

Case: 5:17cv955 Doc: 65

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Christie L. Reed et al v. East End Properties, Inc. et al Order on Motion for Temporary Restraining
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

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Case Name: Christie L. Reed et al v. East End Properties, Inc. et al

Case Number: 5:17-cv-00955-DMG-KK

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Document Number: 65

Docket Text:

MINUTES IN CHAMBERS - ORDER RE DEFENDANT EAST END PROPERTIES, INC.'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER [63] by Judge Dolly M. Gee. In light of the foregoing, the Court DENIES the TRO Application. IT IS SO ORDERED. (lom)

5:17-cv-00955-DMG-KK Notice has been electronically mailed to:

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES—GENERAL

Case No. ED CV 17-955 DMG (KKx)

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Present: The Honorable DOLLY M. GEE, UNITED STATES DISTRICT JUDGE

KANE TIEN
Deputy Clerk

NOT REPORTED
Court Reporter

Attorneys Present for Plaintiff(s)
None Present

Attorneys Present for Defendant(s)
None Present

Proceedings: IN CHAMBERS - ORDER RE DEFENDANT EAST END PROPERTIES, INC.'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER [63]

Currently before the Court is Defendant East End Properties, Inc.'s ("East End") *ex parte* application for temporary restraining order ("TRO Application"), which seeks to prevent Plaintiffs from (1) filing with any court, (2) recording with any governmental instrumentality, including a California county recorder or the California Secretary of State, (3) delivering to any person or entity the Lis Pendens, or any notice of pendency of action or lien that purports to attach to the Shirley or Vineyard Properties or East End's other property without prior court order in the state court actions entitled *East End Properties, Inc. v. David Alan Boucher, et al.*, No. BC528166, and *East End Properties, Inc. v. Christie L. Reed, et al.*, No. CIVRS 1206485 (the "State Court Actions"); and (4) from commencing further lawsuits or claims to title to the Shirley or Vineyard other than the State Court Actions. [Doc. # 63.] On October 24, 2017, *pro se* Plaintiff Christie L. Reed filed an Opposition. [Doc. # 64.] For the reasons that follow, the TRO Application is **DENIED**.

I.

PROCEDURAL AND FACTUAL BACKGROUND

On June 6, 2017, *pro se* Plaintiffs Christie L. Reed and Nora Araya filed the operative first amended complaint ("FAC") against multiple defendants, including East End. [Doc. # 7]. The FAC alleges civil rights violations, a claim under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), misprision of a felony, good faith improvements, and dereliction of duty, all in connection with underlying state court proceedings related to two properties (the "Shirley Property" and "Vineyard Property"), which Plaintiffs purportedly owned. *Id.*

On September 19, 2017, while East End's motion to dismiss the FAC ("MTD") [Doc. # 46] was pending, Araya served on East End an unrecorded notice of pending action (the "Lis Pendens"). [Doc. # 49 ("Notice").] The Lis Pendens purports to give notice of an action that "United States, *ex relatione* Nora Araya" initiated against, as relevant here, East End on

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September 1, 2017 in the “Environmental District Court[,] Environmental District of The United States of America[,] State Division of California / Los Angeles,” which bears case number “ENC170901.” Exhibit 1 to TRO Application (Lis Pendens) [Doc. # 63-1]. According to the Lis Pendens, the action concerns the Shirley Property and two other properties located in Huntington Beach, California. *Id.* The purported attorney representing Araya in the Lis Pendens is “Lolita Elvira Salazar,” state bar number “2055627.” *Id.*

On September 26, 2017, East End alerted this Court to the service of the Lis Pendens, stating that it “demonstrates the tireless, fraudulent efforts and abuses of process by Plaintiffs giving rise to and including this action” and should “assist the Court to understand and to take appropriate action to stop the ceaseless efforts of Plaintiffs.” Notice at 2. In the Notice, East End asked this Court to bar, in its order on the pending MTD, Plaintiffs from recording the Lis Pendens or “any other purported cloud on title to real estate owned by East End” without prior approval of this Court. *Id.* at 3.

On October 23, 2017, East End filed the instant TRO Application. [Doc. # 63.] Notably, in the interim between East End’s filing of the Notice and the TRO Application, the Los Angeles County Superior Court on October 11, 2017 issued a comprehensive temporary restraining order, which, with some qualifications, prohibits Araya and her agents, including Reed, from serving, filing, recording with the Los Angeles County Recorder (or any other county’s recorder), publishing, or delivering “to any person or entity in any form or manner whatsoever” the Lis Pendens, any other notice of pending action, or any other document document that purports to create a lien against the Shirley Property or any other property owned by East End. Exhibit 3 to TRO Application (“State TRO”) [Doc. # 63-1].

II.
LEGAL STANDARD

A temporary restraining order is an extraordinary remedy, particularly when sought *ex parte*. See *Reno Air Racing Ass’n, Inc. v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006) (“The stringent restrictions imposed . . . by Rule 65 on the availability of *ex parte* temporary restraining orders 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. *Ex parte* temporary restraining orders are no doubt necessary in certain circumstances, but under federal law they 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.” (alteration in original) (quoting *Granny Goose Foods, Inc. v. Teamsters*, 415 U.S. 423, 438–39 (1974))). Although the standard for granting a TRO is “identical” to that for granting a preliminary injunction, an *ex parte* TRO may be granted “only if . . . it clearly appears . . . that immediate and irreparable injury, loss or damage will result to the applicant

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before the adverse party or that party's attorney can be heard in opposition." *Id.* at 1130 (second alteration in original) (quoting Fed. R. Civ. P. 65(b)(1)); *Brown Jordan Intern. V. Mind's Eye Interiors, Inc.*, 236 F. Supp. 2d 1152, 1154 (D. Haw. 2002).

