

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

GREGORY A. HARRIMAN et al.,)
)
) Plaintiffs)
)
v.) Civil No. 99-41-B
)
UNITED STATES DEPARTMENT OF)
AGRICULTURE, et al.,)
)
) Defendants)

ORDER AND MEMORANDUM OF DECISION

BRODY, District Judge

Plaintiffs Gregory A. Harriman and Kathryn Harriman (“Plaintiffs”) have filed this action against Defendants United States Department of Agriculture (“USDA”), Farm Service Agency (“FSA”), Rural Economic and Community Development Administration (“RECDA”), and Fleet Bank of Maine (“Fleet”) in connection with the foreclosure and impending auction of Plaintiffs’ dairy farm in Troy, Maine. Before the Court is Plaintiffs’ Motion for a Temporary Restraining Order (“TRO”) in which they request that the Court enjoin Fleet from auctioning the property pending resolution of their underlying claim against the other defendants by staying the statutory redemption period or by barring Fleet from advertising the auction.

After a hearing on Plaintiffs' Motion, the Court declines to issue a TRO against Fleet on several grounds. First, the Court finds that the 90 day period of redemption provided by Maine Rev. Stat. Ann. tit. 14, § 6322 expired on April 7, 1999. Once the redemption period in a foreclosure action has run, the statute deprives a mortgagor of all rights to redeem or possess the property. See Smith v. Varney, 309 A.2d 229, 232 (Me. 1973); In re Simcock, 152 B.R. 7, 9 (D. Me. 1993). This Court has no legal power to alter the statute’s operation and Plaintiffs have not

shown that its limited equitable powers in this area are applicable here. See Smith, 309 A.2d at 232.

Second, Plaintiffs have failed to meet their burden with respect to the specific requirements for the grant of a TRO. See Planned Parenthood League v. Bellotti, 641 F.2d 1006, 1009 (1st Cir.1981) (stating four TRO criteria). In particular, the Court finds that Plaintiffs have not established that they are likely to succeed on the merits of their action. Plaintiffs sole argument is that the USDA will concede that it improperly failed to provide financing to Plaintiffs and wrongfully accelerated their loan. This suggestion, however, was flatly rejected by the government at the hearing. Moreover, Plaintiffs have failed to demonstrate why their claim is not barred by the doctrine of res judicata in light of the Maine Law Court's decision in Fleet Bank of Maine v. Harriman, 721 A.2d 658 (Me. 1998).

Plaintiffs' Motion for a Temporary Restraining Order is DENIED.

SO ORDERED.

MORTON A. BRODY
United States District Judge

Dated this ____ day of April, 1999.