

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

In the Matter of the Petition of

COURT FILE NO. 62-CV-13-7742

Federal Home Loan Mortgage Corporation

TEMPORARY RESTRAINING ORDERfor a New Certificate of Title After
Mortgage Foreclosure Sale

The above-entitled matter came on for hearing by telephone conference call on May 15, 2014 on Petitioner's Motion for a Temporary Restraining Order to prevent Petitioner from being evicted under a Writ of Restitution issued by Judge Marek in Housing Court File 62-HG-CV-14-483. The hearing was held by Wayne D. Anderson, Examiner of Titles, sitting as Referee of District Court. William Butler appeared for movant, Jeffrey C. Jacobsen. Stephanie Nelson appeared for Petitioner, Federal Home Loan Mortgage Corporation. There were no other appearances.

Upon the written pleadings and argument of counsel, Petitioner's Motion for Temporary Restraining Order is GRANTED, effective immediately. The Sheriff SHALL NOT remove persons from the property under the authority of the Writ of Execution until further Order of this Court.

The following Memorandum of Law is incorporated herein.

1. A Writ of Restitution was issued in Housing Court File 62-HG-CV-14-483. The Sheriff is scheduled to execute the Writ by physically removing Petitioner from the Property on Friday, May 16, 2014.
2. The basis for the Housing Court Writ of Restitution is a Sheriff's Certificate evidencing the sale of the property following mortgage foreclosure, recorded as Doc. No. 2199665.
3. A Sheriff's Certificate is *prima facie* evidence that the foreclosure was valid and, upon expiration of the redemption period, that all ownership rights belong to the foreclosing party, including the right of possession. Minn. Stat. 580.19.
4. The Housing Court does not determine the validity of the foreclosure or the effectiveness of the Sheriff's Certificate to convey rights to the lender. Those issues must be challenged by a separate action, which Petitioner has brought in this instant action. *Amresco Residential Mortgage Corp. v. Stange*, 631 N.W.2d 444 (Minn. App. 2001).

5. Until the validity of the foreclosure is adjudicated, this Court cannot state with certainty what rights in the property – if any – are held by the lender, so the lender cannot assert that it alone holds the right of possession required to evict the borrower from the property.
6. Petitioner seeks a Temporary Restraining Order preventing the enforcement of the Writ of Restitution. The Court must consider five factors as articulated in *Dahlberg Bros. v. Ford Motor Co.*, 137 N.W.2d 314 (Minn. 1965), in determining whether the temporary restraining order should issue. The *Dahlberg* factors to be considered are as follows:
 - a. The nature and background of the relationship between the parties pre-existing the dispute giving rise to the request for relief.
 - b. The harm to be suffered by plaintiff if the temporary restraint is denied as compared to that inflicted on defendant if the injunction issues pending trial.
 - c. The likelihood that one party or the other will prevail on the merits when the fact situation is viewed in the light of established precedent fixing the limits of equitable relief.
 - d. The aspects of the fact situation, if any, that permit or require consideration of public policy expressed in the statutes, state and federal.
 - e. The administrative burdens involved in judicial supervision and enforcement of the temporary decree.
7. The Court finds that the relationship of the parties is lender-borrower which doesn't favor either party. The harm to be suffered by lender is short-term lost opportunity to sell; the harm to be suffered by borrower is to be rendered homeless, perhaps wrongfully, which factor favors the borrower. The likelihood of prevailing on the merits cannot be determined yet because final written submissions regarding a motion for Summary Judgment, heard on May 14, 2014 have not been received and reviewed, and essential legal questions have not been briefed or argued, which favors issuing the injunction to freeze the situation in place. Minnesota has a strong public policy of enabling people to stay in their homes, as expressed in numerous consumer protection statutes and programs, which favors the borrower; a speedy and final resolution of this issue slightly favors the

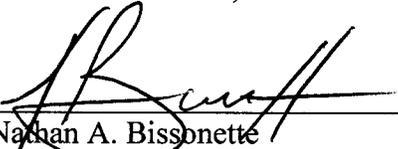
lender. The administrative burden of a short-term injunction will be slight, which favors neither party.

8. No bond is required, but Mr. Jacobsen is required to provide an initial deposit of \$1,500.00 and monthly payments to cover ongoing carrying costs in the amount of \$800.00, to be deposited with the District Court. The initial deposit and first monthly payment is due by 4:30 p.m. on Friday May 23, 2014. Succeeding monthly payments are due by 4:30 p.m. June 23, July 23, August 25, September 23, 2014, and on the 23rd of each month thereafter (or the first day following the 23rd that is not a Saturday, Sunday or legal holiday.) If payments are not made as ordered, the injunction will be dissolved.

The foregoing facts were found by me after due hearing and entry of this Order is recommended.

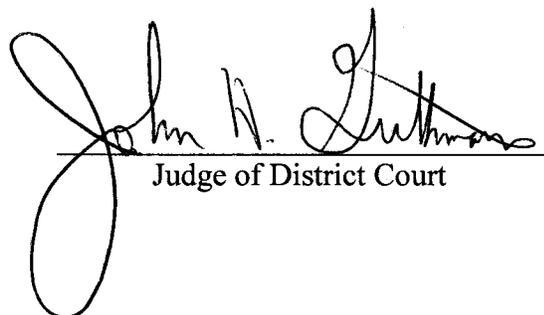
WAYNE D. ANDERSON, EXAMINER OF TITLES

by


 Nathan A. Bissonette
 Deputy Examiner of Titles

Dated:

5-16-14


 Judge of District Court