UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

MICHAEL D. DALTON, JR.,
LEAH M. DALTON, and
MICHAEL A. DEEM,

Plaintiffs-Appellants,

v.

CHOICEONE BANK,

Defendant-Appellee.

Case No. 26-1238

On Interlocutory Appeal from the United States District Court for the Western District of Michigan, Southern Division Case No. 1:26-cv-00163-HYJ-RSK
Honorable: Hala Y. Jarbou
U.S. Magistrate Judge: Ray Kent

Michael D. Dalton, Jr.
Leah M. Dalton, and
Michael A. Deem
In Pro Per Plaintiffs-Appellants
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CHOICEONE BANK'S RESPONSE TO PLAINTIFFS - APPELLANTS' EMERGENCY MOTION FOR PRELIMINARY INJUNCTION PENDING APPEAL AND TO EXPEDITE APPEAL (Document: 3-1)

NOW COMES the Defendant - Appellee, **ChoiceOne Bank**, by and through its attorneys, Winegarden, Haley, Lindholm, Tucker & Himelhoch, PLC, and for its Response to Plaintiffs - Appellants' **Emergency Motion for Preliminary Injunction Pending Appeal and to Expedite Appeal** (Document: 3-1) states as follows:

I. INTRODUCTION

The Plaintiffs - Appellants seek equitable relief to protect themselves from the normal and expected consequences of their conscious and deliberate decision to default on two loans, the repayment of which was secured by mortgages on the two properties (LC ECF No. 41; PageID.648). To the surprise of no one other than the Plaintiffs - Appellants, their deliberate payment defaults resulted in the foreclosure of the mortgages and their eviction from the properties. This is not irreparable harm. Rather, it is the exact outcome expected from the path that the Plaintiffs - Appellants have consciously chosen to walk. The Plaintiffs - Appellants apparently believe that they do not have to pay their monetary obligations like everyone else (LC ECF No. 41; PageID.648). They get to this belief by adopting "sovereign citizen" ideology that professes to bestow "untouchable" status on their land if they obtain a copy of a Federal Land Patent issued to someone else in the 1800s and record a magic document that they found on the internet with the Register of Deeds. There is no legal or factual support for these preposterous claims. The Plaintiffs - Appellants think that the rest of us are foolish for paying our bills and hope that, upon the rest of us being enlightened by their perceived truths, that the entire mortgage loan and foreclosure industries will collapse. "Soon, ChoiceOne Bank and all other central banks in the mortgage and foreclosure industry, will breath (*sic.*) their last. Good riddance. A man's and a woman's, (*sic.*) home will be their castle one again - forever" (LC ECF No. 41; PageID.648). Equity does not come to the aid of malicious and destructive endeavors such as this. Equity also does not protect you from suffering the consequences of your own deliberate and misguided actions.

II PRELIMINARY MATTERS

Before diving into the issues raised in the Plaintiffs - Appellants' Motion, it should be noted that there is no federal court subject jurisdiction for this case. Federal Court interference with the existing state court Judgments that have already determined that ChoiceOne Bank is the party that is entitled to possession of the properties in question is also prohibited by the *Younger* abstention doctrine. These issues have already been raised and briefed below. See LC ECF Nos. 20, 21, 41-43 and 57. Those arguments will not be repeated here but the Court should be aware of their existence. The Plaintiffs - Appellants filed this interlocutory appeal and the pending Motion BEFORE the lower court rendered its decision on ChoiceOne's Motion to Dismiss. Given that the briefing on these issues has already been completed, it is anticipated that this case will be DISMISSED shortly for the reasons stated in ChoiceOne Bank's lower court Motion.

III THE PLAINTIFFS - APPELLANTS HAVE NOT MET THE STRICT STANDARDS REQUIRED FOR THE ISSUANCE OF A PRELIMINARY INJUNCTION

A preliminary injunction is "an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 22; 129 S Ct 365, 80; 172 L Ed 2d 249, 264 (2008). A preliminary injunction is an extraordinary remedy never awarded as of right. Munaf, 553 U.S., at 689 – 690, 128 S.Ct., at 2218–2219. In each case, courts "must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." Amoco Production Co., 480 U.S., at 542, 107 S.Ct. 1396. "In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction. Winter at 24. A mandatory preliminary injunction is ordinarily issued

only in extraordinary circumstances.

