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NATIONAL CLEARINGHOUSE STATES DISTRICT COURT FOR THE  
FOR LEGAL SERVICES DISTRICT OF NEW HAMPSHIRE

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Joseph P. Rioux, et al.

v.

#C-89-573-L

CF Investments, Inc.

ORDER ON MOTION FOR PRELIMINARY INJUNCTION

This civil action filed by plaintiffs, Joseph Rioux and Donna Rioux (hereinafter the Riouxes), against CF Investments, Inc., the defendant, is seeking both declaratory and injunctive relief from this court. A hearing was held January 2, 1990 to consider the continuation of this court's December 22, 1989 ex parte temporary restraining order enjoining CF Investments from selling the home of Joseph Rioux and Donna Rioux.

A brief summary of the facts follows. As husband and wife, the Riouxes are owners of a single family house located at 291 Main Street, Danville, New Hampshire. Presently, Donna Rioux and her three children reside there. Donna Rioux and Joseph Rioux are separated. The Riouxes purchased the property in 1977 with a loan from the Farmers Home Administration. In 1987, the Riouxes refinanced their Farmers Home Administration loan with another loan from Resource Financial Group, Incorporated. Subsequently, the Riouxes borrowed \$10,000.00 from CF Investments in June 1988 giving CF Investments a second mortgage on their property.

After falling behind in the repayment schedule for their first mortgage with Resource Financial Group, plaintiffs were facing a foreclosure sale on May 31, 1989 by Resource Financial Group. On May 8, 1989 the Riouxes borrowed \$60,000.00 from CF Investments, thus eschewing the foreclosure on their house by the first mortgagee, Resource Financial. This second loan made to plaintiffs by CF Investments was to bring their first mortgage up to date and was ultimately used to pay the outstanding balance of the first mortgage to Resource Financial. The Riouxes had a one year term on the \$60,000.00 note, which broke down to monthly interest payments of \$1,050.00 for eleven months and a final payment of \$61,050.00 in the last month of the one year repayment schedule. The property was originally appraised for \$80,000.00 and was subsequently reappraised to have an estimated market value of \$62,000.00 as of December 28, 1989 by defendant's real estate appraiser, Robert Gagne. Gagne never saw the interior of the Riouxes' home. However, plaintiffs contend that the \$62,000.00 figure is too low an estimation considering the repairs and work they have done to their home, both to the interior and exterior.

The Truth in Lending Act, 15 U.S.C. § 1635(a), provides a three day period for homeowners to rescind a transaction in which their home is used for collateral of a loan other than the

original purchase of the home. Under this law, the Riouxes had until midnight of May 11, 1989 to rescind their \$60,000.00 loan from CF Investments. On May 10, 1989, the plaintiffs were requested by a CF representative to sign a typewritten document waiving their right to rescind under the Truth in Lending Law. The Riouxes did sign the waiver that evening.

At the January 2nd hearing, counsel for the defendant conceded that the Riouxes had repaid some of the first loan (\$10,000.00 loan made in June 1988) to CF Investments, the exact amount since repaid was unclear. However, it is an undisputed fact the Riouxes have not made any payment to CF on the \$60,000.00 note at any time since the loan was made in May of 1989.

The only issue which this court must now decide is whether to continue the present injunction enjoining CF Investments from foreclosing on the Riouxes' house.

In the First Circuit, a plaintiff must satisfy four criteria in order to be entitled to a preliminary injunction. The Court must find: (1) that plaintiff will suffer irreparable injury if the injunction is not granted; (2) that such injury outweighs any harm which granting injunctive relief would inflict on the defendant; (3) that plaintiff has exhibited a likelihood of success on the merits; and (4) that the public interest will not

be adversely affected by granting of the injunction." Women's Community Health Center, Inc. v. Cohen, 477 F. Supp. 542, 544 (D. Me. 1979) (citations omitted.) Planned Parenthood League of Mass. v. Bellotti, 641 F.2d 1006 (1st Cir. 1981).

Obviously the more drastic the effect of the injunction, the more carefully the district court should consider staying its hand . . . . A court should be reluctant to grant preliminary relief if there is a close factual dispute which would go either way at the trial on the merits. A-Copy, Inc. v. Michaelson, 599 F.2d 450 (1st Cir. 1978).

Another factor to be considered on the issue of preliminary relief is a balancing of the harm to the plaintiffs as against the harm to the defendants if the project is halted. Society for Protection of American Forests v. Brinegar, 381 F. Supp. 282, 283 (D.N.H. 1974).

It has been brought to the court's attention that pending a ruling on plaintiffs motion for a temporary injunction that another foreclosure sale has been set for January 15, 1990.

The defendant makes a seemingly cogent argument that the value of the plaintiffs real estate has diminished since its assumption of the first mortgage in May, 1989. The court accepts to some degree the testimony of the real estate agent, Mr. Gagne.

The court is also mindful that because of the strained relationship between the parties an appraisal of the interior of the property was not made. Mr. Gagne also brought in evidence of comparable sales. The plaintiffs equally forcefully have maintained that there were capital improvements not considered. The court has reference to the new roof, carpeting, plumbing and furnace.

It is also very evident that the plaintiffs have had a very trying time recently with respect to their financial situation. They have had to receive welfare from the Town of Danville and Mr. Rioux's employment record has been spotty, especially with respect to his accounts receivables.

From the paucity of evidence before the court because of the exigencies of time restraints in a temporary injunction hearing the following is patent. The value of real estate in southern New Hampshire has declined in recent months. In all probability the value of the plaintiffs home has diminished in value to some extent since May, 1989 and maybe for some short period before. To permit the real estate to be foreclosed might cut the loss to the defendant if it prevails on the merits. On the other hand the plaintiffs could be irreparably harmed if their home is foreclosed and they prevail on the merits.

It is also troublesome to the court that the plaintiffs have apparently made no effort to even make a partial payment on their mortgage. It is also evident that there would have been a foreclosure on plaintiff's property on May 31, 1989 if the defendant had not intervened. A countervailing argument to this line of reasoning may be that even if that did happen the plaintiffs would have had a greater equity of redemption than they may have in January, 1990 and defendants did not act altruistically.

It is the order of this court that the temporary injunction shall be continued. This case is to take precedence on the court's calendar. It will be called for trial in either June or July of 1990. Reference is made to FRCP 65(a)(2). If the defendant so desires arrangements shall be made with plaintiffs' counsel to afford defendant's real estate appraiser the opportunity to inspect the interior of the plaintiffs' dwelling house.

Pending a hearing on the merits commencing February 1, 1990 the plaintiffs shall pay \$400.00 a month to be held by Attorney Victor Dahar in escrow pending a final decision of this court. If necessary to obviate a tax sale Attorney Dahar, in his discretion, can apply the monthly sums in partial payment to the

Town of Danville.

January 3, 1990

*Martin F. Loughlin*  
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Martin F. Loughlin  
Senior Judge

Victoria Pulos, Esq.  
Victor W. Dahar, Esq.

