

16.2 Homeowners’ Amended Complaint to Quiet Title and for Other Relief

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

[Plaintiffs],)	
)	
Plaintiffs,)	Case No. [No.]
)	
vs.)	Judge Flynn
)	
Second Chance Program, Inc.;)	
Harrison & Chase, Inc.;)	
J.T. Foxx;)	
David Ruiz;)	
Donald Thomas, LLC;)	
BankFinancial FSB; and)	
Unknown Owners and Nonrecord Claimants,)	
)	
Defendants.)	

AMENDED COMPLAINT TO QUIET TITLE AND FOR OTHER RELIEF

[Plaintiffs] (“[Plaintiffs]” or “Mr. [Plaintiffs]” and “Mrs. [Plaintiffs],” respectively), by and through their attorneys, the Legal Assistance Foundation of Metropolitan Chicago, hereby file this Complaint to Quiet Title and for Other Relief, and allege in support thereof as follows.

PRELIMINARY STATEMENT

1. By this action to quiet title, [Plaintiffs] seek a declaration that they are the exclusive titleholders to their residential real property, that the deed which purported to convey their exclusive title to the property was in fact an equitable mortgage, and that the Mortgage subsequently executed in favor of Defendant BankFinancial and purportedly encumbering [Plaintiffs]' property is void. [Plaintiffs] seek entry of an order voiding the transfer of title allegedly effected by the deed and voiding the subsequent Mortgage and Assignment of Rents. Additionally, [Plaintiffs] seek damages for the wrongful conduct of the Defendants as set forth below.

JURISDICTION AND VENUE

2. The Court has jurisdiction over the parties and the subject matter of this action. All parties necessary to the determination of this cause have been duly joined as defendants.

3. Venue is proper pursuant to 735 ILCS 5/2-103(b), because the real estate that is the subject of this Complaint is situated in Cook County.

PARTIES

4. Plaintiffs [Plaintiffs] are a married couple aged 68 and 65, respectively. They have been married 48 years. [Plaintiffs] have lived in their home at [Address], Illinois, 60608, since they purchased the property in 1970.

5. Defendant Second Chance, Inc. (“Second Chance”) is an Illinois corporation doing business in Illinois. Second Chance, Inc.’s President, Secretary, and registered agent is J.T. Foxx, 250 Parkway Dr., Ste. 150, Lincolnshire, Illinois, 60069. Second Chance, Inc. is not licensed in the state of Illinois as a real estate broker or as a mortgage broker.

6. Defendant Harrison & Chase, Inc. (“Harrison & Chase”), is an Illinois corporation doing business in Illinois. Harrison & Chase’s President, Secretary, and registered agent is J.T. Foxx, 250 Parkway Dr., Ste. 150, Lincolnshire, Illinois, 60069. Harrison & Chase is not licensed in the state of Illinois as a real estate broker or as a mortgage broker. On information and belief, Harrison & Chase was an alter ego of Second Chance for purposes of the events outlined in this Complaint.

7. Defendant J.T. Foxx (“Foxx”) is listed with the Illinois Secretary of State as the President, Secretary, and registered agent of Harrison & Chase, and the President, Secretary, and registered agent of Second Chance.

8. Defendant David Ruiz is an employee of Harrison & Chase and/or Second Chance.

9. Defendant Donald Thomas, LLC (“Donald Thomas”) is a business registered in Illinois as a limited liability company (“LLC”), doing business in Illinois. On information and belief, Donald Thomas is owned and/or operated by J.T. Foxx, for the purpose, *inter alia*, of collecting purported rent payments allegedly due from homeowners such [Plaintiffs]. Donald Thomas’s registered agent is Charles E. Alexander, 1500 Lakeside Drive, Bannockburn, IL 60015.

10. Defendant BankFinancial FSB (“BankFinancial”) is a federal savings bank with offices in Illinois.

11. Defendants Unknown Owners or Nonrecord Claimants are any other individuals or entities who may have or claim an interest in the property described below.

STATEMENT OF FACTS

12. [Plaintiffs] bought their single-family home (the “Home” or “Property”) located at [Address], IL 60608 in 1970 for \$20,000. The legal description of the Property is as follows:

LOT [No.] IN [NAME] AND OTHER’S ADDITION TO CHICAGO, A
SUBDIVISION OF BLOCKS [NOS.] (EXCEPT THE WEST 172 FEET THEREOF) IN
ASSESSOR’S DIVISION OF THE NORTHWEST [No.] OF THE WEST [No.] OF
THE NORTHEAST [No.] OF SECTION [No.], TOWNSHIP [No.] NORTH,
RANGE [No.], EAST OF THE [No.] PRINCIPAL MERIDIAN, IN COOK
COUNTY, ILLINOIS.