Four factors are particularly important in determining whether a preliminary injunction is proper:

(1) the likelihood of plaintiff's success on the merits;

(2) whether the injunction will save the plaintiff from irreparable injury;

(3) whether the injunction would harm others; and

(4) whether the public interest would be served by the injunction.

Southern Milk Sales, Inc v Martin, 924 F2d 98, 103 (CA 6, 1991) citing In Re DeLorean Motor Co., 755 F.2d 1223, 1228 (6th Cir.1985). *Winter*.

Here, the Plaintiffs - Appellants are requesting this Court to issue a mandatory preliminary injunction to restore their possession to the two properties in question despite the existence of two separate state court judgments (LC ECF Nos. 21-7 and 21-8; PageID.350-351 PageID.352-353) which have already determined that it is the Defendant - Appellee ChoiceOne Bank that is entitled to possession of those properties, not the Plaintiffs - Appellants and despite the fact that the Plaintiffs - Appellants have already been lawfully evicted from those very same properties (LC ECF Nos. 21-9 and 50-1; PageID.354-356 PageID.775). In this case, NONE of the four-factors favor the issuance of a Preliminary Injunction.

A. <u>The Plaintiffs - Appellants have ZERO chance of Succeeding on the Merits of their Claim.</u>

ChoiceOne Bank has already addressed the merits of the Plaintiffs - Appellants' claims under the First Amended Complaint in its lower court Motion to Dismiss (LC ECF No. 20, PageID.289-291). The basic problem with the Plaintiffs - Appellants' claims is that they are

falsely premised on a wild assertion that the Plaintiff -Appellants somehow posses "allodial title" and rights under a Federal Land Patent for the two properties in question. This claimed interest purportedly provides them with "forever benefits" with respect to those properties which phrase apparently roughly translates to "nobody can take my property from me FOREVER for any reason" (LC ECF No. 41; PageID.648). The Plaintiff - Appellants fail to establish any legal support or justification for this wild assertion but it is apparently related to the filling out and recording of a magic document with the Register of Deeds. Again, there is no legal support provided for this astounding claim.

All of this is complete and utter nonsense. The Plaintiffs - Appellants acquired both properties under the normal, mundane method of purchase under a Warranty Deed (See LC ECF No. 21-1, PageID.304-306 for the Commercial Property and LC ECF No. 21-2, PageID.308-309 for the Dalton Residence). They borrowed money from a bank, the repayment of which was secured by a Mortgage on each of the properties. The Daltons then purposely and intentionally decided to stop paying on their loans in mistaken reliance on their "forever benefits" (LC ECF No. 41; PageID.648). This, of course, resulted in the foreclosure of the Mortgages (See LC ECF No. 21-3, PageID.311-319 for the Commercial Property and ECF No. 21-4, PageID.321-328 for the Dalton Residence), the transfer of legal title to both of the propertied to Defendant - Appellee ChoiceOne Bank and the ultimate eviction of the Plaintiffs - Appellants from both of the properties (LC ECF Nos. 21-7 and 21-8; PageID.350-351 PageID.352-353) (LC ECF Nos. 21-9 and 50-1; PageID.354-356 PageID.775). This version of reality is decidedly less interesting and quite normal and expected. But it is the actual reality.

The Court should also note that even if the Plaintiffs - Appellants' wild tales of fantasy

were actually true (they are actually unequivocally false), it would not help the Plaintiffs - Appellants one iota. This is because under Michigan law, following the expiration of the relevant redemption period, a foreclosing creditor is given all of the rights of the borrower in the property as of the date of the mortgage, or any time thereafter. **MCL 600.3236** provides in pertinent part as follows:

> Unless the premises described in such (Sheriff's) deed shall be redeemed within the time limited for such redemption as hereinafter provided, **such deed shall thereupon become operative, and shall vest in the grantee therein named**, his heirs or assigns, **all the right, title, and interest which the mortgagor had at the time of the execution of the mortgage, or at any time thereafter** (emphasis added).

