

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA,
CIVIL DIVISION

GREEN TREE SERVICING LLC, amended to
DITECH FINANCIAL, LLC,
300 Bayport Drive, Suite 880
Tampa, Florida 33607

Plaintiff/Counter-Claim Defendant,

CASE NO 13-004803-CI-20

v.

TIMOTHY D. GRUNDMANN, et al.,

Defendants/Counter-Claim Plaintiffs.

FINAL JUDGMENT FOR COUNTERCLAIM PLAINTIFFS

THIS CAUSE, having come before the Court on Tuesday, April 19, 2016, Wednesday, April 20, 2016, and Tuesday, April 18, 2017 upon the Court's Order setting non-jury trial. The Court having conducted a non-jury trial, reviewed the pleadings, and considered the record, evidence, live testimony, and argument of counsel, and otherwise fully advised, the Court finds the following:

PROCEDURAL HISTORY

1. Green Tree Servicing LLC ("Green Tree") filed an action for foreclosure of a mortgage on May 13, 2013.
2. Timothy and Carol Grundmann ("the Grundmanns") filed a motion to assert a counterclaim on February 10, 2014, which Counterclaim was deemed filed by Order of the Court on May 19, 2014.
3. Following a hearing on Green Tree's Motion to Dismiss the Grundmanns' counterclaim on September 23, 2014, the Court entered an Order partially granting and partially

denying the Motion to Dismiss on October 1, 2014. Pursuant to the Order, the following counts of the Grundmanns' Counterclaim were not dismissed and remained intact and were presented at trial: Count I asserting Breach of Contract; Count II for Breach of Fiduciary Duty; Count III for Breach of Implied Covenant of Good Faith and Fair Dealing, except for allegations as to an "oral contract"; and Count IV asserting Negligence.

4. The Court entered an Order on January 28, 2016 amending Plaintiff's name from Green Tree Servicing LLC to Ditech Financial, LLC.

5. The Court presided over a non-jury trial as to Plaintiff's Complaint and the Grundmanns' Counterclaim on Tuesday, April 19, 2016, Wednesday, April 20, 2016, and Tuesday, April 18, 2017.

6. At trial, on April 18, 2017, Plaintiff voluntarily dismissed its cause of action against the Grundmanns for foreclosure of a mortgage. Trial proceeded solely as to the Grundmanns' Counterclaim.

FINDINGS OF FACT

Based on the evidence and testimony at trial, the Court makes the following findings of fact:

7. Timothy and Carol Grundmann refinanced their home on June 26, 2006, signing a promissory note and mortgage for a loan from AMPRO Mortgage, a Division of United Financial Mortgage Corp.

8. Federal National Mortgage Association owned the subject loan at all times pertinent to this action.

9. Green Tree Servicing LLC was the servicer of the subject loan at the time of filing this action pursuant to a power of attorney from Federal National Mortgage Association.

10. Bank of America NA was the servicer of the loan until December 1, 2011, at which time servicing of the loan transferred from Bank of America NA (“Bank of America”) to Green Tree.

11. During the course of this action, Green Tree Servicing LLC became Ditech Financial LLC (“Ditech”) pursuant to a name change merger document on September 1, 2015.

12. In May 2009, the Grundmanns became late in their payments to Bank of America, but continued making payments.

13. Sometime around December of 2010 and January of 2011, Bank of America stopped accepting payments on the loan.

14. Carol Grundmann spoke with a representative from Bank of America at that time, who told her to not make a payment for three consecutive months, and after that time to call back and they could then enter a payment plan. Carol Grundmann was told that she could not enter into a payment plan without first missing three monthly payments.

15. After missing three payments as instructed, Carol Grundmann called Bank of America and a repayment plan was put into place, requiring a down payment of \$8,000, and then six consecutive monthly payments of approximately \$2,917, at which time the loan would then be current

16. On May 19, 2011, the Grundmanns made the initial payment of \$8,000, which Bank of America accepted.

17. The Grundmanns thereafter made payments of \$2,917.56 on June 15, 2011, \$3,000 in July, 2011, and additional payments of \$2,917.56 on August 22, 2011, September 20, 2011, October 19, 2011, and November 15, 2011, each of which Bank of America accepted.

