

# **EXHIBIT 5**

2013 WL 12109437

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United States District Court,  
W.D. Michigan, Southern Division.

West Michigan Family Homes LLC, Plaintiff,  
v.

United States Department of  
Agriculture, et al., Defendants.

File No. 1:13-cv-1277

|  
Signed 11/26/2013

#### Attorneys and Law Firms

Kelly M. Kammer, Steven A. Wright, Steven A. Wright PC,  
Shelby Township, MI, for Plaintiff.

Ryan D. Cobb, U.S. Attorney, Grand Rapids, MI, for  
Defendants.

#### ORDER

ROBERT HOLMES BELL, UNITED STATES DISTRICT  
JUDGE

\*1 This matter is before the Court on Plaintiff's *ex parte* "emergency" motion for temporary restraining order and preliminary injunction (Dkt. No. 3). The Court applies the same standard to a motion for a temporary restraining order (TRO) as to a motion for a preliminary injunction. *Summit County Democratic Cent. & Executive Comm. v. Blackwell*, 388 F.3d 547, 550 (6th Cir. 2004). Those factors are: (1) whether the movant has a strong likelihood of success on the merits, (2) whether the movant would suffer irreparable

injury absent a TRO, (3) whether granting the TRO would cause substantial harm to others, and (4) whether the public interest would be served by granting the TRO. *Ne. Ohio Coal. for Homeless & Serv. Employees Int'l Union, Local 1199 v. Blackwell*, 467 F.3d 999, 1009 (6th Cir. 2006) (internal citations omitted).

Upon review of Plaintiff's verified complaint, motion for temporary restraining order, brief in support, and Rule 65 certification, it does not appear to this Court that Plaintiff has a strong likelihood success on the merits. Specifically, the regulations and handbook sections that Plaintiff has cited are cast in permissive language (e.g., "the Agency *may* authorize...", "non-program property *may* be sold...", "the Agency *may* negotiate...", "the State Director *may* negotiate..."). Plaintiff has cited no authority that would suggest that Defendants were required to negotiate with a party that had not bid on the property in question, but nonetheless expressed interest in purchasing it. The Court holds therefore, that Plaintiff is not likely to succeed in his claims for injunctive relief and specific performance, where the performance Plaintiff seeks is not mandated by the authority Plaintiff cites. Because Plaintiff has not made a prima facie showing that it has a right in the property in question, the Court cannot conclude at this stage that Plaintiff will be irreparably harmed by sale of the same.

Accordingly,

**IT IS HEREBY ORDERED** that Plaintiff's *ex parte* emergency motion for a temporary restraining order and preliminary injunction (Dkt. No. 3) is **DENIED**.

#### All Citations

Not Reported in F.Supp.2d, 2013 WL 12109437