

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

CHRISTINE CARTER-FRAZER,
and ALL OTHERS;
Plaintiff(s),

v.

Case No.
HON.

12 CU3941-4

FILED
2012 MAR 21 A 11:01
DEKALB COUNTY GA

INVESTORS ONE CORP.;
NATIONAL CITY BANK OF INDIANA;
NATIONAL CITY HOME LOAN SERVICES, INC.;
FIRST FRANKLIN FINANCIAL CORP.;
AMS SERVICING, LLC;
SHAPIRO & SWERTFEGER, LLP; and
KONDAUR CAPITAL CORP.
Defendant(s).

J. G. DAVIS & ASSOCIATES, LLC
By: JOSHUA G. DAVIS (P51474)
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**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

NOW COMES the Plaintiff, *CHRISTINE CARTER-FRAZER*, by and through his/her attorney(s), JOSHUA G. DAVIS, and for his/her Complaint for Damages and Injunctive Relief, states as follows:

PARTIES

1.

Plaintiff, CHRISTINE CARTER-FRAZER (hereinafter referred to as Plaintiff) resides in the State of Georgia, City of Decatur, more specifically at 3662 Wellhaun Road 30034, herein after, Property.

2.

Co-Defendant, Investors One Corp., doing business at 302 Church St. White Plains, New York 10603 (hereinafter referred to as IOC), whose registered agent is Incorporating Services, LTD; 900 Old Roswell Lakes Parkway, Suite 310; Roswell, GA 30076.

3.

Co-Defendant National City Bank of Indiana, doing business at 2150 North First St.; Suite 100, San Jose, CA 95131 (hereinafter referred to as NCBI), who is now owned by PNC, Financial Services, LC whose registered agent is Paula Montano, 1297 Wildflower Downs, Lawrenceville, GA 33044.

4.

Co-Defendant National City Home Loan Services, Inc. (hereinafter referred to as NCHLS) who is now owned by PNC, Financial Services, LC doing business at 1297 Wildflower Downs, Lawrenceville, GA 33044, whose registered agent Paula Montano, 1297 Wildflower Downs, Lawrenceville, GA 33044.

5.

Co-Defendant First Franklin Financial Corporation (hereinafter referred to as FFFC) doing business at 400 Countrywide Way, Stop CA6-919-02-01, Simi Valley, CA 93065; whose registered agent is CT Corporation System, 1201 Peachtree St. NE. Atlanta, GA 30361.

6.

Co-Defendant Kondaur Capital Corporation (hereinafter referred to as KCC) doing business at 1100 Town & County Road, Suite 1600, Orange, CA 92868; whose registered agent is Corporation Service Company, 40 Technology Parkway South #300, Norcross, GA 30092.

7.

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Co-Defendant AMS Servicing, LLC (hereinafter referred to as AMS) doing business at 333 Earle Ovington Blvd., Suite 900, Uniondale, NY 11553; whose registered agent is CT Corporation System, 1201 Peachtree St. NE. Atlanta, GA 30361.

8.

Co-Defendant Shapiro & Swertfeger, LLP (hereinafter referred to as S&S) doing business at 2872 Woodcock Boulevard, Duke Building, Suite 100, Atlanta, GA 30341; whose registered agent is Denise Rainwater Griffin, 295 South Culver St., Suite B, Lawrenceville, GA 30045.

9.

Each of the Defendants named herein are believed to, and are alleged to have been acting in concert with, as employee, agent, co-conspirator or member of a joint venture of, each of the other Defendants, and are therefore alleged to be jointly and severally liable for the claims set forth herein, except as otherwise alleged.

VENUE AND JURISDICTION

10.

Cases respecting title to land must be brought in the county in which the land (or a part thereof in case of a single tract) lies. Ga. Const. of 1983 Art. VI, Par. II, Sec. II as a case "respecting title to land. This Court is the proper court of venue to bring this Petition for Quiet Title and for Temporary and Permanent Restraining Order and Injunction as it respects the property in question which is located in ^{DeKalb} Henry County, and further since the Supreme Court of Georgia has held that the Superior Court is the Court of proper jurisdiction to matters involving title over land. . *Setlock v. Setlock*, 286 Ga. 384, 688 SE2d 346 (2010). ("For the purpose of enabling all persons owning real estate within this state to have the title thereto settled and

registered[,]...the *superior court* of the county in which the land is located shall have exclusive original jurisdiction of all petitions and proceedings had thereupon.”, which includes claims for quiet title) (Emphasis supplied) O.C.G.A. § 44-2-60.

FACTS

11.

