

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY  
CIVIL ACTION

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REGIONS BANK,	:	
	:	
Plaintiff,	:	
	:	CASE NO.: 10-000191-CI
vs	:	
	:	DIVISION: 11
	:	
PAULA ROBERTS, et al.,	:	
	:	
Defendants.	:	
	:	

PROCEEDINGS:	Defendant's Emergency Motion for Temporary Injunction
BEFORE THE HON. JUDGE:	Pamela A.M. Campbell
DATE:	March 1, 2012
PLACE:	Pinellas County Courthouse St. Petersburg, Florida
TIME:	4:00 p.m. to 4:33 p.m.
REPORTED BY:	DALE DeFRANCO, RPR

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APPEARANCES:

MEGHAN A. KENEFIC, ESQUIRE  
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Telephonically on behalf of Plaintiff

MATTHEW D. WEIDNER, ESQUIRE  
Matthew D. Weidner, P.A.  
1229 Central Avenue  
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(727) 894-3159

Appeared on behalf of Defendant

P R O C E E D I N G S

1  
2 THE COURT: We're here on Case 10-000191  
3 CI-11, Regions Bank, here represented by Miss  
4 Kenefic by phone, versus Paula Roberts, here  
5 represented by Matthew Weidner who is here in  
6 person, and we are here for the Defendant's  
7 Emergency Motion for a Temporary Injunction.

8 Mr. Weidner.

9 MR. WEIDNER: Please the Court. Thank you  
10 for hearing us on an emergency basis. I'm here on  
11 behalf of my client who owns property here in  
12 Pinellas County. The cornerstones of this nation  
13 have been the respect of private property rights.  
14 And no right in this nation has been more important  
15 historically than perhaps the First Amendment,  
16 other than the right that someone is secure and  
17 safe in their home. That right is being  
18 egregiously violated all across the country and  
19 especially here in Pinellas County because we have  
20 unidentified, unlicensed, unauthorized parties that  
21 are forcibly gaining entry into the private party  
22 of voters and citizens within this county.

23 What I'm seeking today is a simple  
24 statement out of court and the statement is just  
25 this; the statement is that a party can be safe and

1 secure in their home and they don't have to worry  
2 about an unidentified party coming and kicking down  
3 the door.

4 Now, in this particular circumstance this  
5 will be the second time this has happened. This  
6 happened back at the beginning of the year and we  
7 came before the Court and we were assured that it  
8 wouldn't happen again. It just happened again.

9 Now this case is unique because we have a  
10 gentleman here in the courtroom. He just happens  
11 to have been a 19-year veteran of the St.  
12 Petersburg Police Department, a former law  
13 enforcement agent who says that he witnessed what  
14 happened initially, and that was his neighbor's  
15 home had been broken into, the locks have been  
16 changed. He didn't witness any other damage, but  
17 law enforcement had to come out and investigate  
18 when that occurrence occurred.

19 The point to be made is this. My client's  
20 property is secured; it has locks on the door, it  
21 has a neighbor, a very qualified neighbor nearby to  
22 secure the property and make sure that things are  
23 okay, and if there's a problem he can get ahold of  
24 his neighbor instantly. It should also be noted  
25 when this most recent event occurred -- I'm showing

1 the Court what I would like to mark as Exhibit A --  
2 it's the notice dated 2/24/12. This is a notice  
3 that was attached to my client's property. You  
4 will note there that notice indicates if you don't  
5 contact someone, we're going to bust down the door  
6 and change the locks. But you will note there's no  
7 phone number on there. There's not even any  
8 company that is properly identified. It just says,  
9 "Call your servicer," whoever that is, but you'll  
10 note there's no phone number a property owner can  
11 call. All they know is that someone is going to  
12 come and break down your door.

13 And, Your Honor, I would respectfully  
14 assert to the Court that this is utterly improper  
15 that we're allowing these unidentified agents to go  
16 and kick down the doors of people's property. I  
17 have several cases pending across the state. In  
18 fact, there's a high profile one in Orlando in the  
19 Middle District where it happens again and again,  
20 even after we have a case pending in Federal  
21 District Court.

