

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

06/01/2023 at 05:04:26 PM

By: Curtiyah Garter,
Deputy Clerk

1 **STEPHEN F. LOPEZ, ESQ. (SBN 125058)**
2 **STEPHEN F. LOPEZ ESQ. APC**
3 840 E. Parkridge Ave, Suite 102
4 Corona, CA 92879
5 Office: (714) 760-9753
6 Direct: (858) 682-9666
7 Facsimile: (714) 242-6944
8 Email: Steve@sflopesq.com

9 Attorneys for Plaintiff Renee Shizue Ramos, aka Renee Shizue Yamagishi

10 **SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA**

11 **RENE C. DAVISON COURTHOUSE**

12 RENEE SHIZUE RAMOS, AKA RENEE
13 SHIZUE YAMAGISHI,

14 Plaintiffs,

15 v.

16 WILMINGTON TRUST NATIONAL)
17 ASSOCIATION, SUCCESSOR TRUSTEE)
18 TO CITIBANK, N.A., AS TRUSTEE FOR)
19 MERRILL LYNCH MORTGAGE)
20 INVESTORS TRUST, MORTGAGE LOAN)
21 ASSET-BACKED CERTIFICATES, AND)
22 SERIES 2006-HES, a business entity form)
23 unknown; NATIONSTAR MORTGAGE)
24 LLC, dba MR. COOPER, a Texas Limited)
25 Liability Corporation; AZTEC)
26 FORECLOSURE COMPANY, INC., a)
27 California Corporation; BRECKENRIDGE)
28 PROPERTY FUND 2016, LLC, a Delaware)
Limited Liability Company; CHAMPERY)
REAL ESTATE 2015, LLC, a California)
Limited Liability Company; ALL PERSONS)
OR ENTITIES UNKNOWN CLAIMING (A))
ANY LEGAL OR EQUITABLE RIGHT,)
TITLE, ESTATE, LIEN, OR INTEREST IN)
PLAINTIFF'S REAL PROPERTY)

Case No.: 23CV029813

**MEMORANDUM OF POINTS AND
AUTHORITIES IN REPLY TO
OPPOSITION TO ORDER TO SHOW
CAUSE RE PRELIMINARY
INJUNCTION**

Judge: Frank Roesch
Dept: 17
Date Filed: 03/22/2023

Date: June 8, 2023
Time: 3:30 p.m.
Dept. 17

1 DESCRIBED IN THIS VERIFIED)
2 COMPLAINT ADVERSE TO PLAINTIFF'S)
3 TITLE, OR (B) ANY CLOUD ON)
4 PLAINTIFF'S TITLE TO THE REAL)
5 PROPERTY. THE CLAIMS OF EACH)
6 UNKNOWN DEFENDANT ARE WITHOUT)
7 ANY RIGHT, AND THESE DEFENDANTS)
8 HAVE NO RIGHT, TITLE, ESTATE, LIEN,)
9 OR INTEREST IN THE PROPERTY and)
10 DOES 1 through 25, inclusive,)
11 Defendants.)
12)
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)

11 **I.**
12
13 **INTRODUCTION**

14 Defendants' opposition to the Order to Show Cause is incorrect on both the facts and the
15 law. The Court should grant the requested preliminary injunction.
16

17 **II.**
18 **DEFENDANTS ARE WRONG ABOUT THE FACTS**

19 As previously set out in Plaintiff's declaration and her verified complaint, on September
20 12, 2019, more than 5 days before the date noticed for the foreclosure sale, Plaintiff tendered to
21 Wilmington, Nationstar and Aztec the amounts due on the loan. On September 12, 2019,
22 Defendants through their attorney, Amanda Hamilton, notified Plaintiff by email that her tender
23 was accepted by her clients, but an exact payoff amount was not provided. The email accepted
24 Plaintiff's offer of payment in full with a \$5,000 discount but provided no amount for the actual
25 redemption. This itself was a violation of *Civil Code* section 2943 which required Defendants to
26
27

1 provide a true and correct payoff and reinstatement statements in response to Plaintiff's request.

2 This also frustrated and prevented Plaintiff from exercising her right to reinstate or redeem the
3 loan pursuant to *Civil Code* section 2924c.