So, even if the Plaintiffs - Appellants somehow possessed some sort of magic pill that protected their land from any attack, by operation of state real property law, that "magic pill" would now belong to Defendant - Appellee ChoiceOne Bank.

B. An Injunction Will Not Save the Plaintiff - Appellants from Irreparable Harm because they have not suffered ANY harm

"[A] party may not satisfy the irreparable harm requirement if the harm complained of is self-inflicted." 11A Charles Alan Wright et al., Federal Practice and Procedure § 2948.1 (3d ed. Apr. 2021 update); see also Texas v. Biden, 10 F.4th 538, 558 (5th Cir. 2021) (per curiam) (self-inflicted injuries "do not count" as irreparable harm); Second City Music, Inc. v. City of Chicago, 333 F.3d 846, 850 (7th Cir. 2003) ("[S]elf-inflicted wounds are not irreparable injury."); Caplan v. Fellheimer Eichen Braverman & Kaskey, 68 F.3d 828, 839 (3d Cir. 1995) ("If the harm complained of is self-inflicted, it does not qualify as irreparable."). Div 80, LLC v Garland, No. 3:22-CV-148, 2022 WL 3648454, at *5 (SD Tex, August 23, 2022)

Here, the Plaintiffs - Appellants' claimed "harm" is that they have been evicted from the

two properties in question. That they have been evicted from those properties is not disputed. That these actions have caused the Plaintiffs - Appellants any "harm" is disputed. The Plaintiffs - Appellants' eviction from the two properties was the normal and expected consequence of the Plaintiffs - Appellants' conscious decision to default on the loans, the repayment of which secured by mortgages on the two properties. The Plaintiffs - Appellants have chosen to believe ridiculous positions that they found on the internet even though those positions defy logic and common sense. The Plaintiffs - Appellants should have known better but they persisted with their futile actions despite multiple warnings from the Defendant - Appellee ChoiceOne Bank that their attempts to avoid paying their debts in this manner would fail. If something seems to be too good to be true, it probably is. So, what has happened to the Plaintiffs - Appellants isn't "harm" of any kind. Rather, it is simply experiencing the natural consequences that they knew or should have known would happen when they purposefully decided to stop paying their mortgage loans. Equity will not save you from your own folly.

C. Balance of Equities.

It is hard to understand how the Plaintiffs - Appellants believe that equity will save them from the consequences of their own deliberate refusal to repay money that they admittedly borrowed. The maxim that "no one should benefit from his own wrongdoing" is a foundational principle of equity. As such, the Plaintiffs - Appellants come before the Court with unclean hands. There are no countervailing equitable considerations that run in favor of the Plaintiffs - Appellants. The Plaintiffs - Appellants have simply experienced the usual and expected consequences of their deliberate decision to breach their contractual obligation to repay the money the admittedly borrowed from the bank. The loss of the collateral for a loan is the normal

and expected consequences from the conscious and deliberate decision to stiff the bank.

D. Public Interest

Normally, the public interest would not come into play in the usual debtor-creditor dispute. However, the Plaintiffs - Appellants have recently confessed their desire to completely destroy the mortgage lending and foreclosure industries through the maneuvers that they are attempting to deploy in this litigation. In response to ChoiceOne Bank's argument that:

> a magic document has miraculously transformed their ownership of these properties to a state in the universe as if they were granted to them under a Federal Land Patent and they are now free to ignore their creditors from whom they previously borrowed large sums of money and to whom they granted Mortgages on their properties which provided for the repossession of the properties on failure to repay the loans. None of that matters any more when you know the secret. (LC ECF No. 21, PageID.299)

the Plaintiffs - Appellants stated the following:

> For the first time, ChoiceOne Bank's statement is correct. ChoiceOne Bank cannot repossess Plaintiffs properties for failure to repay the loans, and that fact is a secret closely kept by ChoiceOne Bank and its minions... ChoiceOne Bank "pulls out all the stops" to discredit Plaintiffs, obscure the facts and misstate the law because it knows **this case is the beginning of the end of mortgage lenders' multi-century fraud on the American people**. We are witnessing ChoiceOne Bank's "death roar," similar to when a bear is wounded and just about to take its last breath it lets out a vicious roar. **Soon, ChoiceOne Bank and all other central banks in the mortgage and foreclosure industry, will breath their last. Good riddance**. A man's, and a woman's, home will be their castle once again – forever. (ECF No. 41, PageID.648) (emphasis added).