22 I have cases across the state where agents  
23 that we cannot identify and that the plaintiff will  
24 not take credit for, are breaking into people's  
25 property when the houses are not even in

1 foreclosure. Let me make that point clear.  
2 Because of this practice that is occurring across  
3 the state, agents are kicking down people's doors,  
4 they're doing it when properties are not even in  
5 foreclosure.

6 Now, I want to make a second point. And  
7 that is, it's very bad what they're doing it when a  
8 property is not in foreclosure. It's arguably  
9 worse when it's occurring in foreclosure because  
10 then arguably you are doing it under cover of law,  
11 under cover of court process. Because what happens  
12 is when they kick down the door and give law  
13 enforcement his call, they explain to law  
14 enforcement that they're in foreclosure and we're  
15 authorized to do this, and maybe they wave around a  
16 court paper. It's that where I'll take the  
17 argument that it's under cover of court process  
18 because law enforcement thinks, well, somehow this  
19 is authorized. And unfortunately the law  
20 enforcement, strained as they are, don't recognize  
21 that this is absolutely not under any court  
22 process. And yet they're getting away with it.

23 So all I seek today -- and I have a copy  
24 of the very simple order injunction. It simply  
25 asserts that the break-in occurred once before, we

1           communicated and tried to get this to stop, it  
2           wouldn't stop, we're here before the Court again  
3           based on the second break-in, and we're simply  
4           asserting a very proper basis for the Court to say  
5           you don't have a legal basis to come into a  
6           property without legal process.

7                         Now, I want to assert the grounds for  
8           temporary injunction, it's a very clear and simple  
9           standard, and assert why it's appropriate in this  
10          case. In fact, I'll cite a case that was presented  
11          from my colleague on the other side of Stephan  
12          Company versus Frank Ferola, F-e-r-o-l-a. It's a  
13          Fourth District case in 2003. It correctly asserts  
14          the standard for temporary injunction which is what  
15          we're seeking here, and that is, Number One,  
16          irreparable harm unless the status quo is  
17          maintained. Irreparable harm, Your Honor, is the  
18          breaking down the door and she could be damaged by  
19          her home being broken into.

20                        And Number Two, that we have no adequate  
21          remedy of law, we tried, so we're here in the court  
22          of equity asking for this injunction. And, Number  
23          Three, that it has a substantial likelihood of  
24          success on the merits. There is no adequate legal  
25          authority for them to be doing what they're doing.

1 And, Four, that the temporary injunction will serve  
2 the public interest.

3 Your Honor it's a public safety issue.  
4 I've taken depositions of the folks that are going  
5 out and doing this. The agents of the banks that  
6 are doing this say that they're in fear because  
7 they are having guns pulled on them. And it's  
8 setting up a very dangerous condition all across  
9 this country and all across the state.

10 Simply, I'd ask the Court to say, if you  
11 want to come onto the property, come before the  
12 court, make your case and you can go onto the  
13 property. But we can't have unidentified people  
14 doing this without any authority of court.

15 Reserving to responses of my colleague,  
16 Your Honor, I'll rest.

17 THE COURT: Miss Kenefic, have you seen the  
18 notice that was --

19 MS. KENEFIC: I have, Your Honor.

20 THE COURT: All right. Go ahead.

21 MS. KENEFIC: Your Honor, respectfully to  
22 Mr. Weidner, there are a couple of  
23 misrepresentations of fact that have not only been  
24 made in motions, that Mr. Weidner has made in open  
25 court. The situation that occurred on February



1 24th, 2012 which is the only situation that we  
2 should be going forward on, on a temporary  
3 injunction basis is based only on future harm to be  
4 committed, not on prior parts. So the occurrence  
5 that occurred on February 24th, 2012, there was no  
6 break-in of the property. There is no kicking in  
7 of the doors as Mr. Weidner has so colorfully  
8 elaborated to the Court.