18. Thereafter, Carol Grundmann called Bank of America and spoke to a

representative who informed her that the Grundmanns had completed the repayment plan, and would soon receive a letter stating they had completed the plan and should begin paying their normal payment amount in December, 2011.

19. Bank of America mailed a letter to the Grundmanns, dated November 19, 2011, stating that Bank of America “received the last installment due under our Repayment Plan agreement, dated May 19, 2011, and it has been credited to your account. . . Thank you for fulfilling this commitment. You are now up to date and current on your home loan payments. You can resume making your normal monthly payments.”

20. Following the transfer of the servicing of the loan from Bank of America to Green Tree, Green Tree mailed the Grundmanns a letter, dated, December 1, 2011, incorrectly stating that the Grundmanns owed approximately \$277,910.87. The nightmare for the Grundmanns begins.

21. When Carol Grundmann called Green Tree, the representative told her not to worry about the improper amount as Green Tree had still not received the entire file after the transfer of servicing of the loan.

22. Green Tree later mailed the Grundmanns a statement, dated December 15, 2011, incorrectly stating that the Grundmanns’ account “is seriously past due!” and they owed \$17,960.76 for the January 1, 2012 payment.

23. When Carol Grundmann called Green Tree, the representative again told them not to worry about the improper amount stated in the statement.

24. Despite a representative from Green Tree telling Carol Grundmann not to make the December, 2011 payment, the Grundmanns made a payment of \$2,739.40 for the December, 2011 payment.

25. On December 20, 2011, Carol Grundmann faxed a copy of the November 19, 2011 letter from Bank of America informing the Grundmanns they were current on the loan to Green Tree, which was verified as received.

26. The Grundmanns thereafter received a letter dated January 11, 2012, stating there was an amount past due on their loan of \$12,315.80.

27. When Carol Grundmann called Green Tree after receiving the January 11, 2012 letter, the representative again told her not to worry about the improper amount stated in the statement.

28. The Grundmanns thereafter received monthly billing statements for February 1, 2012, stating \$17,428.64 as the total amount due, and for March 1, 2012, stating \$16,896.52 as the total amount due.

29. Carol Grundmann called Green Tree after receiving these statements, again informing them that the Grundmanns were current on their loan; yet the representatives from Green Tree still could not account for the stated amounts due in the monthly billing statements.

30. Carol Grundmann requested the representative from Green Tree to call the representative from Bank of America to attempt to rectify the situation, but the representative from Green Tree refused to call Bank of America and refused to give any explanation to the Grundmanns as to the stated amounts due. The treatment the Grundmanns received from Green Tree was unconscionable.

31. The Grundmanns continued making payments for January, 2012, February, 2012, March, 2012, and April, 2012, but Green Tree rejected the February, March, and April payments, telling Mrs. Grundmann that she needed to make payments for the full amount past due, an amount which changed each month ranging from \$12,315.80 to \$17,428.64, with no explanation

given by Green Tree for the amounts, or why they varied from month to month.

32. During the time period of February to April while the Grundmanns' payments to Green Tree were being rejected, the Grundmanns were contacted by Fannie Mae for purposes of discussing the possibility of modifying the Grundmanns' loan.

33. The Grundmanns began communicating with the "Collins Center", which was the organization Fannie Mae instructed the Grundmanns to contact, to begin the process for a loan modification review.

34. The Grundmanns began collecting all documents and forms as requested by the Collins Center, however prior to submitting the documents the Grundmanns were contacted by Green Tree wanting to know what the Grundmanns planned to do about their mortgage.

35. Carol Grundman informed the Green Tree representative, Conan Wilson, that she and her husband were now working directly with Fannie Mae and were planning on going to a mediation for purposes of a potential loan modification directly with Fannie Mae.

