

After U.S. Bank scheduled a sheriff's sale of the property, Clark filed for bankruptcy in the United States Bankruptcy Court for the Eastern District of Pennsylvania, automatically staying the sheriff's sale. U.S. Bank obtained relief from the bankruptcy stay in order to proceed with its sheriff's sale on March 31, 2004.

Clark filed a motion for preliminary injunction with this Court on May 28, 2004, seeking to prevent the sheriff's sale. After an evidentiary hearing at which Clark testified and presented documents evidencing his claim, the Court concluded that it was unlikely that Clark would succeed on the merits and denied the motion. Clark v. U.S. Bank Nat'l Ass'n, No. 03-5452, 2004 U.S. Dist. LEXIS 11264 (E.D. Pa. Jun. 18, 2004) (hereinafter "Clark I").

In August 2004, Clark filed a second petition in bankruptcy in the United States Bankruptcy Court for the Eastern District of Pennsylvania. The Bankruptcy Court granted U.S. Bank relief from the Automatic Stay on August 26, 2004. The Bankruptcy Court's order provided that "[n]o future filing by this Debtor shall stay Movant's state court foreclosure, or any Sheriff's Sale scheduled therein, or any ensuing action for possession of the Premises." (Defs.' Resp. Opp. Pl.'s Emer. Mot. Inj. Pending Appeal at Ex. A).

A non-jury trial was held in this case on September 20, 2004, at which Clark did not personally appear. His counsel incorporated Clark's testimony from the preliminary injunction hearing, presented four additional documents and no additional testimony, and then rested his case. In a Memorandum and Order of October 13, 2004, I entered judgment in favor of Defendants on all counts of the complaint. Clark v. U.S. Bank Nat'l Ass'n, No. 03-5452, 2004 U.S. Dist. LEXIS 20657 (E.D. Pa. Oct. 13, 2004) (hereinafter "Clark II"). Clark filed his Notice

of Appeal to the United States Court of Appeals of the Third Circuit along with the instant motion on November 4, 2004.

II. DISCUSSION

The standard for obtaining an injunction pending appeal is identical to the standard for granting a preliminary injunction. See Walker v. O'Bannon, 487 F. Supp. 1151, 1161 (W.D. Pa. 1980). As a result, the moving party must demonstrate to the court that the following four factors weigh in its favor: “(1) the likelihood that the moving party will succeed on the merits; (2) the extent to which the moving party will suffer irreparable harm without injunctive relief; (3) the extent to which the nonmoving party will suffer irreparable harm if the injunction is issued; and (4) the public interest.” Shire U.S., Inc. v. Birr Labs., Inc. 329 F.3d 348, 352 (3d Cir. 2003). Whether or not to grant the injunction is within the sound discretion of the court. See id.

Clark raises two possible grounds of success in his appeal. First he argues that this Court may have erred when “it held that the disclosure requirements of the Truth-In-Lending Act (“TILA”) are satisfied by information contained in a HUD-1 form.” The record does not support such a claim.¹ In addition to the notation of the cost of hazard insurance on the HUD-1 settlement form, Clark received and acknowledged a TILA Disclosure Statement providing, “you may obtain property insurance from anyone you want that is acceptable to Ameriquest Mortgage Company.” Clark I, 2004 U.S. Dist. LEXIS 11264 at *13. From the information adduced in the preliminary injunction hearing, this Court found that Clark received a clear and specific

¹ For a full discussion of the requirements of the Truth-In-Lending Act, see Clark I, 2004 U.S. Dist. LEXIS 11264 at *11-15.

statement in writing disclosing both the cost of insurance and the fact that Clark had the right to select his own insurer in compliance with 15 U.S.C. § 1605(c); 12 C.F.R. § 226.4(d)(2). Id. at *11-15. These findings were then supplemented at trial by the testimony of Jennifer McGovern, Senior Loan Coordinator at Ameriquest, where the documents signed by Clark were themselves offered into evidence. Clark II, 2004 U.S. Dist. LEXIS 20657 at *3-4. There was, therefore, ample evidence in the record to support the conclusion that Ameriquest made the required disclosures to Clark and was in compliance with TILA. As a result, judgment was granted in Defendants' favor.

Second, Clark argues that this Court's decision that the Anti-Injunction Act prevents me from enforcing a debtor's request to rescind a loan under TILA is likely to be reversed by the Court of Appeals. The argument is without merit. This Court has found, after a trial on the merits, that Defendants are in full compliance with TILA. There are, therefore, no grounds for recession of the loan and no grounds for an issuance of an injunction to enforce a recession. As a result, there is no need to consider the application of the Anti-Injunction Act to this case any further.

As Clark has, again, failed to establish a likelihood of success on the merits of his appeal, there is no basis to alter or modify the previous rulings of June 18, 2004, and October 13, 2004, and issue an injunction.

An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MAURICE L. CLARK,	:	
	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 03-5452
	:	
U.S. BANK NATIONAL ASSOCIATION	:	
and AMERIQUEST MORTGAGE	:	
COMPANY,	:	
	:	
Defendants.	:	
	:	

ORDER

AND NOW, this 16th day of November, 2004, upon consideration of Plaintiff's Emergency Motion for Injunction Pending Appeal (Doc. No. 33), and the Defendants' Response in Opposition thereto, it is hereby **ORDERED** that Motion is **DENIED**.

BY THE COURT

<u>/s/ Robert F. Kelly</u>	
Robert F. Kelly,	Sr. J.