On or about January 16, 2002, Plaintiff entered into a Loan Agreement with First Franklin Financial Corporation, with a Security Deed (hereinafter “Deed”) in the sum of \$160,000.00. The Deed was recorded in Dekalb County Deed Book 12908, Page 656.

12.

Plaintiff is the widow and now executrix of Leroy Frazer’s estate who passed in December of 2002.

13.

On September 22, 2004, thru corporate assignment First Franklin Financial Corporation recorded and assigned its interest to National City Home Loan Services, Inc. The assignment, which was signed and authorized by Eileen J. Gonzales-Assistant Vice President for First Franklin Financial Corporation lacked a counter signature by another authorized signatory, as the assignment lacked a corporate seal. See Exhibit “A”

14.

On February 8, 2006, thru corporate assignment First Franklin Financial Corporation attempted to record and assign its interest to National City Bank of Indiana, however it had no interest to assign because it had already assigned said deed to National City Home Loan Services, Inc. Nonetheless, the assignment, which was signed and authorized by Eileen J.

Gonzales-Assistant Vice President for First Franklin Financial Corporation lacked a counter signature by another authorized signatory, as the assignment lacked a corporate seal. See Exhibit "B"

15.

On July 27, 2010, thru corporate assignment National City Bank of Indiana recorded and attempted assign its interest to Kondaur Capital Corporation, but it never received true interest from First Franklin Financial Corporation. The assignment, which was signed and authorized by Krystal Hall- Assistant Secretary for Assignments for National City Bank lacked a counter signature by another authorized signatory, as the assignment lacked a corporate seal. The assignment was to be returned to Shapiro & Swertfeger. See Exhibit "C"

16.

On July 27, 2010 the same day as the previous assignment Kondaur Capital Corporation recorded and attempted to assign its bogus interest to Investors One Corporation. The assignment, which was signed and authorized by John Kontoulis-President for Kondaur Capital Corporation lacked a counter signature by another authorized signatory, as the assignment lacked a corporate seal. The assignment was to be returned to Shapiro & Swertfeger. See Exhibit "D"

17.

On May 12, 2011 thru corporate assignment National City Home Loan Services, Inc., recorded and assigned its interest to National City Bank of Indiana. The assignment, which was signed and authorized by Debra L. Conley- Mortgage Officer and Steven Hall- Mortgage Officer for National City Home Loan Services, Inc., however the officers are not known to have the authority to transfer interests. Also, there is no corporate seal on this assignment. The assignment was to be returned to Shapiro & Swertfeger. See Exhibit "E"

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18.

On or about November 23, 2010, Plaintiff was served with a Notice of Sale from McCurdy & Candler, LLC, indicating that the firm represented Bank of America as creditor for the loan in question and that the servicer of such loan was Washington Mutual Bank. Property was set for foreclosure sale on January 4, 2011. At this time neither Bank of America, nor Washington Mutual Bank had any interest in property. See Exhibit "F"

19.

On or about May 26, 2011 Plaintiff received a letter from Shapiro & Swertfeger, LLP, responding to a Qualified Written Request sent by Plaintiff. The letter provides a chain-of-title for the property, which clearly showed that Investors One Corporation did not have a valid interest due to invalid assignment. See Exhibit "G"

20.

On October 4, 2011, Investors One Corporation foreclosed on Plaintiff.

21.

On or about October 5, 2011 Plaintiff received a letter correspondence from Shapiro & Swertfeger, LLP stating that she had been foreclosed on October 4, 2011 and that she had must vacate the premises no later than three days from receiving letter. See Exhibit "H"

22.

On November 15, 2011 Plaintiff was served by Dekalb County Marshall with a Dispossessory Warrant. Investors One Corporation was the Plaintiff.

23.

On November 30, 2011 Plaintiff attended Dispossessory Hearing in the Magistrate Court of Dekalb County. A Writ of Possession was issued against Plaintiff, however Investors One

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Corporation had neither signed nor recorded any Deed Under Power concerning this property at the time that the Order of Writ was awarded. See Exhibit "I"

24.

On February 28, 2012 Investors One Corporation recorded a Deed Under Power concerning property in Deklab County Superior Court. Two un-named Vice-Presidents of AMS Servicing signed the Deed Under Power on December 2, 2011, LLC thru a power of attorney. Shapiro & Swertfeger, LLP, prepared the Deed Under Power. See Exhibit "I"

25.

On March 7, 2012 from a de novo Appeal to the Superior Court of Dekalb County Judge Gail C. Flake ordered a writ of possession for Investors One Corporation.

COUNT I - Wrongful-Foreclosure

26.

