

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

JOHN E. BUTERBAUGH and
CARRIE BUTERBAUGH,

Plaintiffs,

vs.

Case No. 2012-4691-CH

SELENE FINANCIAL, LP, JPMORGAN
MORTGAGE ACQUISITION CORP.,
AS TRUSTEE FOR THE UNKNOWN
TRUST, and UNKNOWN TRUST,

Defendants.

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OPINION AND ORDER

Plaintiffs have filed a “motion to set aside sheriff’s deed and for order to show cause why Defendants should not be held in contempt.” Defendants have filed a response and request that the motion be denied.

Plaintiffs filed their complaint in this matter on October 18, 2012. In addition, Plaintiffs filed an ex parte motion for a temporary restraining order. On October 18, 2012, the Court entered an ex parte temporary restraining order (“TRO”) and order to show cause preventing Defendants from holding a foreclosure auction sale of the Plaintiffs’ home located at 54731 Apache Lane, Shelby Township, MI (“Subject Property”). In addition, the TRO ordered Defendants to appear at a hearing scheduled for October 29, 2012 to show cause as to why the TRO should not be converted into a preliminary injunction.

On October 26, 2012, Defendants removed this matter to the U.S. District Court for the Eastern District of Michigan. On December 14, 2012, while a motion to remand this matter back

to this Court was pending in the District Court, Defendants held a Sheriff's Sale of the Subject Property. Defendant JPMorgan Mortgage Acquisition Corporation was the successful purchaser of the Subject Property. On March 4, 2013, the District Court granted Plaintiffs' motion to remand this matter back to this Court. Plaintiffs now seek to set aside the Sheriff's Sale.

In support of their motion, Plaintiffs contend that the TRO did not expire or dissolve and that the Sheriff's Sale was held in violation of the TRO. In response, Defendants contend that the TRO automatically expired 14 days after it was entered pursuant to MCR 3.310(B)(3), that the TRO could not be converted into a preliminary injunction without a hearing, and that the United States Supreme Court, in *Granny Goose Foods v Bhd of Teamsters & Auto Truck Drivers*, 415 US 423 (1974), held that removal of a matter to a federal district court does not extend the duration of a temporary restraining order in place prior to the removal.

MCR 3.310(B)(3) provides:

(3) Except in domestic relations actions, a temporary restraining order granted without notice expires by its terms within such time after entry, not to exceed 14 days, as the court sets unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension must be stated on the record or in a document filed in the action.

Accordingly, pursuant to MCR 3.310(B)(3), a temporary restraining order automatically expires after 14 days unless the court otherwise orders. Moreover, this interpretation is consistent with the United States Supreme Court's holding in *Granny Goose*.

In *Granny Goose*, the trial court issued a temporary restraining order. Two days later the case was removed to a United States District Court. While the District Court denied the defendant's motion to dissolve the TRO entered by the state court, it did not extend or otherwise modify it. After the TRO expired, the defendant engaged in the activity previously barred by the TRO. In affirming the Court of Appeals decision holding that defendant had not violated the

TRO, the Supreme Court held that a state issued temporary restraining order does not remain in effect for an indefinite period of time if the case is removed to federal court; rather, the temporary restraining order's duration remains limited to that provided by the governing rule. *Id.* at 438.

Consequently, under *Granny Goose* and MCR 3.310, the TRO expired 14 days after it was entered by this Court. Accordingly, because the Sheriff's Sale was held after the TRO expired Plaintiffs' motion must be denied.

Conclusion

For the reasons discussed above, Plaintiffs' motion to set aside sheriff's deed and for order to show cause why Defendants should not be held in contempt is DENIED. Pursuant to MCR 2.602(A)(3), this Opinion and Order neither resolves the last pending claim nor closes this case.

IT IS SO ORDERED.

/s/ Judge John C. Foster 28189

Dated: November 19, 2013

JCF/sr

Cc: *via e-mail only*
Bruce Redman, Attorney at Law, bredman@redmanlawfirm.com
David Dell, Attorney at Law, ddell@orlans.com