36. Upon notifying Conan Wilson of their plan on working directly with Fannie Mae, Carol Grundmann was transferred to a Ms. Donna Singleton with Green Tree who directed Carol Grundmann to "stop the process with Fannie Mae."

37. Carol Grundmann was told that moving forward with Fannie Mae would be a waste of time; that Green Tree already had all of their information, and if she went through Green Tree instead of dealing directly with Fannie Mae that Green Tree would forgive \$60,000 of the loan, reduce the principal balance to \$204,000, and the Grundmanns would have monthly payments of \$1,421.71; a deal that, according to Green Tree's representative Donna Singleton, Fannie Mae could not offer.

38. The Grundmanns were told that if they made three trial payments via certified

check in the amount of \$1,421.71, that they would thereafter receive a final loan modification with the same monthly payment, a new principal balance of \$204,000 and an interest rate of 4.6%.

39. The Grundmanns reasonably relied upon the statements made by Donna Singleton and accepted the offer and made their initial trial payments via certified checks on May 25, 2012, June 25, 2012, and July 24, 2012.

40. After making the three trial payments the Grundmanns continued to make the same monthly payment to Green Tree and were told by Green Tree to wait for the final modification package to arrive

41. In October of 2012 the Grundmanns received the written loan modification document from Green Tree, but the agreement contained terms different than those offered to and accepted by the Grundmanns.

42. The modification agreement of October 2012 had a new total principal balance of \$287,301 41, with \$82,601 of that balance being deferred, instead of \$60,000 of a principal balance of \$264,000 being forgiven.

43. Ms. Grundmann called Green Tree and spoke with Donna Singleton to ask why there was a difference in the terms of the written agreement compared to the one she offered on the phone, and she provided no answer other than that's the way they do it and that the Grundmanns needed to pay it as set forth in the modification they received.

44. The Grundmanns asked for an explanation as to why an additional \$23,000 was being added to the principal, and Green Tree, via Donna Singleton, would not provide an explanation and would only tell the Grundmanns to sign the modification and send it back.

45. The Grundmanns made multiple calls to Green Tree attempting to get someone to

explain to them why there was an extra \$23,000 being added to the principal balance of the loan, as they needed to know why that additional amount was being added before they could sign the modification. The Grundmanns were always routed back to Donna Singleton who refused to give them any answers other than to sign and return the agreement

46. The Grundmanns continued making, and Green Tree continued accepting, payments in the amount of \$1,421.71 pursuant to the payment plan agreed to between the Grundmanns and Green Tree in May of 2012, until May of 2014, when Green Tree began returning the monthly payment checks to the Grundmanns.

47. After receiving the returned check in May of 2014, the Grundmanns continued to mail monthly checks in the amount of \$1,421.71 to Green Tree, and since that time Green Tree has returned most of those checks, all of which have been deposited into a separate account set up by the Grundmanns, which as of the final day of trial in the matter of April 18, 2017, had an account balance of \$52,759.25.

48. As of the time of trial, \$36,576.44 had been sent to Green Tree by the Grundmanns, and never returned, and no evidence or testimony was provided by Green Tree as to those funds ever being applied to the Grundmanns' loan account.

COUNT 1 OF COUNTERCLAIM – BREACH OF CONTRACT

49. The Court finds that pursuant to the terms of the Mortgage, Green Tree had a contractual obligation to properly apply, account for, and report all payments received by the Grundmanns.

50. The Court finds that Green Tree breached the terms of the mortgage by failing to timely and accurately apply payments made by the Grundmanns and failing to maintain and provide accurate account statements to the Grundmanns. The Court has absolutely no

confidence in any of Green Tree's financial documents. None of it could be explained.

51. The Court finds that Green Tree further breached the terms of the mortgage by preparing and providing false account statements and misleading letters to the Grundmanns as to the amounts owed on the loan and alleged past due amounts.