4 Further, as previously stated, On September 25, 2019, at approximately 7:46 am Plaintiff
5 tendered to Defendants Wilmington, Nationstar, and Aztec, all sums due on the loan for full
6 redemption in compliance with *Civil Code* sections 2903 and 2905. Defendants responded by
7 saying they were going to hold the sale despite the tender. At approximately 12:30 pm they held
8 a sale in violation of *Civil Code* section 2924c. The Property was purchased by Breckenridge
9 Property Fund LLC, who did so despite Plaintiff telling their agent at the sale that she had
10 redeemed. On August 17, 2021, Breckenridge quitclaimed its interest in the Property to
11 Champery Real Estate 2015, LLC. As set out below, these facts alone establish proper tender in
12 this case sufficient to stop the sale.
13
14

15 It is now claimed that Plaintiff could not pay the tender at the time the tender was made.
16 But this is not true. As previously stated, the loan Ms. Hamilton was notified of on September
17 25, 2019, at 7:46 am was approved. Regardless, as set out in the Supplemental Declaration of
18 Plaintiff submitted with this reply, on September 24, 2019, at 3:57 pm Plaintiff sent Ms.
19 Hamilton proof of another loan that was unquestionably "approved". Plaintiff could follow
20 through on her tender. The only reason the payment was not completed was the act of
21 Defendants in holding the sale despite Plaintiff's tender.
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III.

DEFENDANTS ARE WRONG ON THE LAW

Citing several cases that do not apply to the law of this case and the facts before the Court, Defendants claim that Plaintiff needs to prove she could actually pay the tender. While Plaintiff could do so, the general law referred to by Defendants does not apply to this case.

In the context of this case, “tender” does not mean actual payment of the reinstatement amount. A tender is an offer of performance. *Turner v. Seterus, Inc.*, (2018) 27 Cal.App.5th 516; *Civil Code*, section 1485. Subdivision (a)(1) of *Civil Code* section 2924c provides in relevant part:

Whenever all or a portion of the principal sum of any obligation secured by deed of trust ... has ... been declared due by reason of default in payment of interest or of any installment of principal ..., the trustor ... may pay to the beneficiary ... the entire amount due, at the time payment is tendered ... other than the portion of principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon, all proceedings theretofore had or instituted shall be dismissed or discontinued and the obligation and deed of trust ... shall be reinstated and shall be and remain in force and effect"

For purposes of *Civil Code* section 2924c tender has occurred when the borrower informs the foreclosing party that he or she would like to pay off the entire amount of the default. Actual submission of payment is not required. *Turner v. Seterus, Inc.*, supra, at 531-532. “This conclusion is bolstered by the legal maxim that “[n]o one can take advantage of his own wrong.” (*Civ. Code*, § 3517.)” *Id.* When, as alleged in the complaint, the only reason the plaintiff did not make an actual payment of the entire amount of the default was because of the acts of the lender or its agents, the lender cannot defeat the wrongful foreclosure cause of action by relying on its own wrongful actions. *Turner v. Seterus, Inc.*, supra at 532. In this case the holding of the sale despite the tender. Once the tender was made Defendants obligation was to not hold the sale.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


IV.

CONCLUSION

The facts set out a basis for the issuance of a preliminary injunction barring the eviction of Plaintiff from the Property.

Dated: June 1, 2023

STEPHEN F. LOPEZ ESQ. APC

By:  _____
Stephen F. Lopez, Attorneys for
Plaintiff, Renee Shizue Ramos, aka Renee
Shizue Yamagishi

1 **PROOF OF SERVICE**

2 I, the undersigned, declare that I am over the age of 18 years and not a party to the case; I
3 am employed in the County of Riverside, California, where the mailing occurs; and my business
4 address is 840 E. Parkridge Avenue, Suite 102 Corona, California 92879. I further declare that I
5 am readily familiar with the business' practice at my place of business for collection and
6 processing of correspondence for mailing with the United States Postal Service; and as
7 applicable that the correspondence shall be deposited with the United States Postal Service that
8 same day in the ordinary course of business.

9 On June 1, 2023, I served the following document(s):

10 MEMORANDUM OF POINTS AND AUTHORITIES IN REPLY TO OPPOSITION TO
11 ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION; SUPPLEMENTAL
12 DECLARATION OF RENEE RAMOS IN SUPPORT OF ORDER TO SHOW CAUSE RE
13 PRELIMINARY INJUNCTION

14 on the following:

15 Brandon Trout, Esq. 16 David Poitras, Esq. 17 Elaine Soong, Esq. 18 Meghan Turner, Esq. WEDGEWOOD 2015 Manhattan Beach Blvd., Ste. 100 Redondo Beach CA 90278 btrout@wedgewood-inc.com dpoitras@wedgewood-inc.com esoong@wedgewood-inc.com mtturner@wedgewood-inc.com	Attorneys for: Breckenridge Property Fund 2016, LLC and Champery Real Estate 2015, LLC
---	--



20 **BY EMAIL:** By transmitting a PDF version of this document by electronic mail.

21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct.

23 Executed on June 1, 2023

24 
25 VERONICA RAMIREZ