

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

DATE: 08/16/2018

TIME: 08:30:00 AM

DEPT: C-72

JUDICIAL OFFICER PRESIDING: Timothy Taylor

CLERK: Kelly Breckenridge

REPORTER/ERM: Patricia Newton CSR# 1385

BAILIFF/COURT ATTENDANT: O. Godoy

CASE NO: **37-2018-00039388-CU-OR-CTL** CASE INIT.DATE: 08/07/2018

CASE TITLE: **SH Westpoint Investments Group LLC vs Malan [IMAGED]**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other Real Property

EVENT TYPE: Ex Parte

APPEARANCES

Maura Griffin, counsel, present for Plaintiff(s).

James Joseph, counsel, present for Plaintiff(s).

Steven A Elia, counsel, present for Plaintiff(s).

Daniel T. Watts, counsel, present for Defendant(s).

Quintin Shammam, counsel, is present for Plaintiff.

PLAINTIFF'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION.

The Court having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

Ruling on *Ex Parte* Application for TRO; Order Reassigning Case to Judge Sturgeon

SH Westpoint v. Malan, Case No. 2018-39388

August 16, 2018, 8:30 a.m., Dept. 72

1. Overview and Procedural Posture.

According to the verified complaint filed just over a week ago, this is a quiet title action relating to a residential property in Chula Vista. The case was assigned to Judge Medel, however there was a 170.6 challenge as to him by the defendant, and the case was reassigned to Dept. 72. ROA 11.

Plaintiff seeks to enjoin a foreclosure sale set for next Friday. This case is related to another case involving the same parties now pending before Judge Sturgeon (No. 2018-34229). Evidently there were several 170.6 challenges in that case as well. The court has reviewed the moving papers. ROA 13-17.

Opposition was filed as well. ROA 18-21. The court heard extensive argument from both sides, and the hearing was reported by a pro tem reporter.

2. Applicable Standards.

The decision whether to grant a *pendente lite* injunction is within the trial court's discretion. *IT Corp v. County of Imperial* (1983) 35 Cal. 3d 63, 69. The trial court must evaluate two interrelated factors when deciding whether to issue a preliminary injunction: (1) the likelihood the plaintiff will prevail on the merits at trial; and (2) the interim harm that will occur if the injunction is denied as compared with the harm that the defendant would be likely to suffer if the preliminary injunction were issued. *Department of Fish & Game v. Anderson-Cottonwood Irrig. Dist.* (1992) 8 Cal.App.4th 1554, 1560.

3. Ruling.

The *ex parte* application is granted, and the foreclosure is temporarily restrained pending hearing on the preliminary injunction. This case is ordered set for a status conference before Judge Sturgeon in Dept. 67 at 2:00 p.m. on August 20, 2018 (the same hour already set for a hearing in Case No. 2018-34229). The case is transferred to Judge Sturgeon, who will set and hear the preliminary injunction within 21 days (unless the parties waive time). The cases are not consolidated as yet; consolidation would be up to Judge Sturgeon. The court makes this transfer decision in light of the identity of the parties in the two cases, and the need to avoid potentially inconsistent rulings and duplication of effort.

IT IS SO ORDERED.



Judge Timothy Taylor