52. The Court finds that Green Tree further breached the terms of the mortgage by mispresenting to the Grundmanns that they were in default on the loan and telling the Grundmanns that they would be homeless if the Grundmanns did not pay the amount claimed owed by Green Tree.

53. The Court finds that Green Tree further breached the terms of the mortgage by refusing to accept payments from the Grundmanns in an attempt to create a forced breach of the note and mortgage for alleged non-payment.

54. The Court finds that Green Tree further breached the terms of the mortgage by filing a foreclosure action against the Grundmanns when the Grundmanns were not in default of their contractual obligations under the note and mortgage.

55. The Court finds that the Grundmanns were harmed and incurred damages as a result of Green Tree's breaches of its contractual obligations under the mortgage.

COUNT II OF COUNTERCLAIM – BREACH OF FIDUCIARY DUTY

56. The Court finds that a fiduciary relationship arose between the Grundmanns and Green Tree. See Capital Bank v. MVB, Inc., 644 So. 2d 515 (Fla. 3d DCA 1994).

57. The Court finds that Green Tree breached its fiduciary duty to the Grundmanns when it instructed the Grundmanns to stop communicating directly with Fannie Mae and instead to work directly with Green Tree for a loan modification.

58. The Court finds that Green Tree further breached its fiduciary duty to the

Grundmanns by promising the Grundmanns what the final terms of a loan modification would be, and then presenting the Grundmanns with a final loan modification several months later that did not contain the terms of the offer made by Green Tree to the Defendants. Green Tree had a continuous pattern of lying to the Grundmanns and cheating them through pathetic and/or non-existent record keeping.

59. The Court finds that the Grundmanns were harmed and incurred damages as a direct and proximate result of Green Tree's breach of its fiduciary duty owed to the Grundmanns.

COUNT III – BREACH OF IMPLIED CONVENTION OF GOOD FAITH AND FAIR DEALING

60. The Court finds that a mortgage contract existed between the Grundmanns and Green Tree.

61. The Court finds that the Grundmanns did all, or substantially all, of the significant things that the mortgage contract required them to do.

62. The Court finds that all conditions required for Green Tree's performance under the mortgage contract had occurred.

63. The Court finds that Green Tree's actions in failing to properly apply funds that had been paid on the loan by the Grundmanns, and failing to properly account for the fact that the loan was paid up and current when Green Tree took over the servicing of the loan, unfairly interfered with the Grundmanns receipt of the mortgage contract's benefits.

64. The Court finds that Green Tree's conduct did not comport with the Grundmanns reasonable contractual expectations under the mortgage contract, and that the Grundmanns were harmed and incurred damages as a result of Green Tree's conduct.

COUNT IV - NEGLIGENCE

65. Green Tree, as the servicer of the Grundmanns' loan, had a duty to timely and

accurately apply payments made by the Grundmanns on their loan.

66. Green Tree further had a duty to conduct a review of the loan file after it was received from Bank of America to confirm that the Grundmanns were current on the loan at the time it was transferred to Green Tree.

67. Green Tree had a duty when asked by the Grundmanns to explain to them why Green Tree was alleging that there were past due amounts owed by the Grundmanns to provide the Grundmanns with an explanation and documentary proof of the alleged past due amounts.

68. Green Tree had a duty of reasonable care to not take any actions for its own benefit and at the expense of its customers, including the Grundmanns.

69. Green Tree breached the duty of care owed to the Grundmanns by failing to properly account for the money paid by the Grundmanns on their loan; failing to provide any explanation to the Grundmanns as to the amounts alleged to be past due; failing to accept payments by the Grundmanns; and by providing false and misleading information to the Grundmanns relative to the proposed loan modification offered by Green Tree, and informing the Grundmanns not to work with Fannie Mae.

70. Green Tree further breached its duty owed to the Grundmanns by filing a foreclosure action against them when the Grundmanns were not in default of the loan.

71. Green Tree further breached its duty owed to the Grundmanns by refusing to accept payments by the Grundmanns in an attempt to create a forced default on the loan.