PIN: 00-000-00-000.

13. [Plaintiffs] took out several mortgage loans over the years in order to make improvements on their home.

14. Other than the transaction described below, [Plaintiffs] last refinanced on January 28, 2004, when they signed a loan for \$192,500 with Homecomings Financial Network, which assigned the mortgage to Mortgage Electronic Registration System (“MERS”). Their monthly payment under this mortgage was \$1,167.

15. [Plaintiffs] are both retired. Prior to retirement, Mr. [Plaintiffs] served on the City of Chicago Police force as a patrol officer for 27 years. Mr. [Plaintiffs] receives a monthly pension from the City of Chicago in the amount of \$2,239. Mrs. [Plaintiffs] worked at various jobs prior to retirement, most recently as a florist at Dominick's grocery store. Mrs. [Plaintiffs] receives a combined monthly Social Security and pension payment of \$612. [Plaintiffs]' income, combined, totals \$2,851 monthly.

16. Toward the end of 2004, [Plaintiffs] experienced financial difficulties because their daughter lost her job and they extended financial assistance to her and her family. Mr. [Plaintiffs'] health was failing; he suffers from an enlarged heart and emphysema, as well as liver problems. Due to high Medicare co-payments on required medical treatment and high prescription drug charges, they fell behind on their mortgage payments.

17. On December 28, 2004, MERS filed a foreclosure complaint against [Plaintiffs].

18. As soon as the foreclosure case was filed, [Plaintiffs] began to receive numerous solicitations from lawyers, realtors, and others advertising services relating to the foreclosure.

19. Out of the many dozens of solicitations, one mailing stood out: the one sent by Second Chance, a name that immediately appealed to [Plaintiffs]. The company marketed itself as "Illinois' Top Foreclosure Mitigation Firm." The letter stated that their services were free and contained statements to the effect of, "PROTECT your home and credit!"; "Stop your FORECLOSURE!"; and "Don't let the bank put your family out!"

20. The mailing also stated something to the effect of, "we are here to save your home for you," and stated that Second Chance could "move back payments to the rear" of a new mortgage. Second Chance boasted that it had had no complaints and had hundreds of satisfied customers. It said something to the effect that "you will be successful if you go with Second Chance, we are the people that will help you."

21. In addition, the mailing stated that Second Chance would work out of the customer's home. This appealed to [Plaintiffs] because, due to Mr. [Plaintiffs'] health, it is difficult for him to travel even short distances.

22. Nothing in the mailing suggested that Second Chance was offering to help the homeowner sell, or transfer ownership, of the Home.

23. [Plaintiffs] were particularly attracted to Second Chance because the letter stated that back payments in arrears could be put "to the rear" of a new mortgage.

24. Based upon the advertisement itself, and based upon the statements made subsequently by representatives of Second Chance and Harrison & Chase, [Plaintiffs] reasonably believed that Second Chance was in the business of helping homeowners maintain ownership of, and remain in, their homes.

25. Based solely on this advertisement, Mrs. [Plaintiffs] called the number on the mailing and spoke with a representative of Second Chance, which she later discovered was also referred to as Harrison & Chase. A few days later, David Ruiz of Second Chance called Mrs. [Plaintiffs] and made an appointment to talk with [Plaintiffs]. He came to [Plaintiffs]' Home on or around January 9, 2005.

26. Ruiz sat with [Plaintiffs] at their table and stated that he would try to help them get out of foreclosure by getting them a new mortgage loan. He acted very kind and congenial to them. He said [Plaintiffs] should not file a bankruptcy under Chapter 13, because it would be bad for their credit. They discussed details about the house, such as how long [Plaintiffs] had owned the home, which was then 34 years.

27. Approximately one week later, Ruiz came back, saying that Second Chance was going to "go ahead" with the refinancing. He discussed with [Plaintiffs] details relating to the refinancing, such as confirming that no one else lived in the Home and that their taxes and water bill were current.

28. Approximately one week later, Mr. Ruiz returned with J.T. Foxx. He introduced Foxx as the "the man who is going to help you," the owner of Second Chance.

He stated that Foxx would get them “on their feet again.” [Plaintiffs] were impressed by Foxx’s expensive car and impeccable dress.

