

STATE OF MAINE
ANDROSCOGGIN, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-12-187
MGK AND - 2/13/2013
RECORDED 2/13/13

GFI AUBURN PLAZA REALTY, LLC,
Plaintiff

v.

WEBSTER BANK, N.A.,
Defendant

ORDER ON PLAINTIFF'S
MOTION FOR
PRELIMINARY
INJUNCTION

The complaint in this case alleges that Defendant Webster Bank improperly recorded in the Androscoggin County Registry of Deeds a preliminary injunction order entered by the Massachusetts Superior Court in separate litigation.¹ The Massachusetts Order enjoined Plaintiff Auburn Plaza from “conveying, assigning, transferring, pledging, encumbering, mortgaging, receiving, liquidating, dissipating or in any manner disposing of” a minority interest in the company owned by Steven E. Goodman.

Auburn Plaza alleges that it has a pending transaction to refinance the debt on its property, which will save it \$400,000.00 a year for the next 10 years. (Compl. ¶¶ 7, 9.) However, the lender has indicated that it will not close the deal because of the Massachusetts Order recorded in the Registry of Deeds. (Compl. ¶ 10.) Count I asks the Court for a declaration that the Massachusetts Order was improperly recorded and has no effect on Auburn Plaza’s title, Count II is for slander of title, and Count III is for interference with a contract or prospective economic advantage. Presently before the Court, pursuant to Maine Rule of Civil Procedure 65(b), is Auburn Plaza’s motion for a preliminary injunction enjoining

¹ In that action, the Bank is the plaintiff and brought suit against a gentleman named Steven E. Goodman in the Massachusetts Superior Court for Suffolk County. In 2007, Mr. Goodman entered into an agreement whereby he guaranteed all payment obligations owed by Village on the Common Realty, a Massachusetts LLC, to the Bank. After the Village defaulted on its obligations to the Bank, the Bank successfully foreclosed on the property. There remained a deficiency of \$4,801,829.00, and the Bank seeks to recover it from Mr. Goodman in Massachusetts Superior Court. The Bank named Auburn Plaza as a “reach and apply” defendant because Mr. Goodman has a minority financial interest in the company.

the Bank from enforcing the Massachusetts Order and correcting the public record. The motion alleges that Auburn Plaza will suffer irreparable harm without the injunction because the Bank has caused a cloud on its title, and “it will suffer the loss of a prime opportunity to refinance its debt.”

A party seeking injunctive relief has the burden of demonstrating that four elements exist:

- (1) [I]t will suffer irreparable injury if the injunction is not granted;
- (2) such injury outweighs any harm which granting the injunctive relief would inflict on the other party;
- (3) it has a likelihood of success on the merits . . . ; and
- (4) the public interest will not be adversely affected by granting the injunction.

Bangor Historic Track, Inc. v. Dep’t of Agric., Food & Rural Res., 2003 ME 140, ¶ 9, 837 A.2d 129.

An irreparable injury is an “injury for which there is no adequate remedy at law.”² *Id.* ¶ 10. The moving party has the burden to provide “evidence sufficient to support its claims of irreparable injury.” *Id.* ¶ 12. Ordinarily, “economic injury standing alone generally will not constitute irreparable injury.” *Me. Cent. R.R. Co. v. Brotherhood of Maint. of Way Emps.*, 646 F. Supp. 367, 371 (D. Me. 1986).

In this case, Auburn Plaza has not demonstrated that a remedy at law is inadequate to compensate its claimed injury. To the contrary, Auburn Plaza alleges in its complaint that without an injunction it will lose an opportunity to refinance its debt worth \$400,000.00 a year for the next 10 years. Thus, its alleged damages are easily quantifiable.

Furthermore, the record does not adequately demonstrate that Auburn Plaza has sustained any injury at all. The complaint does not address the possibility that the current lender would close the transaction once the litigation is resolved, or that another lender would refinance the debt. Because Auburn Plaza does not affirmatively argue that it will lose the opportunity to refinance altogether, it cannot demonstrate a cognizable injury.