9 What did occur was there was an external  
10 field inspection of the property. There was no  
11 going into the property, there was no entering the  
12 premises. Upon that external field inspection it  
13 was determined that the subject property was  
14 vacant. Based on that field inspection there and  
15 the fact that or the assertion that it was vacant  
16 and according to the terms of the subject mortgage,  
17 specifically paragraph seven, which specifically  
18 states, and I quote: Lender or its agent may make  
19 reasonable entry upon inspection of the property.  
20 If it has reasonable cause the lender may inspect  
21 the interior of the improvement of the property.  
22 Lender shall give borrower notice at the time of  
23 the required second interior inspection testifying  
24 that it should meet reasonable cost.

25 Upon the property being determined vacant, a

1 notice was left on the exterior gate next to the  
2 front door of the subject property. Again, there  
3 was no breaking in of the subject property, there  
4 was no entering of the property, and the notice  
5 clearly stated that if the property was not vacant  
6 then contact your servicer and then we would not be  
7 entering the property.

8 The notice specifically states, and I know  
9 you have a copy in front of you, Your Honor, the  
10 notice states that the mortgagor intends to protect  
11 the property from waste and deterioration, and that  
12 the property may have its locks replaced or  
13 plumbing system winterized within several days.

14 Your Honor, where the injunction is  
15 preventative in nature it cannot be based on prior  
16 harm.

17 MR. WEIDNER: In this case -- sorry.

18 THE COURT: Go ahead, please, Miss Kenefic.

19 MS. KENEFIC: Again, as I pointed out to the  
20 Court, not only has Mr. Weidner represented what  
21 occurred on February 24th, being that there was no  
22 peeking in the door, there was no entering into the  
23 property, he also based his motion improperly on an  
24 alleged occurrence that happened in the past and an  
25 temporary injunction cannot be based upon prior bad

1 will, prior harm. It can only be based on a harm  
2 that is perceived to occur in the future.

3 Mr. Weidner pointed out, I've had my  
4 assistant forward three particular cases on the  
5 issue of, the issue of an injunction. And all  
6 three cases it is clear that in seeking an  
7 injunction, which is an extraordinary remedy that  
8 should be granted sparingly, that the complaint  
9 should be based on a future harm that is likely to  
10 continue and that the complaint must allege  
11 specific facts showing irreparable harm.

12 Mr. Weidner's claim is completely void of  
13 any specific facts that winterizing or preserving  
14 this particular property would show irreparable  
15 harm to this particular Defendant, i.e., or  
16 specifically that this property is not vacant, that  
17 the Defendant resides in the property, that the  
18 property is full of personal property. The  
19 complaint is completely void of any specific facts  
20 of irreparable harm.

21 And based on the actual Florida Supreme  
22 Court decision, which is a 1913 decision,  
23 specifically on page 7 from Justice Taylor, in this  
24 particular case the issue of the temporary  
25 injunction was stated to be erroneously entered and

1           improperly entered and granted because the original  
2           bill upon which it was predicated, the complaint is  
3           to a trespass that already had been accomplished  
4           when the bill was filed and that there was no  
5           specific facts in this particular claim that there  
6           was irreparable harm from the injury.

7                         Similarly, Your Honor, the case, I believe  
8           that it's the Quantum Condominium Association  
9           versus Pomerance (phonetic), once again a temporary  
10          injunction was ruled and granted because, once  
11          again, the claim was based on a past harm and that  
12          the claim was completely void of specific facts  
13          showing irreparable harm.

14                        Based upon that, Your Honor, the Plaintiff  
15          would ask that the Court deny the Defendant's  
16          Motion for Temporary Injunction. The Plaintiff is  
17          well aware of the case law and well aware it's not  
18          to enter into a property that is inhabited by a  
19          particular owner. What it did seek to preserve is  
20          its right to preserve the collateral of the money  
21          that is owed.

