

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

RIAD GHOSHEH,

Plaintiff,

v.

Case No. 2:19-cv-2710-MSN-tmp

PHH MORTGAGE CORPORATION and
THE WILSON LAW GROUP,

Defendants.

**ORDER GRANTING PLAINTIFF RIAD SHOSHEH'S MOTION FOR TEMPORARY
RESTRAINING ORDER PURSUANT TO CIV. R. 65(b)(1)**

Before the Court is Plaintiff Riad Ghosheh's Motion for Temporary Restraining Order Pursuant to Civ. R. 65(b)(1) filed October 28, 2019 ("Motion") (ECF No. 10). The Court held a hearing on the Motion on October 30, 2019. Because no counsel has entered an appearance for either Defendant, the Court instructed Plaintiff's counsel to notify counsel for Defendants of the hearing and its date and time. (ECF No. 13.) Present at the hearing were Marc Dann (in-person) and Brian Flick (via telephone) for Plaintiff; Joseph Ronderos (via telephone) for Defendant PHH Mortgage Corporation ("Defendant PHH"); and Sammy High (via telephone) for Defendant The Wilson Law Group.

Plaintiff is the legal owner of the real property located at 9201 Loganberry Lane, Cordova, TN 38016 (the "Property"). (ECF No. 9 at PageID 119.) The Property is Plaintiff's principal residence. (*Id.*) Ocwen Loan Servicing LLC ("Ocwen") was the previous loan servicer for Plaintiff's mortgage loan on the Property. (*Id.*) The mortgage loan is secured by a Deed of Trust

on the Property. (*Id.*) Defendant PHH became the servicer on the mortgage loan as a result of Ocwen merging into Defendant PHH. (*Id.* at PageID 119–20.)

During the first half of 2019, Plaintiff failed to remit several mortgage payments while he was out of the country attending to family business. (*Id.* at PageID 122.) Subsequently, on June 3, 2019, Ocwen sent Plaintiff a proposed “Streamline Modification Trial Period Plan” (the “TPP”), which Plaintiff alleges he timely executed and returned. (*Id.* at PageID 123.) The TPP required three payments of \$1,418.15, with the first due July 1, 2019, the second due August 1, 2019, and the third due September 1, 2019. (ECF No. 9-1 at PageID 142.) Plaintiff alleges he timely made the payments required under the TPP, and he submitted copies of cashier’s checks and tracking information in support thereof. (ECF No. 9 at PageID 123–24; ECF Nos. 9-2, 9-3, 9-4.) Plaintiff alleges that a merger between Ocwen and Defendant PHH occurred at some point during the three-month duration of the TPP payments. (ECF No. 9 at PageID 124.) Plaintiff avers that Ocwen kept the funds for the payment due July 1, 2019, but never credited the amount to the loan balance; PHH returned the payment due August 1, 2019 to Plaintiff via a letter dated September 22, 2019; and the payment submitted for September 1, 2019 is unaccounted for at this time. (ECF No. 9 at PageID 124.) Plaintiff subsequently learned that a foreclosure sale of the Property is scheduled for Friday, November 1, 2019. (*Id.*) Notice of the foreclosure sale was published on October 11, October 18, and October 25, 2019. (*Id.*) Plaintiff’s Motion seeks to enjoin foreclosure of the Property.

“The standard for determining whether to grant a temporary restraining order is the same as the standard for determining whether to grant a preliminary injunction.” *Provectus Biopharmaceuticals, Inc. v. Dees*, No. 3:16-CV-222, 2016 U.S. Dist. LEXIS 189165, at *3 (E.D. Tenn. Sept. 14, 2016). A request for a preliminary injunction is governed by Fed. R. Civ. P. 65.

Farnsworth v. Nationstar Mortg., LLC, 569 F. App'x 421, 427 (6th Cir. 2014). “Generally, the plaintiff bears the burden of establishing his entitlement to a preliminary injunction.” *Jones v. Caruso*, 569 F.3d 258, 265 (6th Cir. 2009). When evaluating a motion for preliminary injunction, the Court must balance: (1) whether the movant is likely to succeed on the merits; (2) whether the movant will suffer irreparable injury in the absence of an injunction; (3) whether the injunction will cause substantial harm to others; and (4) whether the injunction will serve the public interest.” *Bradfield v. Perry*, No. 17-5450, 2017 U.S. App. LEXIS 24358, at *2–3 (6th Cir. Nov. 30, 2017).

Upon reviewing the record in this matter and hearing the arguments of counsel, the Court is satisfied that, at this point in the litigation, Plaintiff has demonstrated a likelihood of success on the merits on several of his claims, including the breach of contract claim related to the TPP. Second, Plaintiff has demonstrated that, absent a temporary restraining order, he will suffer immediate and irreparable harm, including loss of his primary residence. And finally, that issuing the temporary restraining order supports the public interest. As to the third factor, the Court recognizes that Defendant could suffer harm from the issuance of a temporary restraining order, but any such harm is likely nominal. Accordingly, the Court finds that, in weighing all the factors, the balance, at this time, weighs in favor of the issuance of a temporary restraining order. Accordingly, Plaintiff’s Motion is well taken and is hereby **GRANTED**.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that, pursuant to Rule 65(b) of the Federal Rules of Civil Procedure, Defendants are temporarily restrained and prohibited from foreclosing upon or selling the Property until this Court rules otherwise. Payment of bond is not required at this time.

A hearing on Plaintiff’s request for preliminary injunction shall be held on **Tuesday, November 12, 2019 at 10:00 a.m.**

IT IS SO ORDERED, this 30th day of October, 2019.

s/ Mark S. Norris

MARK S. NORRIS

UNITED STATES DISTRICT JUDGE