

STATE OF MAINE
CUMBERLAND, ss.

BUSINESS & CONSUMER COURT ✓
LOCATION: Portland
Docket No. BCD-13-CV-18

THE BANK OF MAINE, f/k/a, SAVINGS)
BANK OF MAINE,)

Plaintiff,)

v.)

BOOTHBAY COUNTRY CLUB, LLC, et)
al.,)

Defendants)

DECISION AND ORDER
(Motion for Temporary Restraining Order)

This matter is before the Court on Defendant James Reeves' Motion for Temporary Restraining Order. Through his motion, Defendant Reeves asks the Court to enjoin Plaintiff The Bank of Maine (the Bank) from litigating or attempting to litigate a matter filed in the Superior Court in New Haven, Connecticut, which action is captioned *The Bank of Maine, f/k/a, Savings Bank of Maine v. James R. Reeves* (the Connecticut action).

FACTUAL BACKGROUND

On October 30, 2008, the Club purchased certain property (real and personal) located in Boothbay and Boothbay Harbor (the Property). At the time, Defendant Reeves was an owner of the Club. To finance the purchase, the Club obtained a loan from the Bank in the amount of \$2,890,000, and executed a promissory note in that amount in favor of the Bank. To secure the Club's obligations under the promissory note, the Club granted a mortgage on the Property. In addition, Defendant Reeves executed a commercial guaranty of the Club's financial obligations to the Bank.

The Club defaulted on its obligations, and on October 30, 2012, the Bank forwarded notices of default to the Defendants by certified mail. Neither the Club nor Defendant Reeves cured the default. As of January 28, 2013, the outstanding obligation to the Bank was \$2,590,567.45.

Pursuant to 14 M.R.S. § 6203-A, the Bank initiated a power of sale foreclosure of the Property, and scheduled a public sale of the Property for January 28, 2013. The Bank served the Club and Defendant Reeves with notice of the sale. The Bank placed the highest bid at the sale, and obtained the Property for \$1.5 million.

In this action, the Bank seeks to recover a judgment in the amount of the difference between the sale price and the balance of the Club's debt to the Bank. The Club and Defendant Reeves contend that the foreclosure sale is invalid because the Bank did not comply with the statutory requirements of the foreclosure process.

According to Defendant Reeves' motion, the Bank has asserted similar claims against Defendant Reeves in the Connecticut action. Defendant requests that the Court enjoin the Bank from pursuing the Connecticut action. In support of his motion, Defendant Reeves argues that injunctive relief is warranted because the simultaneous actions will increase his legal expense and raise the possibility of the inconsistent results.

DISCUSSION

Defendant Reeves seeks a temporary restraining order under M.R. Civ. P. 65(a). Under Maine law,

A party seeking injunctive relief by a temporary restraining order or a preliminary injunction has the burden of demonstrating to the court that four criteria are met. The moving party must demonstrate that (1) it will suffer irreparable injury if the injunction is not granted; (2) such injury outweighs any harm which granting the injunctive relief would inflict on the other party; (3) it has a likelihood of success on the merits (at most, a probability; at least, a

substantial possibility); and (4) the public interest will not be adversely affected by granting the injunction. Failure to demonstrate that any one of these criteria are met requires that injunctive relief be denied. A temporary restraining order may be granted only if it 'clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant.' '[P]roof of irreparable injury is a prerequisite to the granting of injunctive relief.' 'Irreparable injury' is defined as "injury for which there is no adequate remedy at law.' (citations omitted).

Bangor Historic Track, Inc. v. Dep't of Agric., 2003 ME 140, 837 A.2d 129, 132-33.

In this case, however, before the Court assesses whether Defendant Reeves has demonstrated the criteria necessary for the issuance of a temporary restraining order, the Court must consider the specific nature of Defendant Reeves' request. Through his motion, Defendant Reeves requests that the Court enjoin the Bank from pursuing a cause of action in another state. In other words, Defendant Reeves is seeking an "antitrust injunction."

Generally, "[a]n anti-suit injunction is appropriate in four instances: 1) to address a threat to the court's jurisdiction; 2) to prevent the evasion of important public policy; 3) to prevent a multiplicity of suits; or 4) to protect a party from vexatious or harassing litigation." *Golden Rule Ins. Co. v. Harper*, 925 S.W.2d 649, 651 (Tex. 1996). See also Kurtis J. Kemper, Annotation, *Propriety Under Circumstances of State Court Injunction Against Nonmatrimonial Action in Court of Sister State*, 20 A.L.R. 6th 211 (2006) ("A state court has discretion to grant an injunction restraining a party from commencing or prosecuting an action in a sister state's court. That discretion, however, is exercised sparingly and only under extraordinary circumstances."). The Maine Law Court has acknowledged that in other jurisdictions an antitrust injunction has been "applied to prevent an evasion of the law of domicile; to prevent great hardship and expenses in defending in the sister state; to prevent one citizen from obtaining an

inequitable advantage over another; and where the suit in the other state would work great wrong and injury to others." *Usen v. Usen*, 136 Me. 480, 13 A.2d 738, 744 (1940) (citations omitted).

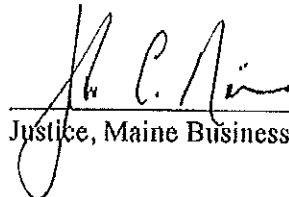
Here, the Bank has commenced the Connecticut action primarily to seek a prejudgment attachment of assets that Defendant Reeves allegedly has in Connecticut. The Bank has expressly represented that after it obtains a ruling on its motion for attachment in the Connecticut action, the Bank intends to request a stay of further proceedings in the Connecticut action. Under these circumstances, this Court's jurisdiction is not jeopardized, Defendant's additional legal costs will be limited, the substantive issues would be resolved based on Maine law in the Maine action, and the Connecticut action was filed for legitimate purposes, and was not filed to harass Defendant Reeves. The Court, therefore, does not believe an "antisluit injunction" is warranted.¹

CONCLUSION

Based on the foregoing analysis, the Court denies Defendant Reeves' Motion for Temporary Restraining Order.

Pursuant to M.R. Civ. P. 79(a), the Clerk shall incorporate this Decision and Order into the docket by reference.

Date: 6/27/13


Justice, Maine Business & Consumer Court

¹ Because the Court has determined that Defendant Reeves is not entitled to an "antisluit injunction," the Court does not discuss in detail whether Defendant Reeves has demonstrated the four criteria necessary for the issuance of a temporary restraining order. However, based on the Court's review of the current record, the Court concludes that Defendant Reeves has not satisfied the criteria. At a minimum, Defendant Reeves has not demonstrated the requisite irreparable harm.