29. [Plaintiffs] told Foxx that they appreciated the opportunity he was extending to help them save their Home. Foxx toured the Home and complimented [Plaintiffs] on it. He said something to the effect of, “we will work with you and get this all squared away.” He did not mention anything about selling or buying the Home.

30. Shortly thereafter, an inspector, appraiser, and surveyor each came to examine the Home and surrounding property.

31. Toward the end of January, Mr. Foxx called Mrs. [Plaintiffs] and told her [Plaintiffs] were scheduled to come in to sign papers on January 30, 2005. Mrs. [Plaintiffs] called her attorney Michael Radzowski, who agreed to go to the closing with [Plaintiffs]. On January 29, Foxx called saying that the closing could not take place on the 30th, because the papers had not yet arrived, but would occur on the 31st instead. On the 31st, Foxx called again and told Mrs. [Plaintiffs] that the closing was cancelled again, and rescheduled for February 3, 2005. At no time was the closing referred to as a sale of the Property.

32. On February 3, 2005, [Plaintiffs] went to the offices of Regent Title Insurance Company, located at 33 North Dearborn, in Chicago. Mr. Radzowski accompanied them. Mr. Radzowski informed [Plaintiffs], in front of Foxx, that he was flying to Florida for his vacation that day at 4:00 p.m. Foxx then told [Plaintiffs] that unfortunately the papers had not arrived after all, and that they would have to reschedule the closing.

33. As soon as [Plaintiffs] arrived home, Foxx called them and told them that the papers for signing had arrived as soon as they had left, and that they were going to “try for” the next day. [Plaintiffs] decided to trust Foxx, even though their attorney was on vacation and would not be present. They trusted Foxx because he had been so kind to them and because they found him very sophisticated and articulate. They also felt

confident because he had told them that his company, Second Chance, was “number one in Chicago”, was well-known and could be trusted, and that they had had hundreds of satisfied customers.

34. Therefore, the next day, February 4, 2005, [Plaintiffs] returned to the office of Regent Title Insurance Agency. They were told to wait, as Foxx was assisting another customer. Several people were already waiting to see Foxx. Foxx appeared about 20 minutes later. [Plaintiffs] were asked to step into a small room where a large stack of papers sat on the desk. A young woman was sitting there as well. Foxx asked [Plaintiffs] to sign or initial each sheet of paper, flipping the paper up from the bottom, without showing them the top portion of the paper. He had indicated where [Plaintiffs] were to sign or initial. While [Plaintiffs] were signing, Foxx remained very friendly, chatting with them as they signed.

35. The moment [Plaintiffs] completed signing the papers, he shook both of their hands and said, “the rent will be \$1800 a month, and there will be a \$50,000 charge each year for three years.” Mrs. [Plaintiffs] was surprised by this charge and asked what it was for, and Foxx replied that it was for Second Chance giving them the loan. Foxx gave [Plaintiffs] copies of what they signed, and they left satisfied that they had signed a mortgage agreement.

36. However, [Plaintiffs] were concerned about the \$50,000 yearly charge, which they had not heard anything about before, and therefore immediately began contacting other mortgage companies to see if they could refinance again.

37. Approximately a few days after the closing, Mrs. [Plaintiffs] informed Foxx by telephone that she was shopping for a new mortgage. Foxx laughed and told her that she was the first person he had met who had started shopping for a new mortgage within two weeks. Mrs. [Plaintiffs] responded that she believed the charges for this mortgage were too high, still believing she had entered into a refinance mortgage.

38. In approximately March, 2005, Mrs. [Plaintiffs] contacted Ameriquest Financial Corporation regarding refinancing the loan. Mrs. [Plaintiffs] gave Ameriquest contact information for Second Chance so that Ameriquest could obtain a payoff figure.

39. Ameriquest subsequently informed Mrs. [Plaintiffs] that the payoff, according to Second Chance, was \$267,000. On April 13, 2005, Foxx called Mrs. [Plaintiffs] to tell her that he was reducing the payoff by \$15,000. Two days later, Foxx called Mrs. [Plaintiffs] and stated that he could only reduce the amount due by \$10,000, not \$15,000, making the total payoff \$257,000.

40. While they did not realize it, at the closing, [Plaintiffs] signed a “Warranty Deed” deeding the property to Donald Thomas, as well as a “Residence Lease” (“Lease”) and “Rider” thereto. A copy of the “Warranty Deed,” “Residence Lease,” and “Rider” are attached hereto as Exhibits A, B, and C, respectively.