72. As a direct and proximate cause of Green Tree's breaches of its duty owed to the Grundmanns, the Grundmanns have been harmed and have incurred damages.

OTHER FINDINGS OF FACT

This Court has been presiding over foreclosure cases before the crisis, during the crisis and now after the crisis. The Court has never seen such horrible treatment by a financial institution to its customer. It was deplorable. The Court has absolutely no confidence in the Plaintiff's records.

The Plaintiff's witness, Mr. Christopher Ogden, was a true gentleman and testified to the best of his ability given the hand he was dealt. The handoff of this loan from Bank of America to Green Tree started the utter confusion. The problem arose when Green Tree took no initiative or any investigation to ensure the records were accurate. The Green Tree representatives lied to the Grundmanns, harassed them and ultimately cheated them.

The Grundmanns were very credible witnesses. This is the only case the Court has seen that payments were made and not returned and not credited to an account. The Grundmanns even set up an escrow account to put their monthly payments in during this litigation.

DAMAGES

73. Compensatory damages are available for each of the Grundmanns' claims for Breach of Contract; Breach of Fiduciary Duty; Breach of the Implied Covenant of Good Faith and Fair Dealing; and Negligence.

74. In determining the compensatory damages in this action, the Court must take into account the amount of money which will put the Grundmanns in as good a position as they would have been if Green Tree had not breached the duties owed to the Grundmanns under the Counts set forth in the Counterclaim.

75. The Court finds that at the time of the Grundmanns' loan being transferred from Bank of America to Green Tree, the Grundmanns were current on the loan and the loan was not in default.

76. The Court finds that the Grundmanns were offered and accepted a loan modification from Green Tree in May of 2012, reducing the principal balance of the loan to \$204,000.00, and that the Grundmanns performed under the terms of the loan modification.

77. The Court finds that Ditech has received and kept payments from the

Grundmanns in the amount of \$36,576.44 which were not properly applied to the Grundmanns' loan.

78. The Court finds that the March 16, 2017 Ditech Billing Statement, with a due date of April 1, 2017, sets forth a total amount \$134,956.65 to become current under the loan.

79. The Court finds that the March 16, 2017 Ditech Billing Statement, with a due date of April 1, 2017, sets forth a "Regular Monthly Payment" amount of \$2,862.42.

80. Based on the evidence and testimony at trial, the Court finds that the amount of \$134,956.65 to become current on the loan (as set forth in the March 16, 2017 Ditech Billing Statement) plus \$36,576.44, which represents the money paid to Ditech by the Grundmanns but never credited to their account, plus \$60,000.00, the amount of principal Green Tree agreed to forgive, for a total of \$231,531.09, is the amount of money sufficient to place the Grundmanns into the position they would have been but for the breaches by their Lender, Green Tree/Ditech.

CONCLUSION

Accordingly, after careful consideration and review of all the evidence and testimony presented by the Parties, it is hereby **ORDERED, ADJUDGED, and DECREED** that:

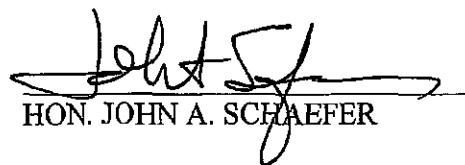
81. Judgment is entered in favor of Timothy Grundmann and Carol Grundmann against Ditech Financial, LLC; and

82. Timothy Grundmann and Carol Grundmann shall recover from Ditech Financial, LLC, the sum of **\$231,531.09**, that shall bear interest at the rate of 5.35% per year, and adjust as provided for by Florida Statute, for all of which let execution issue. The Defendants have agreed and desire to apply the recovery to their mortgage.

83. The Court retains jurisdiction in this matter for purposes of awarding attorneys' fees and costs.

DONE AND ORDERED at Clearwater, Pinellas County, Florida on

NOV 2, 2017


HON. JOHN A. SCHAEFER

Copies furnished to:

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