III.
DISCUSSION

A. Propriety of the TRO Application in this Case

The TRO Application currently before the Court is unique insofar as it is the defendant seeking affirmative relief. A defendant may seek, and a district court may grant, injunctive relief even in the absence of a counter claim, as is the case here. *See* 28 U.S.C. § 1651 ("The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."). *See, e.g., Clinton v. United States*, 297 F.2d 899 (9th Cir. 1961) (affirming the district court's grant of a permanent injunction in favor of the defendant-appellee, although no counter-claim was brought).

Here, however, East End asks this Court to prevent Plaintiffs from filing, recording, and delivering lis pendens (including the Lis Pendens) or other liens in connection with the Shirley and Vineyard Properties, or any other of East End's property, when the title to such properties are not at issue in this action. *See, e.g., BGJ Assocs., LLC v. Superior Court*, 75 Cal. App. 4th 952, 967 (1999) ("A lis pendens notice may be recorded in an action which has a 'real property claim,' which is defined by statute as 'the cause or causes of action in a pleading which would, if meritorious, affect . . . title to, or the right to possession of, specific real property.'" (quoting Cal. Civ. Proc. Code § 405.4)); *see also* TRO Application at 8 ("Under California law, the recordation of a lis pendens is limited to actions in which title to the property for which a lis pendens is requested is in dispute."). Indeed, on its face, the Lis Pendens is not related to this action. *See* Lis Pendens at Caption. Given that this action is unrelated to a real property claim, the merits of the Lis Pendens is irrelevant. Moreover, East End seeks relief in this Court despite the fact that it has obtained such relief, at least in connection with the Shirley Property, through the State TRO. Accordingly, this case does not appear to be the proper vehicle for obtaining the requested relief.

B. Entitlement to Temporary Restraining Order

1. Likelihood of Success on the Merits

East End does not argue the merits of this lawsuit, but rather, the merits of the Lis Pendens that Araya served on it. As discussed above, the merits of the Lis Pendens are

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completely unrelated to this action. Although East End urges that the issuance of the Lis Pendens should be “evidence” to this Court “of Plaintiff Araya’s abuse of the United States District Court’s authority,” neither of the Plaintiffs ever filed the Lis Pendens on the docket in this case. TRO Application at 9. Rather, East End filed a Notice that alerted this Court to the service of the Lis Pendens. [Doc. # 49.]

Accordingly, this factor—and its related “serious questions going to the merits [have been] raised” factor, *Jones*, 844 F. Supp. 2d at 1100—do not weigh in favor of the grant of the TRO Application. The Court could deny the TRO Application on this ground alone. See *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th Cir. 2017) (“Likelihood of success on the merits ‘is the most important’ *Winter [v. Nat. Res. Def. Council, Inc.]*, 555 U.S. 7 (2008)] factor; if a movant fails to meet this ‘threshold inquiry,’ the court need not consider the other factors in the absence of ‘serious questions going to the merits.’” (quoting *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015); *Alliance for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134 (9th Cir. 2011))). East End’s failure to show irreparable harm, however, is dispositive in this case.

2. Irreparable Harm

As a preliminary matter, East End has not shown that irreparable harm will result absent the requested TRO insofar as the Application is aimed at Plaintiff Reed. Notably, East End admits that Reed did not participate in the filing and service of the Lis Pendens, but nonetheless seeks extraordinary relief based on her “demonstrated . . . willingness to initiate baseless legal proceedings through the filing of this actions and the unsupportable claims [therein]” and the fact that she “has shared legal counsel and served pleadings through the same people as” Araya. TRO Application at 5.

East End has similarly failed to show its entitlement to *ex parte* relief as to Araya. East End points to California law’s statutory scheme for recording notice of a lis pendens, the intent of which is “to restrict rather than enlarge the common law doctrine of notice, and to curb abuses of the procedure.” *Palmer v. Zaklama*, 109 Cal. App. 4th 1367, 1376 (2003) (cited in TRO Application at 10). East End also notes that several federal courts outside of the Ninth Circuit have found that the filing of a Lis Pendens causes irreparable harm, but none of those cases are analogous. Further, East End asserts that legal remedies are inadequate because Plaintiffs are judgment proof. *Id.* at 11. None of these facts demonstrate that Araya will record the Lis Pendens in the immediate future such that East End’s property rights *in this case* will be harmed.

In fact, East End’s filings show that Plaintiffs may already have been enjoined from such conduct by the state court. Accordingly, East End has failed to show its entitlement to the grant of the TRO Application. See *Ctr. for Food Safety v. Vilsack*, 636 F.3d 1166, 1174 (9th Cir.

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2011) (where litigant fails to show likelihood of irreparable harm absent preliminary relief, the court need not address remaining elements).

**IV.
CONCLUSION**

In light of the foregoing, the Court **DENIES** the TRO Application.

IT IS SO ORDERED.