22                        In this case, as I stated before, the  
23          particular reason their agent went out and  
24          basically did a field inspection and upon that  
25          field inspection determined that the property was

1 vacant; i.e., abandon, and in that case they left a  
2 note for the owner and left reasonable notice for  
3 this owner to contact their servicer and tell them  
4 that it was not vacant. That did not occur and as  
5 I said before, Your Honor, there has been no  
6 break-in in this particular case on February 24,  
7 2012 there has been absolutely no break-in. So  
8 therefore we'd ask the Court to deny the temporary  
9 injunction.

10 THE COURT: Thank you. Miss Kenefic, what's  
11 the temperature out today?

12 MS. KENEFIC: I believe it's 80.

13 THE COURT: And it's been hot like this for  
14 the last, since at least the 24th, hasn't it? It  
15 has been at my house which is close by in the area.  
16 Anyway, what's really disturbing to me is that the  
17 notice says "the plumbing system winterized." I  
18 mean in Florida when it's 80 degrees this  
19 particular year and February, the notice just flies  
20 in the face of reason.

21 MS. KENEFIC: Your Honor, I don't work for  
22 the particular preservation company and I don't  
23 know if the word "winterize" means -- I don't know  
24 what that means particularly. So I don't know if  
25 that's the term they use if they're just checking

1 the plumbing -- I don't know what that means. I  
2 don't know it it's just a standard notice that they  
3 placed on the particular property, but I would  
4 point out to Your Honor that the notice was not  
5 inside the property. It was placed on the outside  
6 gate, external gate next to the front door of the  
7 property, and it was not inside the property.

8 THE COURT: The notice is problematic. Mr.  
9 Weidner, how would you respond?

10 MR. WEIDNER: Please the Court, Your Honor.  
11 The two points that I would like questioned is it  
12 was asserted I made misrepresentations to the  
13 Court. Let me make clear what I think my motions  
14 expressly do. There were absolutely interior  
15 break-ins. That was predicated in the first motion  
16 and there is a police report that is attached where  
17 there absolutely were interior break-ins.

18 The second representation to the Court is  
19 that the harm that I'm trying to prevent is the  
20 future harm that is clearly articulated in the  
21 notice that they presented. So if my colleague  
22 would kindly represent to the Court if I've made  
23 any other misrepresentation I would like the record  
24 corrected. But I think my motions are expressly  
25 clear, number one, there were absolutely interior

1 break-ins by the agents of the Plaintiff; number  
2 two, what I'm seeking to prevent is the actions  
3 which they assert that are going to be in the  
4 future which is break into my client's property.  
5 They're not permitted.

6 I have also provided to the Court at least  
7 six cases; some from Florida. We have one First  
8 District Court of Appeal case, but then I have  
9 cases from all across the country where precisely  
10 the theory that my colleague is asserting has been  
11 repudiated by the courts repeatedly, and that is  
12 even if they point to a provision in the contract,  
13 and this is a Florida case, Mid State Investment  
14 versus Ostein, terms of the contract which are  
15 against public policy will not be enforced by  
16 courts. This is expressly this public policy. We  
17 respectfully request the Court to issue an  
18 injunction.

19 MS. KENEFIC: Your Honor, if I may respond.  
20 Plaintiff is well aware of the case law as I stated  
21 before. Plaintiff has no problem in seeking a  
22 court order to enter the property should the Court  
23 find and the Plaintiff find that the property is  
24 vacant. We do not believe that the temporary  
25 injunction is necessary for that.

1 THE COURT: Okay, well, I'm going to grant  
2 the temporary injunction. Temporary injunction  
3 finding as follows. And Miss Kenefic, have you  
4 seen the proposed order from Mr. Weidner?

5 MS. KENEFIC: I have not, Your Honor, and I  
6 do object to any mention in the particular order of  
7 any acts that happened in the past. As I stated  
8 before, a temporary injunction is only for that  
9 future perceived harm, and therefore the order that  
10 I saw in the past of Mr. Weidner's and that we've  
11 gone back and forth on, he continue to puts in it a  
12 day about January 2011 and I object to that being  
13 in the order, Your Honor.

