

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GUADALUPE L. GARCIA, JR., <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 1:00CV02445
)	
ANN VENEMAN, Secretary of)	Judge: James Robertson
Agriculture,)	
)	
Defendant.)	
_____)	

**DEFENDANT'S OPPOSITION TO PLAINTIFFS' EMERGENCY
MOTION FOR PRELIMINARY INJUNCTION**

The Garza Family's loss of their farm through foreclosure is a serious matter. Plaintiffs' Emergency Motion For Preliminary Injunction is not. Plaintiffs do not identify a single plaintiff who presently is threatened with foreclosure, imminent or otherwise. And since no plaintiff is facing adverse agency action, plaintiffs have no foreclosure claim, let alone one on which they are likely to prevail. Nor does anything plaintiffs have to say about the public's or defendant's interests further their cause. And in the absence of any threatened injury to plaintiffs, there is nothing against which to balance the substantial public interest in ensuring that government losses dues to defaulted farm loans are minimized and that potentially productive farm land is made available to capable producers.

1. Plaintiffs acknowledge that to establish their entitlement to a preliminary injunction they must demonstrate that they are facing imminent irreparable injury. See Memorandum of Points and Authorities in Support of Plaintiffs' Emergency Motion for Preliminary Injunction ("Pl. Mem.") at 6-7. According to plaintiffs, that injury is the potential loss of their farms due to foreclosure. Yet

despite attaching to their motion dozens of pages of exhibits, plaintiffs have not identified even a single member of their group who is facing an imminent foreclosure, nor have they provided a declaration from any such farmer, or even a foreclosure notice.¹

Nor does plaintiffs' resurrection of the Garza's foreclosure get them anywhere. See Pl. Mem. at 3-6. The Garza's property was foreclosed upon and sold almost two months ago. Thus, rather than seeking to secure a continuation of the Garza's status quo, which is the proper function of a preliminary injunction, plaintiffs seek nunc pro tunc relief that would recreate circumstances that ceased to exist long before the instant motion was filed.

2. In light of this Court's September 10, 2004 Order denying for the second time plaintiffs' motion for class certification, the only plaintiffs in this case are those persons identified as such in the caption of the complaint and as to whom the complaint alleges facts sufficient to establish this Court's subject matter jurisdiction. Yet plaintiffs' discussion of the likelihood of success criterion does not mention any plaintiff by name or discuss, even anonymously, the factual basis of any plaintiffs' claim of credit discrimination. See Pl. Mem. at 7-9. In these circumstances, plaintiffs have failed to demonstrate that there is any "likelihood that [they] will succeed on the merits," let alone a "substantial" likelihood of that happening. See Pl. Mem. at 6, citing Lee v. Christian Coalition of Am., 160 F. Supp.2d 14, 26 (D.D.C. 2001).

This conclusion is not undermined by plaintiffs' reference to various reports and statements

¹ Plaintiffs' Motion is schizophrenic, to say the least, on the issue of irreparable injury. As we note in the text, the Motion argues that a party's loss of his farm is irreparable, id. at 7, yet the Motion later asks the Court to order defendant to repurchase the Garza's former property and then convey it to the Garzas. Id. at 11. If plaintiffs truly believe the Court possesses the power to issue such an order they cannot simultaneously to argue that the potential loss of their farms would be "irreparable." But if plaintiffs truly believe that the loss of property at foreclosure is irreparable they have no business asking the Court to order the return of the Garza's farm.

in which discrimination problems at USDA were discussed and/or acknowledged. See Pl. Mem. at 7-9. Because this is not a class action, each plaintiff must prove that he was personally the victim of discrimination in order to prevail on his claim. None of the materials upon which plaintiffs rely conclude that USDA discriminated against every Hispanic farmer, let alone against the particular plaintiffs in this case in any of the events that actually are the subject of this litigation. To the contrary, those materials eviscerate any suggestion that plaintiffs' ethnicity is a reliable predictor of discrimination. For example, in the excerpt from former Secretary Glickman's 1997 congressional testimony on which plaintiffs rely, the former Secretary testified that "the overwhelming majority of [USDA] employees are committed to treating their co-workers and customers with dignity and respect. The institutional and personnel problems which continue to afflict the Department should not demean the majority of our committed and capable staff." See Pl. Mem., Exhibit 8 at 95.²

3. Plaintiffs' public interest argument is little more than an allegation of discrimination. Plaintiffs assert that because, in order to avoid litigating a motion for a preliminary injunction, defendant entered into a stipulation barring certain foreclosure and debt collection activities at the outset of a case brought by white farmers who believed they were entitled to the benefits available to African American farmers under the Pigford Consent Decree, it would be discriminatory, and therefore contrary to the public interest, for an injunction imposing similar limitations not to be entered in this case. Pl. Mem. at 9-11. But unlike the plaintiffs in Green, plaintiffs in this case did not move for a preliminary injunction at the beginning of the case. And as we have noted before,

² Likewise, the Civil Rights Action Team ("CRAT"), whose work plaintiffs rely on, see Pl. Mem. at 9, issued a report in 1997 that found no "consistent picture of disparity" in loan approval or loan processing rates between white and minority borrowers during the several-year period the CRAT studied. See CRAT Report at 21.

the question of injunctive relief is premature inasmuch as there is no claim that any plaintiff presently is facing any imminent loan servicing action. In the event any plaintiff finds himself in that position in the future he is free to seek expedited relief under Fed. R. Civ. P. 65.

4. According to plaintiffs, in order to determine whether an injunction would injure defendant it is necessary to "balance the equities[.]" Pl. Mem. at 11, citing Lee, 160 F. Supp.2d at 34. Plaintiffs' "equity" consists of claims of injury and discrimination that are simply that: bare allegations devoid of any factual support whatsoever. See Pl. Mem. at 7-9. Defendant, on the other hand, has significant responsibilities to ensure that public funds are protected and that productive land is farmed by persons who have not already failed at that enterprise. An injunction that would interfere with defendant's ability to discharge those responsibilities would significantly undermine her ability to discharge her obligations under the farm credit program. In these circumstances the balance clearly favors defendant; "something, even a modest . . . interest, outweighs nothing every time." NARFE v. Horner, 879 F.2d 873, 879 (D.C. Cir. 1989).

CONCLUSION

For all these reasons plaintiffs' emergency motion for a preliminary injunction should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on Nov. 5, 2004, Defendant's Opposition to Plaintiffs' Emergency Motion for Preliminary Injunction was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon plaintiffs' counsel as follows:

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