41. According to the formal terms of the Warranty Deed, [Plaintiffs] transferred title to their home to Donald Thomas at the closing on February 4, 2005. (*See Exhibit A.*)

42. According to the formal terms of the Lease, the monthly rent was \$1800, due beginning February 4, 2005, and on the first of the month thereafter. (*See Exhibit B.*)

43. According to the formal terms of the Rider, [Plaintiffs] had an irrevocable option to purchase the Property as long as they were not in default under the Lease. The purchase price would be \$267,000 if purchased within 12 months of sale, or \$277,000 if purchased within 13-24 months of sale; and 287,000 if purchased within 25-36 months of the sale. (*See Exhibit C.*)

44. Despite these written provisions, [Plaintiffs] never talked with Ruiz, Foxx, or anyone else about selling their house to Donald Thomas (whom they had never heard of before), nor did they intend to sell their house to Donald Thomas.

45. At the closing, [Plaintiffs] also signed a HUD-1 Settlement Statement listing a contract sales price of \$217,000. A true and accurate copy of the HUD-1 Settlement Statement is attached hereto as Exhibit D.

46. According to the HUD-1, the transaction was a cash sale for \$217,000, and paid off [Plaintiffs]' prior mortgage loan at an amount of \$208,050.29, and property taxes in the amount of \$699.85. At closing, [Plaintiffs] received no cash payment. Figures are listed on the HUD-1 for "first month rent" (\$1,800) and "security deposit" (\$1,000). (See Exhibit D.)

47. Other than the above payoffs, [Plaintiffs] received no other monetary benefit from the transaction.

48. On May 26, 2005, Donald Thomas, LLC executed a mortgage with BankFinancial in the amount of \$347,200. A true and accurate copy of this Mortgage is attached hereto as Exhibit E. It also executed an Assignment of Rents, attached hereto as Exhibit F.

49. Beginning in February, 2005, [Plaintiffs] have continued to reside in the Home and have made "rent" payments of \$1,800 per month. At some point, approximately May, 2005, Foxx called Mrs. [Plaintiffs] and advised her that he could lower her "rent" to \$1,650. They struggled to make any of these payments, which constitute about 60% of their total monthly income. As a result, they stopped making their payments in approximately June, 2005, and were subsequently sued for eviction in case numbered [No.]. That case remains pending.

50. Mrs. [Plaintiffs] suffered a stroke on May 4, 2005, due to high blood pressure and tachycardia (elevated heart rate), due to the extreme stress of realizing that she and her husband had been defrauded and faced the loss of their Home.

51. Mrs. [Plaintiffs] does not recall when she realized that according to the Warranty Deed, [Plaintiffs] purportedly no longer owned the Home. She believes she may have learned this when attempting to refinance with Ameriquest. Mr. [Plaintiffs] did

not understand the formal meaning of the Warranty Deed until preparing to file this Complaint.

52. On information and belief, [Plaintiffs] remained on the county records as taxpayer up to August, 2005.

53. [Plaintiffs] hoped that they would be able to “repurchase” their Home and again own it outright. However, [Plaintiffs] cannot afford the monthly “rent” payments, which must remain current in order to benefit from the option to purchase back the property. They also cannot afford to obtain a loan to “repurchase” their home for the contract price of \$267,000.

54. [Plaintiffs] now face the imminent prospect of eviction.

55. The current value of [Plaintiffs]’ home is approximately \$375,000.

56. Assuming the payoff statements on the HUD-1 are accurate, [Plaintiffs] received the benefit of the payoff of their previous mortgage loan (\$208,050.29) plus the payoff of property taxes (\$709.25), for a total benefit of \$208,759.54. In addition to having paid a total of \$5,400 in “rent” payments, they stand to lose approximately \$175,000 in equity built up in their Home of 35 years.

57. **[STRICKEN]** [Plaintiffs] have fallen prey to the bustling new foreclosure rescue scam business that was the subject of a report issued in June 2005 by the National Consumer Law Center, “Dreams Foreclosed: The Rampant Theft of Americans’ Homes Through Equity-stripping Foreclosure ‘Rescue’ Scams” (<http://www.consumerlaw.org/news/ForeclosureReportFinal.pdf>).

58. **[STRICKEN]** This report surveys 18 states (including Illinois), examining the equity-stripping schemes targeting homeowners facing foreclosure and the statutes that states are beginning to pass in an effort to combat this form of equity-stripping.

