

Kelli Sue De Paepe v. Wells Fargo Banks, NA, et. al.
SACV 16-1279 JVS (KESx)

TENTATIVE ORDER DENYING PLAINTIFF’S MOTION FOR PRELIMINARY INJUNCTION

Plaintiff Kellie Sue De Paepe (“De Paepe”) moved for a preliminary injunction pending appeal. Docket No. 36. Defendants Wells Fargo Bank, National Association, as successor by merger with Wells Fargo Bank Southwest, National Association, f/k/a Wachovia Mortgage, FSB, f/k/a World Savings Bank FSB (“Wells Fargo”) opposed. Docket No. 40. De Paepe replied. Docket No. 41.

For the following reasons, the Court **denies** the motion.

BACKGROUND

This case’s factual background is well-known to the parties and detailed in the Court’s previous order. Docket No. 25. The Court previously granted Wells Fargo’s request to dismiss De Paepe’s claims with prejudice. Id. De Paepe’s appeal is pending. Docket No. 27. De Paepe now seeks an order to enjoin “a trustee’s sale of, or any other foreclosure activity against, plaintiff’s residence located at 2145 W. Cris Avenue, Anaheim, CA[.]” Mot. at 2, Docket No. 36.

ANALYSIS

I. The Court lacks jurisdiction to issue injunctive relief.

In general, “filing of a notice of appeal divests the district court of jurisdiction over the matters appealed.” S.E.C. v. Am. Capital Investments, Inc., 98 F.3d 1133, 1145 (9th Cir. 1996) abrogated on other grounds by Steel Co. v. Citizens for a Better Env’t, 523 U.S. 83 (1998). But “a district court may exercise residual jurisdiction over a continuing course of conduct in order to preserve the status quo.” Id. See also Nat. Res. Def. Council, Inc. v. Sw. Marine Inc., 242 F.3d 1163, 1166 (9th Cir. 2001).

Rule 62(c) codifies this power. Nat. Res. Def., 242 F.3d at 1166. It states:

While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an

injunction, the court may suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights.

Fed. R. Civ. Proc. 62(c).

But a district court “does not retain jurisdiction to adjudicate anew the merits of the case.” Nat. Res. Def., 242 F.3d at 1166. Therefore, a district court may only issue injunctive relief to preserve the status quo *as of the time the appeal was filed*. See id. at 1166–67 (measuring the status quo at the time of filing); Mayweathers v. Newland, 258 F.3d 930, 935 (9th Cir. 2001) (evaluating whether district court “changed the status quo at the time of the first appeal”).

Here, the Court lacks jurisdiction to enjoin Wells Fargo because an injunction would alter the status quo. At the time De Paepe filed her appeal the Court had dismissed all her claims, including her request for injunctive relief. Docket No. 25. Although Rule 62(c) authorizes the Court to grant or modify previously-issued injunctive relief, it does not allow the Court to issue new injunctive relief that readjudicates the case's previously-determined merits.

The Court's dismissal of De Paepe's complaint on substantive grounds does not equate to a denial of injunctive relief which the Court is free to revisit. In any event, North American Airlines Inc. V. Int'l Brotherhood of Teamsters, 2005 U.S. Dist. Lexis 6819 (S.D.N.Y. Apr. 18, 2005), cited at Reply, p. 11, is contrary to Mayweathers' mandate to look at the status quo at the time of appeal. Mayweather, 258 F.3d at 935. Issuing injunctive relief when the Court has previously dismissed De Paepe's claims would change the current status quo between the parties. Therefore, the Court cannot issue such relief absent compelling new facts — De Paepe has not presented such facts and only restates prior arguments.

Finally, even if the Court were to address the merits of De Paepe's motion, it is clear that she could not satisfy the first requirement for a preliminary injunction, a showing that she is likely to prevail on the merits. Winter v. Natural Res. Def. Council, Inc., 555 U.S. 5, 20 (2008).

CONCLUSION

For the foregoing reasons, the Court **denies** De Paepe's motion for a preliminary injunction.