

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

NANA TCHIENKOU,

Plaintiff,

v.

NET TRUST MORTGAGE, ET AL.,

Defendants.

CIVIL ACTION No. 3:10-cv-00023

OPINION AND ORDER

JUDGE NORMAN K. MOON

This matter is before the Court upon consideration of the *pro se* Plaintiff's motion seeking "Emergency Injunctive and Declaratory Relief and Stay Foreclosure Sale." See Docket no. 3. For the following reasons, the motion is hereby DENIED.

Plaintiff filed the instant motion contemporaneously with his complaint and a motion for leave to proceed *in forma pauperis*, which I granted. The complaint is brought under the Truth in Lending Act, and the instant motion seeks "to stay an imminent foreclosure sale. . . ." At present, Defendants have not yet been served with the underlying complaint.

I will treat Plaintiff's request for emergency relief as a motion seeking a temporary restraining order pursuant to Federal Rule of Civil Procedure 65(b), which permits a court to issue a temporary restraining order without notice to the adverse party in certain circumstances.

"Ex parte [TROs] are no doubt necessary in certain circumstances." *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70 of Alameda County*, 415 U.S. 423, 439 (1974) (citation omitted). However, "[t]he stringent restrictions imposed . . . by Rule 65, on the availability of ex parte [TROs] reflect the fact that our entire jurisprudence runs counter to the notion of court action taken before reasonable notice and an opportunity to be

heard has been granted both sides of a dispute.” *Id.* at 438–39. The “stringent restrictions” of Rule 65 include two procedural requirements that a movant must satisfy before a court may issue a TRO. First, the movant must set forth “specific facts in an affidavit or a verified complaint [that] clearly show the immediate and irreparable injury . . . [that] will result to the movant before the adverse party can be heard.” Fed. R. Civ. P. 65(b)(1)(A). Second, “the movant’s attorney [must] certify in writing any efforts made to give notice and the reasons why it should not be required.” Fed. R. Civ. P. 65(b)(1)(B).

Here, assuming that Plaintiff can state facts showing immediate and irreparable injury,* Plaintiff has not certified in writing any efforts made to put Defendant on notice of the motion, nor has he offered any reason as to why notice should not be required. The requirements of Rule 65(b)(1) are not merely technical niceties that a court may easily disregard, but rather crucial safeguards of due process. *See Austin v. Altman*, 332 F.2d 273, 275 (2d Cir. 1964); *see also Jourdan v. Jabe*, 951 F.2d 108, 109-10 (6th Cir. 1991) (holding that a *pro se* litigant is not entitled to special consideration with respect to straightforward procedural requirements that a lay person can comprehend as easily as a lawyer). Accordingly, because Plaintiff has failed to

* Plaintiff states that his home is subject to a foreclosure sale on Friday, June 11, 2010. However, the substitute trustee has informed the court that the foreclosure sale has been canceled, and there are no unlawful detainer eviction proceedings pending against Plaintiff in the Albemarle County General District Court. The circumstances justifying the issuance of an *ex parte* temporary restraining order “should be restricted to serving their underlying purpose of preserving the status quo and preventing irreparable harm just so long as is necessary to hold a hearing, and no longer.” *Granny Goose Foods, Inc. v. Brotherhood of Teamsters and Auto Truck Drivers Local No. 70 of Alameda County*, 415 U.S. 423, 439 (1974). Because the foreclosure is no longer imminent, a temporary restraining order is not appropriate here. I add that the substantive standard for granting a temporary restraining order is the same as the standard for entering a preliminary injunction, *see, e.g., Commonwealth of Virginia v. Kelly*, 29 F.3d 145, 147 (4th Cir. 1994) (applying preliminary injunction standard to a request for temporary restraining order), and Plaintiffs seeking preliminary injunctive relief must establish that (1) they are likely to succeed on the merits; (2) they are likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in their favor; and (4) a preliminary injunction is in the public interest. *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. ___, 129 S. Ct. 365, 374 (2008); *Real Truth About Obama, Inc. v. FEC*, 575 F.3d 342, 346-47 (4th Cir. 2009), *vacated on other grounds*, ___ U.S. ___, 2010 WL 1641299 (April 26, 2010).

comply with the requirements of Rule 65(b), his motion for a temporary restraining order must be denied.

For the heretofore stated reasons, Plaintiff's motion (docket no. 3) is DENIED.

It is so ORDERED.

The Clerk of the Court is hereby directed to send a certified copy of this Opinion and Order to the pro se Plaintiff.

Entered this *9th* day of June, 2010.

/s/ Norman K. Moon
NORMAN K. MOON
UNITED STATES DISTRICT JUDGE