59. [Plaintiffs] would never have entered this transaction had they believed they were selling their Property to Donald Thomas or anyone else, nor would they have

entered this transaction had they known the Property would be mortgaged for substantially more than the “repurchase” price.

60. [Plaintiffs] are in imminent jeopardy of being evicted from their Home of 35 years. They want to save their Home and the equity built up therein. They seek an order from this court voiding the Warranty Deed and subsequent Mortgage and Assignment of Rents and awarding damages as set forth below.

COUNT I

Quiet Title

(Against Donald Thomas and Unknown Owner and Nonrecord Claimants)

1.-60. Plaintiffs repeat and reallege paragraphs 1 through 60 above as though fully set forth herein.

61. This Count is pled against Donald Thomas.

62. The deed transfer from [Plaintiffs] to Donald Thomas, though formally a conveyance of real property, should properly be construed as the granting of an equitable mortgage. This principle of common law is codified in Illinois Civil Code, which defines as a mortgage to be foreclosed through the sole statutory procedure available an “equitable mortgage,” as well as “every deed conveying real estate, although an absolute conveyance in its terms, which shall have been intended only as a security in the nature of a mortgage.” 735 ILCS 5/15-1207(c) and (e).

63. Each of the following type of factors is properly considered by courts in declaring an equitable mortgage:

- a. The gross disparity between the economic benefit received by [Plaintiffs] and the value of the Home;
- b. The relative sophistication of the parties;
- c. The fact that [Plaintiffs] were not represented by counsel at the closing;

- d. The fact that [Plaintiffs] remained in the Property after the “sale”;
- e. The fact that [Plaintiffs] continued to pay taxes (through the “rent” payments);
- f. The fact that [Plaintiffs] retained an option to “repurchase” the Home, which was in fact in the nature of the repayment of a debt;
- g. The fact that the language used by Ruiz, Foxx, Second Chance and Harrison & Chase to describe the nature of the transaction they were arranging for [Plaintiffs] never evinced an intent by [Plaintiffs] to sell the Property to Donald Thomas; and
- h. The fact that [Plaintiffs] themselves never understood the transaction as a sale of their Home, nor intended it as such.

64. Here, consideration of each of the above factors warrants the court to construe the deed transfer from [Plaintiffs] to Donald Thomas as the granting of an equitable mortgage.

WHEREFORE, [Plaintiffs] ask this court to enter an order:

- a. Voiding the deed transfer and declaring that said transfer was in fact an equitable mortgage lien (securing a sum to be determined at trial), with sole title to the Home restored to [Plaintiffs];
- b. Invalidating the title interests of any Unknown Owners or Nonrecord Claimants whose purported interests depend upon the validity of said deed transfer;
- c. Awarding such other relief as is equitable and just.

COUNT II

**Quiet Title
(Against Donald Thomas, BankFinancial, and Unknown Owner and Nonrecord Claimants)**

1.-64. Plaintiffs repeat and reallege paragraphs 1 through 64 as though fully set forth herein.

65. This Count is pled against Donald Thomas and BankFinancial.

66. According to the formal terms of the Warranty Deed, [Plaintiffs] transferred title to Donald Thomas.

67. However, Donald Thomas acquired an equitable mortgage only, as set out in Count I and incorporated by reference herein.

68. BankFinancial was on notice that Donald Thomas held an equitable mortgage only.

69. Nonetheless, with the Mortgage executed on May 26, 2005, Donald Thomas purported to grant a lienhold interest to BankFinancial.

70. Because Donald Thomas had a mere equitable mortgage, its attempt to encumber the Property in favor of BankFinancial is void.

71. BankFinancial was on notice of the limited nature of the title interest held by Donald Thomas because of [Plaintiffs]' continuing occupancy of the Property after February 4, 2005, and through the date when BankFinancial issued its mortgage loan. Occupancy of residential property is public notice of a title interest therein, creating a requirement on the part of the lender to inquire into the nature of that title interest. Here, due diligence on the part of BankFinancial would have confirmed through the title records, tax records, and [Plaintiffs] themselves, that [Plaintiffs] were long-time homeowners who had given an equitable mortgage on the Property and had the option to "repurchase" the Property (*i.e.*, pay off their equitable mortgage loan) within three years, at a sum considerably less than the mortgage with which Donald Thomas was seeking to encumber the Property.

