must show: (1) a
23 likelihood of success on the merits; (2) a likelihood of irreparable harm to the moving party in
24 the absence of preliminary relief; (3) that a balance of equities tips in the favor of the moving
25 party; and (4) that an injunction is in the public interest. *Winter v. Natural Res. Def. Council,*
26 *Inc.*, ___ U.S. ___, 129 S. Ct. 365, 376 (2008).
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1 Traditionally, injunctive relief was also appropriate under an alternative “sliding scale”
2 test. *The Lands Council v. McNair*, 537 F.3d 981, 987 (9th Cir. 2008). However, the Ninth
3 Circuit overruled this standard in keeping with the Supreme Court’s decision in *Winter*.
4 *American Trucking Ass’ns Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009)
5 (holding that “[t]o the extent that our cases have suggested a lesser standard, they are no longer
6 controlling, or even viable”).

7 ***

8 Plaintiffs have failed as a matter of law to establish their right to a Temporary Restraining
9 Order or a preliminary Injunction. The court will assume Plaintiffs can establish the element of
10 irreparable harm, as evidenced by their respective Affidavits of hardship. [Dkt. #s 11 & 12]. But
11 they have not met, and cannot meet, their burden of establishing that the remaining factors weigh
12 in favor of injunctive relief.

13 Because the Plaintiffs are proceeding *pro se*, the Court extends some latitude to their
14 pleadings. Nevertheless, the bulk of Plaintiffs’ arguments appear to rest on the purely
15 conclusory allegation that the Defendants have failed in some manner to properly initiate the
16 foreclosure. They suggest that these vague imperfections lead to the result that the Plaintiffs are
17 somehow not obligated to repay the money they seem to admit they borrowed. Moreover, as
18 this Court has concluded previously, courts “have routinely held that [a defendants’] so-called
19 ‘show me the note’ argument lacks merit.” *Freeston v. Bishop, White & Marshall, P.S.*, 2010
20 WL 1186276 (W.D. Wash. 2010) (quoting *Diessner v. Mortgage Electronic Registration*
21 *Systems*, 618 F. Supp. 2d 1184, 1187 (D. Ariz. 2009) (collecting cases)).

22 The Plaintiffs have not established any remote likelihood of success on the merits of their
23 claims. It appears from Plaintiffs’ own filings that they have not paid on the mortgage in three
24 years. But the Plaintiffs have not articulated, much less demonstrated, what the defendants did
25 wrong, and they have failed to show how any such error would have the effect of relieving the
26 Plaintiffs of the obligation to repay their debt.

27 Not have the Plaintiffs met their burden of establishing that the balance of equities tips in
28 their favor. They have alleged hardship (a separate element) but have not even addressed how

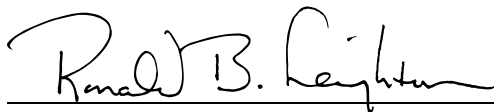
1 they equities are in their favor. On the other hand, the plaintiffs have apparently been in
2 possession of a home they have not paid for, for some period of time. The balance of equities
3 weighs in favor of Defendants.

4 The final factor is the public interest. While it is perhaps true that the public has an
5 interest in exposing and preventing fraud and attorney misconduct, Plaintiffs have made no
6 showing whatsoever that either of those things occurred in this case. And it is clear that the
7 public has a broad interest in resolving the unfortunately vast array of in default loans adversely
8 affecting every bank in the country. Enjoining facially legitimate foreclosure sales is not in the
9 public interest; in fact, just the opposite is true.

10 The Plaintiffs have not met their burden to obtain injunctive relief. Their Motions [Dkt.
11 #2, 3, and 9] for such relief are therefore DENIED.

12 **IT IS SO ORDERED.**

13 Dated this 12th day of August, 2011.

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18 RONALD B. LEIGHTON
19 UNITED STATES DISTRICT JUDGE
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