

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS

SUPERIOR COURT  
NO.: 2183CV00075

WHITEACRE PROPERTIES, LLC

v.

1 SHARPE OPPORTUNITY INTERMEDIARY TRUST (aka 1 SHARPE  
OPPORTUNITY INTERMEDIATE TRUST)

MEMORANDUM OF DECISION AND ORDER ON PLAINTIFF'S MOTION  
FOR PRELIMINARY INJUNCTION AND FOR APPROVAL OF A  
MEMORANDUM OF LIS PENDENS

INTRODUCTION

Whiteacre Properties, LLC, (“plaintiff”) filed an Amended Verified Complaint on February 17, 2021 against 1Sharpe Opportunity Intermediary Trust (“defendant” or “1Sharpe”) for wrongful foreclosure of mortgage (Count I), breach of contract and failure to comply with conditions precedent to exercising statutory power of sale (Count II), declaratory judgment (Count III), approval of a Memorandum of *Lis Pendens* (Count IV), and injunctive relief (Count V). The plaintiff also filed an *ex parte* Motion for a temporary restraining order and application for a preliminary injunction. After giving notice and opportunity to be heard, the matter came before me for a two-party hearing on the preliminary injunction request on March 18, 2021. Based on the Amended Verified Complaint, the written submissions and oral arguments of counsel at the telephone hearing, and for the reasons that follow, I hereby **DENY** the request for a preliminary injunction and the request for approval of the Memorandum of *Lis Pendens*.

CC: R.S., M.D. 3/23/21  
M.B.

## **BACKGROUND**

On September 30, 2019, the plaintiff purchased a parcel of real estate known as 11 Mooring Circle, Plymouth, Massachusetts (“the property”) for \$204,000. The plaintiff obtained a mortgage from Conventus, LLC (“Conventus”), and that mortgage was assigned to 1Sharpe on the day of closing. The assignment was not recorded, however, until September 23, 2020, nearly a year later. In May 2020, the plaintiff reportedly tried to sell the property, but was unsuccessful due to a septic system failure. The plaintiff then installed a new system at a cost of \$21,000. The plaintiff did not pay the monthly mortgage for May, nor did it make any payments during the ensuing months. The plaintiff alleges that it had a plan to pay off the loan when it sold the property, however the property did not sell and the plaintiff made no payments on the mortgage.

On September 10, 2020, the plaintiff was sent a Notice of mortgagee’s sale of real estate, indicating a mortgage sale would be conducted by public auction on November 19, 2020. Thereafter the parties exchanged correspondence regarding the plaintiff’s plan to bring the loan current, however no payments of any kind were made. The foreclosure sale was held on November 19, 2020, and 1Sharpe accepted a bid from a third-party which reportedly exceeds the amount due on the mortgage. The plaintiff has now brought the instant action challenging the legality of the foreclosure sale, and requests a preliminary injunction maintaining the property’s status quo until completion of the litigation.

## **DISCUSSION**

In order to prevail on a Motion for Preliminary Injunction, the burden is on the moving party, here the plaintiff, to establish that: (1) success is likely on the merits; (2) irreparable harm will result from the denial of the injunction; and (3) the risk of irreparable harm to the moving party outweighs any similar risk of harm to the opposing party. To obtain preliminary relief, the

individual plaintiffs must prove a likelihood of success on the merits of the case and a balance of harm in their favor when considered in light of their likelihood of success. Packaging Indus. Group, Inc. v. Cheney, 380 Mass. 609, 616-617 (1980). It is well settled that “[a] preliminary injunction is an extraordinary remedy never awarded as of right.” Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 24 (2008). To the contrary, “the significant remedy of a preliminary injunction should not be granted unless the plaintiffs had made a clear showing of entitlement thereto.” Student No. 9 v. Board of Educ., 440 Mass. 752, 762 (2004). One is not required to wait until he is injured before applying for equitable relief, “but he is not entitled to seek [injunctive] relief unless the apprehended danger is so near as at least to be reasonably imminent.” Shaw v. Harding, 306 Mass. 441, 449 (1940). In ruling on a motion for preliminary injunction, the court is charged with balancing the “rights, interests and harms to each party to determine if the requested relief by way of preliminary injunction is legally appropriate and warranted.” See Tri-Nel Management, Inc. v. Board of Health of Barnstable, 433 Mass. 217 (2001).

Here the plaintiff argues that it has a reasonable likelihood of success on the merits of its claim that 1Sharpe conducted an illegal foreclosure sale on the property. Specifically, the plaintiff alleges that the public advertisement sent out on November 15, 2020 failed to identify the holder of the mortgage, that the September 10, 2020 notice identified the incorrect mortgage holder, and that the 21-day notice publication requirements of G.L. c. 244, §14 were violated. Moreover, the plaintiff argues that Conventus, not 1Sharpe, was acting as the true mortgage holder when at least some of the notices went out, and because of the failures to strictly comply with the statute, no entity was contractually authorized to exercise the statutory power of sale and to conduct the foreclosure on the property. The defendant, on the other hand, presents a number

of exhibits in its Opposition which strongly suggest that the foreclosure sale was conducted in compliance with the statutory requirements. First, statutory Notices of Sale were published on October 29, 2020, November 5, 2020 and November 12, 2020 in the Patriot Ledger in compliance with G.L. c. 244, §14. The defendant concedes that the auctioneer sent additional advertisements in an effort to attract more bidders, but convincingly argues that publication of those documents would not render the three proper Notices somehow legally insufficient. Second, the defendant points out that its Notice of mortgagee's sale of real estate is dated September 10, 2020, but postmarking confirms that the Notice was not actually mailed to the plaintiff until October 23, 2020, after the assignment from Conventus to 1 Sharpe was recorded. As a result, there appears to be no question that 1 Sharpe had appropriate authority to send notice and conduct the foreclosure sale. The defendants persuasively argue that there is no reasonable likelihood of success on the merits of the plaintiff's claims because those claims are based solely on mistakes the plaintiff made in understanding the mortgage document, the notice of sale publications and the notice of sale mailings sent to the plaintiff. For all of the aforesaid reasons, I decline to issue a preliminary injunction or approve the filing of a Memorandum of *Lis Pendens*.

### ORDER

Based upon the foregoing, the Plaintiffs' request for preliminary injunction is **DENIED**.  
The plaintiffs' request for approval of a Memorandum of *Lis Pendens* is **DENIED**.

March 22, 2021



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Daniel J. O'Shea  
Justice of the Superior Court