² “The normal remedy at law is, of course, damages.” *Cyr v. Ruotolo*, 1985 Me. Super. LEXIS 371, *18 (Dec. 27, 1985). Thus, an injunction may issue when “damages would not fairly compensate the plaintiff.” *Id.*

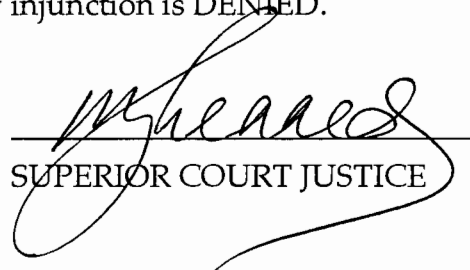
As to likelihood of success on the merits, the recording statute in Maine indicates that recording is permitted under the present circumstances: "Registers shall receive and record all . . . copies of judgments and decrees certified by the clerk of courts in the county where the complaint is pending or the judgment or decree is rendered." 33 M.R.S.A. § 654. However, because recording the Massachusetts Order is a form of enforcement, the Bank must comply with the filing requirements of the Uniform Enforcement of Foreign Judgments Act, 14 M.R.S.A. §§ 8003-8004. Counsel for the Bank has indicated that it plans to comply with the Act in the near future in order to resolve any impediment to enforcing the Massachusetts Order, through recording or otherwise. As to Auburn Plaza's claims for slander of title and tortious interference with a prospective economic advantage or contract, the motion likewise does not demonstrate a likelihood of success on the merits.³

Because Auburn Plaza cannot demonstrate irreparable injury or a likelihood of success on the merits, injunctive relief is denied.

The entry will be:

Plaintiff's motion for preliminary injunction is DENIED.

2/13/13
DATE


SUPERIOR COURT JUSTICE

³ In particular, Plaintiff submits no evidence that the Massachusetts Order constituted a "false statement," as required for a slander of title claim. *See Colquhoun v. Webber*, 684 A.2d 405, 409 (Me. 1996). Plaintiff also submits no evidence of "fraud or intimidation," as required for a tortious interference with a prospective economic advantage or contract claim. *See Rutland v. Mullen*, 2002 ME 98, ¶ 13, 798 A.2d 1104; *Grover v. Minette-Mills, Inc.*, 638 A.2d 712, 716 (Me. 1994).

GFI AUBURN PLAZA REALTY LLC - PLAINTIFF

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SUPERIOR COURT

ANDROSCOGGIN, ss.

Docket No AUBSC-CV-2012-00187

DOCKET RECORD

vs

WEBSTER BANK NA - DEFENDANT

Attorney for: WEBSTER BANK NA
CHRISTOPHER P MULLIGAN - RETAINED 12/31/2012
BOSEN & SPRINGER PLLC
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PORTSMOUTH NH 03801

Filing Document: COMPLAINT

Minor Case Type: DECLARATORY JUDGMENT

Filing Date: 12/13/2012

Docket Events:

12/13/2012 FILING DOCUMENT - COMPLAINT FILED ON 12/13/2012

12/13/2012 Party(s): GFI AUBURN PLAZA REALTY LLC
ATTORNEY - RETAINED ENTERED ON 12/13/2012
Plaintiff's Attorney: PATRICK D THORNTON

12/13/2012 CERTIFY/NOTIFICATION - CASE FILE NOTICE SENT ON 12/13/2012

12/13/2012 Party(s): GFI AUBURN PLAZA REALTY LLC
MOTION - MOTION PRELIMINARY INJUNCTION FILED ON 12/13/2012
WITH DRAFT ORDER

12/17/2012 Party(s): WEBSTER BANK NA
OTHER FILING - ENTRY OF APPEARANCE FILED ON 12/17/2012
CHRISTOPHER MULLIGAN

12/17/2012 Party(s): WEBSTER BANK NA
OTHER FILING - OPPOSING MEMORANDUM FILED ON 12/17/2012
OBJECTION TO REQUEST FOR TEMPORARY RESTRAINING ORDER

12/31/2012 Party(s): WEBSTER BANK NA
RESPONSIVE PLEADING - ANSWER & COUNTERCLAIM FILED ON 12/31/2012

12/31/2012 Party(s): WEBSTER BANK NA
ATTORNEY - RETAINED ENTERED ON 12/31/2012
Defendant's Attorney: CHRISTOPHER P MULLIGAN

12/31/2012 ORDER - SCHEDULING ORDER ENTERED ON 12/31/2012
MARYGAY KENNEDY , JUDGE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO
PARTIES/COUNSEL