These statements of false bravado are shocking on their face and borderline seditious. Defendant - Appellee ChoiceOne Bank respectfully suggests that the Plaintiffs - Appellants' desired goal of causing the collapse of the national mortgage financing and foreclosure industries is NOT in the Public Interest.

IV. CONCLUSION

Quite frankly, this Court never needs to reach a decision on the merits of the Plaintiffs - Appellants' request for the issuance of a Preliminary Injunction. This is because there is no federal court subject matter jurisdiction for this case. The Plaintiffs - Appellants clearly WANT this case to be decided in the federal court system for whatever reason. However, federal court jurisdiction is not simply a matter of desire. It is governed by statute and the Plaintiffs - Appellants claim simply does not satisfy the statutory requirements. Whilst talking about the US Constitution in a historical context with respect to their delusional arguments of allodial title and Federal Land Patents, the Plaintiffs - Appellants have failed to identify any federal constitutional provision, statute or treaty that is actually contested with respect to what is actually just a simple state property rights case. But the Plaintiffs - Appellants do not have rights under a Federal Land Patent. They took the properties under a normal Warranty Deed. They do not have allodial title either. This mediaeval concept plays no role in Michigan real property law of the 21st century. The Daltons previously had fee simple title to both properties. However, they lost that interest in the land, due to their misguided and far-fetched beliefs, when the Mortgage on each property was foreclosed and a Sheriff's Deed was issued and recorded for each property. Defendant - Appellee ChoiceOne Bank now owns the fee simple title to each of the properties as a direct and proximate result of the Plaintiffs - Appellants' foolish decision to deliberately default on their obligation to repay their loans. The Plaintiffs - Appellants are using these ancient, erroneous and misguided concepts and arguments in an attempt to manufacture federal court jurisdiction where no such jurisdiction actually exists. There is no federal Court jurisdiction to be found under these facts.

Even if we were to hypothetically assume federal court jurisdiction for the sake of argument, this Court still need not reach a decision on the merits of the Plaintiffs - Appellants' request for the issuance of a Preliminary Injunction. This is because the state courts have already heard and thoroughly and completely rejected the Plaintiffs - Appellants' wild claims of allodial title and claimed rights under a Federal Land Patent. The Plaintiffs - Appellants obviously do not like or agree with those decisions as they have resulted in their physical expulsion from the properties involved in this case. Nevertheless, issues of comity and respect for state court decisions compel the abstention from federal court intervention and review of an unfavorable state court decisions.

Finally, even if the Court were to reach the merits of the Plaintiffs - Appellants' request for a Preliminary Injunction, NONE of the four-factors discussed above cut in favor of the issuance of a Preliminary Injunction in this case. Consequently, the Defendant - Appellee **ChoiceOne Bank** respectfully requests that this Court **DISMISS** this case due to a lack of subject matter jurisdiction. Failing that, Defendant - Appellee ChoiceOne Bank respectfully requests that this Court **abstain** from deciding this case due to the issues of comity and respect for the state court decisions that soundly rejected the ridiculous propositions being asserted by the Plaintiffs - Appellants in this case. Failing that, Defendant - Appellee ChoiceOne Bank respectfully requests that this Court **DENY** the Plaintiffs - Appellants' Motion for the issuance of a Preliminary Injunction as **NONE** of the four factors to be considered weigh in favor of the issuance of a Preliminary Injunction.

Certificate of Compliance:

The undersigned hereby certifies that this Brief was prepared using WordPerfect 2020 software and contains 2,978 words.

Respectfully submitted,

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