The Plaintiff hereby incorporate(s), re-allege(s) and adopted by reference as if more fully stated, paragraphs herein above.

27.

Co-Defendant IOC exercised a power of sale on October 4, 2011.

28.

Co-Defendant IOC failed to have any interest in said real property to effectuate foreclosure sale on October 4, 2011 because it never received a valid assignment from National City Bank of Indiana who was the last entity to have authority to assign interest in property.

29.

Co-Defendant IOC conducted such sale without securing proper interest has caused financial and emotional damage to Plaintiff in an amount in excess of \$500,000.

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COUNT II - Conversion

The Plaintiff hereby incorporate(s), re-allege(s) and adopted by reference as if more fully stated, paragraphs herein above.

30.

The owner of personalty is entitled to its possession. Any deprivation of such possession is a tort for which an action lies. Ga. Code Ann. § 51-10-1 (West). In Georgia, to establish a claim for conversion, the complaining party must show: (1) title to the property or the right of possession; (2) actual possession in the other party; (3) demand for return of the property; and (4) refusal by the other party to return the property. *See Condrey v. SunTrust Bank of Georgia*, 431 F.3d 191 (5th Cir. 2005).

31.

Plaintiff was the owner of the property and the funds submitted to Co-Defendant AMS to pay for the mortgage. The money was paid in the form of checks executed by Plaintiff. AMS who was servicing loan for IOC, who had no interest or real ownership in property, converted funds on the behalf of IOC. Further, IOC foreclosed and exercised power over Plaintiff's property despite not holding a valid interest in property.

The Supreme Court of Georgia explained,

“Conversion consists of an unauthorized assumption and exercise of the right of ownership over personal property belonging to another, in hostility to his rights; an act of dominion over the personal property of another inconsistent with his rights; or an unauthorized appropriation...In order to be chargeable with conversion, technically it is not necessary that the defendant assert any right of ownership over the property; it is sufficient if the defendant wrongfully assumes dominion over the property inconsistent with the owner's right.... It is immaterial that such dominion was exercised in good faith, for whoever meddles with another's property, whether as principal or agent, does so at his peril, and it makes no difference that in doing so he acts in good faith.”

Levenson v. Word, 668 S.E.2d 763, 765 (Ga. App. 2008) aff'd, 686 S.E.2d 236 (Ga. 2009).

32.

Regardless of AMS's or IOC's belief that they had authority to receive payments and foreclose, they are liable for conversion because AMS received payments on the behalf of IOC who had no authority to collect or foreclose.

33.

AMS and IOC are jointly and severally liable to Plaintiff for conversion and should be awarded damages in excess of \$500,000.

COUNT III - Constructive Fraud

The Plaintiff hereby incorporate(s), re-allege(s) and adopted by reference as if more fully stated, paragraphs herein above.

34.

On or about May 26, 2011, Plaintiff receives letter from Shapiro & Swertfeger, LLP, indicating that foreclosure sale was to take place by creditor IOC, with the listed servicer as AMS.

35.

Co-Defendant IOC failed to have a properly secured and recorded interest in Plaintiff's property.

36.

Plaintiff, on reliance of this letter and other previous communications by Co-Defendants IOC, AMS, and S&S attempted to resolve default on her mortgage. However, due to Co-Defendant IOC's lack of interest, Plaintiff's attempts to resolve with Co-Defendant IOC were of no use.

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37.

Co-Defendants IOC and S&S knew or should have known that said representations were untrue at the time they were made because S&S serviced 3 of 5 assignments concerning property. Moreover, S&S responded to a qualified written request that showed thru chain-of-title that IOC lacked authority to foreclose.

38.

These intentional misrepresentations and concealments were made knowingly by Co-Defendants by IOC and S&S to deceive Plaintiff as to existing facts and intended actions with the intent that the Plaintiff would rely and act upon said misrepresentations.

39.

Plaintiff, without any knowledge or indication that the misrepresentations were indeed false and without any indication from Co-Defendants IOC and S&S that material information was being concealed, did not seek other remedies or methods to postpone, challenge, dispute and/or cure the foreclosure of said real property.

40.

Plaintiff has been damaged by Co-Defendants IOC's and S&S's fraudulent misrepresentations and concealments in an amount to be determined.

COUNT IV - Fraud in the Inducement

The Plaintiff hereby incorporate(s), re-allege(s) and adopted by reference as if more fully stated, paragraphs herein above.

41.

The Defendants, through said communications and contracts, led Plaintiff to believe that they had the authority and desire to modify her loan. However, due to their lack of interest, this