14 THE COURT: What would be the basis of that,  
15 because to me it goes on the credibility of the  
16 motion in the first place as to why would they even  
17 be fearful. Because if it's just notice on the  
18 outside of the door, that would be one thing. But  
19 in the motion it says that counsel has agreed this  
20 wasn't really going to happen in the future and  
21 here it came. So to make the motion credible you  
22 need that so it gives credence to the fact that  
23 even though there had been an agreement this  
24 wouldn't happen, here it is.

25 MS. KENEFIC: If I may point out, there was



1 no break-in February 24, 2012. There was no  
2 break-in at all on February 24, 2012.

3 THE COURT: Just the notice itself --

4 MS. KENEFIC: The notice states that there  
5 may be, that property may be have the locks  
6 replaced or plumbing system winterized, Your Honor.  
7 It does have the word "may" in there.

8 THE COURT: I think that's a pretty serious  
9 threat and to say that you are going to have  
10 somebody's house winterized when it's 80  
11 degrees outside, it's not credible. So in the  
12 order for temporary injunction that I'm granting I  
13 will permit the language because I think that goes  
14 to the creditability of the motion in the first  
15 place.

16 The pleadings filed by the Defendant  
17 assert that on or about January 6th, 2011 agents  
18 acting on behalf of the Plaintiff -- and this is  
19 the pleadings filed -- broke into the property that  
20 is subject to this litigation without lawful order  
21 of this Court and without any clear legal authority  
22 to enter the home of the Defendant. That's what  
23 the pleading says and I'll allow that in.

24 The Defendant next asserts a notice was  
25 attached to the subject property on or about this

1 day, February 27 -- I think it should say  
2 February 24, 2012 -- which states the property may  
3 have its locks replaced and/or it's plumbing system  
4 winterized within the next several days, attached  
5 as Exhibit A. The Court believes that no party not  
6 specifically authorized by the owner of residential  
7 property should be permitted to forcibly gain  
8 access to a home without court order, exigent  
9 circumstances or clear legal authority. I agree  
10 with that.

11 The Defendant is seeking an injunction to  
12 prevent the unauthorized entry into residence  
13 property that is the subject of the suit. And this  
14 Court believes there is a substantial likelihood  
15 that the Defendant would prevail on the merits of  
16 the injunction. And I'll leave that. There exists  
17 a substantial threat of irreparable injury to the  
18 Defendant if her home was permitted to be broken  
19 into. That that threat of harm mentioned above  
20 outweighs any possible harm that this injunction  
21 may cause Plaintiff. That granting this injunction  
22 would not serve the public interest.

23 Number Two in the proposed paragraph isn't  
24 really appropriate anymore because we are having a  
25 hearing here today. The Court therefore grants the

1 injunction which prevents Plaintiff or its agents  
2 from changing the lock, winterizing the plumbing  
3 system during the month of February where it's 80  
4 degrees this year, and entering into the  
5 residential property of the Defendant threatening  
6 to change the lock, winterize the property or  
7 threaten to enter the residential property of the  
8 Defendant, making any attempts to gain access to  
9 the interior of the property by trying door knobs,  
10 attempting to open window or do anything else with  
11 furtherance of attempts to enter into the property.

12 Therefore the Court grants an injunction  
13 which shall be effective until a future stipulation  
14 by the parties or further court order. Any party  
15 violating this injunction may be subject to civil  
16 or indirect criminal contempt proceedings which  
17 include the imposition of a fine or imprisonment,  
18 and also may be charged with a crime punishable by  
19 a fine, jail, or both, as provided by Florida  
20 Statutes. The Court retains jurisdiction to enforce  
21 the terms of this order.

