

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

PHILIP C. BELLFY, *et al.*,

Plaintiffs,

v.

KEITH CREAGH,

Defendant.

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CASE NO. 1:15-CV-282

HON. ROBERT J. JONKER

**ORDER**

This matter is before the Court on Plaintiffs' *ex parte* Motion for Temporary Restraining Order (docket # 2), filed today. Plaintiffs seek to "enjoin Defendant, or other State of Michigan officers, employees, agencies, subdivisions, successors, or assigns" from approving a proposed sale of State land in the Upper Peninsula. (docket # 2.) Plaintiffs contend that the sale would impair their rights under the 1836 Treaty of Washington and in a 2007 Consent Decree reaffirming those rights. The Consent Decree is the subject of another case in this District, *United States of America v. State of Michigan, et al.*, No. 2:73-CV-26 (W.D. Mich. November 2, 2007) (consent decree, docket # 1799), currently assigned to Chief Judge Paul Maloney. The Consent Decree not only addresses substantive rights of the parties, but also describes detailed alternative dispute resolution procedures. (docket # 1799, pp. 62-67.) The nature of the claim Plaintiffs are attempting to assert *pro se* appear to touch on both procedural and substantive provisions of the Consent Decree.

The *ex parte* Motion for Temporary Restraining Order does not satisfy the procedural requirements of FED. R. CIV. P. 65(b)(1). Under Rule 65(b)(1), the Court may not issue a temporary restraining order without written or oral notice to the adverse party or its attorney unless specific

facts in an affidavit or verified complaint clearly show that irreparable injury will result before the adverse party can be heard in opposition and the moving party provides written certification of any efforts made to give notice and why notice should not be required. The motion papers do not meet this burden. The papers include no affidavit, declaration, or verified complaint. The papers do not certify any efforts made to give notice to the adverse parties, and the papers do not provide any reason why such notice should not be required. FED. R. CIV. P. 65(b)(1). Therefore, the motion is barred on procedural grounds. Plaintiffs are free, of course, to file a new, procedurally proper motion for a temporary restraining order or other injunctive relief.

It is this Court's normal practice to refer pro se litigation to the Magistrate Judge for handling of all matters under 28 U.S.C. § 636 and W.D. Mich. LCivR72, and the Court follows this customary practice here. The Court also requests that the Magistrate Judge assess whether the case should be reassigned to Chief Judge Maloney as the Judicial Officer presiding over the Consent Decree case.

**ACCORDINGLY, IT IS ORDERED:**

1. Plaintiffs' Motion for Temporary Restraining Order (docket # 2) is **DENIED WITHOUT PREJUDICE**.
2. Under 28 U.S.C. § 636 and W.D. Mich. LCivR 72, this case is referred to Magistrate Judge Hugh W. Brenneman, U.S. District Court, 582 Ford Federal Building, 110 Michigan, N.W., Grand Rapids, Michigan, for handling of all matters under 28 U.S.C. § 636(a) and § 636(b)(1)(A); and for submission of recommendations on dispositive motions under § 636(b)(1)(B).
3. The Court requests that the Magistrate Judge assess whether the case should be reassigned to Chief Judge Maloney as the Judicial Officer presiding over *United*

*States of America v. State of Michigan, et al.*, No. 2:73-CV-26 (W.D. Mich. filed  
September 28, 1984).

Dated: March 17, 2015

/s/ Robert J. Jonker  
ROBERT J. JONKER  
UNITED STATES DISTRICT JUDGE