

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

BACKEREI, LLC,

Plaintiff,

v

Case No. 15-146868-CH

Hon. Wendy Potts

INFINITY ACQUISITIONS, LLC, et al,

Defendants.

OPINION AND ORDER RE: PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY
INJUNCTION

At a session of Court
Held in Pontiac, Michigan
On

OCT 16 2015

Plaintiff Backerei, LLC moves the Court to toll the foreclosure redemption period on its property, which is due to expire on November 5, 2015.¹ In 2003, Peoples State Bank financed Backerei's purchase of commercial property on Washington Avenue in Royal Oak in exchange for a mortgage. Talmer Bank acquired the mortgage after the FDIC became the receiver for Peoples State Bank in 2011. Backerei claims that when its loan came due in June 2014, it began negotiating with Talmer to renew the loan. However, Talmer sent Backerei a notice of default on January 27, 2015, demanding payment of \$312,607.12. Talmer assigned the mortgage to Defendant Infinity-810 Lofts, LLC, on March 17, 2015, and Infinity-810 assigned the mortgage to Defendant Infinity Acquisitions, LLC. Backerei claims that on March 30, Infinity Acquisitions sent Backerei a notice of foreclosure demanding \$326,436.50.

¹ Backerei also asks the Court to discharge a lis pendens that Defendant Infinity-810, LLC recorded on Backerei's property pertaining to a related case, *Infinity 810-Lofts, LLC v Backerei, LLC*, 2014-144266-CK. Because the Court discharged the lis pendens in the other case, the issue is moot.

Backerei filed this action on May 4, 2015, a day before the May 5th foreclosure sale. Backerei's complaint alleges that Infinity-810 and Infinity Acquisitions conspired to slander Backerei's title. Backerei also seeks an accounting of its mortgage loan and injunctive relief. With its complaint, Backerei filed a motion for an ex parte temporary restraining order on the foreclosure, which the Court denied. The Court held a hearing on the injunction motion on May 7, 2015, and denied the motion without prejudice.

Backerei now renews its request that the Court stay the redemption period because Infinity-810 engaged in a pattern of conduct designed to prevent Backerei from refinancing. Although Backerei presents this issue as a request for injunctive relief, it did not brief the standard for granting an injunction. See *Thermatool Corp v Borzym*, 227 Mich App 366, 376; 575 NW2d 334 (1998). Even if Backerei had properly briefed the injunction standard, the Court's ability to toll a foreclosure redemption period is more limited than its authority to grant injunctive relief. Because Infinity Acquisitions has a legal right to foreclose, this Court has no general equitable authority to relieve Backerei from the effect of foreclosure. *Shulthies v Barron*, 16 Mich App 246, 247-248; 167 NW2d 784 (1969). Absent a showing of fraudulent conduct that prevented Backerei from exercising its right of redemption, this Court cannot toll the redemption period. *Heimerdinger v Heimerdinger*, 299 Mich 149, 154-155; 299 NW 844 (1941).

Backerei alleges that Infinity-810, an entity that shares the same owner as Infinity Acquisitions, repeatedly blocked Backerei's access to the property and prevented Backerei from repairing its wall, which is a necessary step to refinancing. In fact, the Court was forced to appoint an expert to monitor the construction activity so that Backerei can complete its repairs. Backerei also notes that Infinity-810 clouded Backerei's title by recording a lis pendens on its property, which the Court has now discharged. Thus, there is some support for Backerei's

position that the conduct of Infinity-810 has interfered with Backerei's ability to refinance its mortgage and redeem the property from foreclosure. However, Backerei's arguments and evidence do not show fraud or even establish conclusively that Infinity-810's conduct was intentional. Because Backerei has not shown that Infinity-810 or Infinity Acquisitions committed fraud that precluded Backerei from exercising its redemption rights, the Court cannot toll the redemption period. *Heimerdinger, supra*.

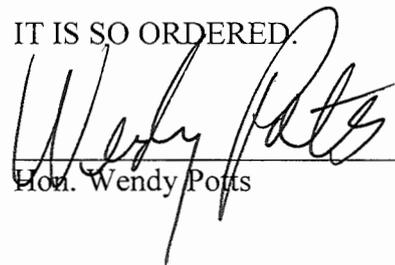
Moreover, any injury that Backerei suffers due to Infinity-810's alleged misconduct in filing the lis pendens or blocking access to repair the wall could be remedied by money damages. Backerei has not explained why it could not produce evidence showing the amount of money it lost due to its inability to redeem the property. Thus, even if the Court were to analyze this under an injunction standard, the request to enjoin the redemption period would still fail because Backerei cannot show irreparable harm. *Thermatool, supra*.

For all of these reasons, the Court denies Backerei's request to enjoin or toll the redemption period.

Dated:

OCT 16 2015

IT IS SO ORDERED.



Hon. Wendy Potts