22 And I'll be glad to sign that order. Miss  
23 Kenefic, in my private practice I certainly was  
24 around sufficient because I had, part of my  
25 practice was guardianship and probate. So people

1 died and the property was vacant and they seriously  
2 had problems. But how we did that was we came to  
3 court and showed what the problems were with  
4 pictures and let us go in. It was general a  
5 homeowners association or somebody that was  
6 contacting my firm to help them get this vacant  
7 property so there was legal access for somebody to  
8 go in.

9 I don't see any of those kind of issues  
10 here. You're telling me that some agent went out  
11 for a field inspection, I don't know who the agent  
12 is, but they're going out to winterize the  
13 property, which to me is totally not credible given  
14 the current circumstances of our climate in Florida  
15 at this particular juncture.

16 So I've heard nothing from your client. I  
17 realize this is an emergency hearing on an  
18 emergency basis. Miss Kenefic, if there was some  
19 certain fact or a witness, that we had in  
20 evidentiary hearing that you wanted to bring to my  
21 attention and the horrific condition of the house  
22 and it really demonstrated some kind of waste for  
23 the lender, I'd be glad to hear all that.

24 So if there are those facts that you think  
25 are necessary, please set another evidentiary

1 hearing and I'll hear from both sides. But on this  
2 emergency basis for this temporary injunction, the  
3 temporary injunction seems very appropriate to me  
4 from a public policy standpoint.

5 Unfortunately this is the third one I've  
6 heard this week on those kind of notices. And I  
7 don't know which lenders or which servicers or who  
8 actually is doing it. I haven't had the hearings  
9 on the other two, but from a general statement that  
10 this is the kind of action and context that is  
11 going on, I think it's deplorable actually. And  
12 hopefully this is an isolated incident.

13 And certainly, Miss Kenefic, on any of  
14 your cases or any of the other plaintiffs, if they  
15 saw there was really deterioration in the home and  
16 they detected some kind of waste going on, I'm  
17 always open to hear from that as well. But just  
18 blanket notices to come in and winterize the home  
19 is totally unacceptable with our climate being  
20 80 degrees.

21 MS. KENEFIC: Your Honor, I just want to make  
22 the record clear only to insure my that client is  
23 in complete compliance with your order. As far as  
24 an external field inspection --

25 THE COURT: They can drive by and look. I

1 mean, it's a public street I would imagine. I  
2 don't imagine this is some remote area. I don't  
3 thing there are anymore remote areas in Pinellas  
4 County. You can certainly drive by and if you saw  
5 that the roof looks like it's leaking or something  
6 like that -- you can even do those via the internet  
7 actually. I think you can see my roof over the  
8 internet, which causes some alarm. So there are  
9 all kinds of things that can be done, but posting  
10 notices just to winterize somebody's property, that  
11 is what just gets them in trouble.

12 MR. WEIDNER: And just so the record is  
13 clear, Your Honor; Miss Kenefic, this is the order  
14 version that I did email to you. I wanted to make  
15 sure you knew that I had provided this to you and  
16 sought your feedback on it. I knew you objected to  
17 that first paragraph, but this was the order you  
18 had received.

19 THE COURT: But I've modified it some mainly  
20 because we are having a hearing even though it's a  
21 non-evidentiary hearing, if someone wants to bring  
22 it back for another evidentiary hearing, that's  
23 fine. But on a temporary basis based on the  
24 information I have I think this is appropriate.

25 MS. KENEFIC: Okay. Thank you. I appreciate

1 your time.

2 THE COURT: Anything else?

3 MS. KENEFIC: No, Your Honor. I appreciate  
4 your time.

5 THE COURT: Okay, thank you. Bye-bye.

6 MR. WEIDNER: Okay. Can you --

7 THE COURT: Do you want to retype this or --

8 MR. WEIDNER: Yeah, I'll retype it and email  
9 it to Theresa.

10 THE COURT: Okay.

11

12 \* \* \* \* \*

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14 (The hearing concluded at 4:33 p.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA  
COUNTY OF PINELLAS

I, DALE DeFRANCO, Registered Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true record of the testimony and proceedings.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated: 03/22/2012.

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Dale DeFranco, RPR