WHEREFORE, [Plaintiffs] ask this court to enter an order:

- a. Voiding the mortgage lien and assignment of rents executed by Donald Thomas in favor of BankFinancial and declaring that neither Donald Thomas nor BankFinancial have any interest in the Property;
- b. Invalidating the title interests of any Unknown Owners or Nonrecord Claimants whose purported interests depend upon the validity of said mortgage lien; and
- c. Awarding such other relief as is equitable and just.

COUNT III
Truth in Lending Act (Against Donald Thomas)

1.-64. Plaintiffs repeat and reallege paragraphs 1 through 64 of Count I as though fully set forth herein.

65. This Count is pled against Donald Thomas.

66. The subject transaction, though structured as a deed transfer from [Plaintiffs] to Donald Thomas, is properly construed as an equitable mortgage loan.

67. In 2004 and 2005, Donald Thomas was engaged in the making of equitable mortgage loans such as the subject transaction, payable by agreement in more than four installments, and for which the payment of a finance charge was required.

68. The subject transaction is properly construed as a mortgage loan in the principal amount of \$217,000, with required payments of \$1800 per month beginning in February, 2005, and running through January, 2008, with a final balloon payment of \$287,000 due on February 3, 2008.

69. Under 12 C.F.R. § 226.18 of the Truth in Lending Act (“TILA”), the amount financed on said mortgage loan is, according to the HUD-1, \$208,750.14 (the loan payoff of \$208,050.29 plus the property tax payment of \$699.85).

70. Given this payoff and the above terms of the mortgage loan, the annual percentage rate (“APR”) of [Plaintiffs]’ mortgage loan is 25.87%. 12 C.F.R. § 226.18.

71. Mortgage loans are covered by the TILA amendment known as the Home Ownership and Equity Protection Act (“HOEPA”) if the APR exceeds by more than 10% the applicable Treasury security yield. 15 U.S.C. §§ 1602(aa).

72. [Plaintiffs]’ loan APR of 25.87 % exceeds the applicable Treasury rate by well over 10%.

73. Because [Plaintiffs]’ loan APR of 25.87% exceeds the applicable Treasury security yield by more than 10%, [Plaintiffs] mortgage loan is a high-cost loan covered by HOEPA. 15 U.S.C. §§ 1602(aa).

74. Upon information and belief, Donald Thomas issued at least two HOEPA loans within a 12 month period, and is therefore a “creditor” for the purposes of TILA. 12 C.F.R. § 226.2.

75. In any event, because [Plaintiffs]’ loan transaction was covered by HOEPA and was brokered (by Harrison & Chase), Donald Thomas is therefore a “creditor” for the purposes of TILA. 12 C.F.R. § 226.2.

76. As a result of the subject transaction, Donald Thomas acquired an interest in [Plaintiffs] home that secures payment or performance of an obligation.

77. The transaction between Donald Thomas and [Plaintiffs] was a “consumer credit transaction” as that term is defined in the Truth in Lending Act, 15 U.S.C. § 1602(h), and Regulation Z, 12 C.F.R § 226.2(a)(12).

78. The transaction between Donald Thomas and [Plaintiffs] was a “closed-end credit transaction” as that term is defined in 12 C.F.R. §§ 226.17 through 226.24.

79. In the course of issuing a mortgage loan to [Plaintiffs], Donald Thomas committed material violations of TILA by failing to make the following disclosures required by TILA and its implementing Regulation Z, 12 C.F.R. § 226.18: APR, amount financed, finance charge, total of payments, and schedule of payments.

80. Donald Thomas also committed a material violation of TILA by failing to provide a written notice of [Plaintiffs]' absolute three-day right to rescind the transaction. 12 C.F.R. § 226.23.

81. These material TILA violations give [Plaintiffs] an extended three-year right to rescind the equitable loan transaction, which automatically voids the lienhold interest held by Donald Thomas. 15 U.S.C. §§ 1635, 12 C.F.R. § 226.23.

82. [Plaintiffs] have exercised their right to rescind the loan by delivering a notice of rescission to Donald Thomas, through their attorneys, Sanford Kahn, Ltd. A true and accurate copy of the rescission letter is attached hereto as Exhibit G.

83. Subsequent to rescission, Donald Thomas must take whatever action is required to void the lien, and it must take steps to ensure the return of any money or property that has been given to anyone in connection with the subject transaction (including but not limited to returning to [Plaintiffs] all of the monthly payments made on the loan). 15 U.S.C. § 1635.

WHEREFORE, [Plaintiffs] ask this court to enter an order:

- a. Voiding the mortgage lien executed in favor of Donald Thomas;
- b. Requiring Donald Thomas to take whatever actions are required by 15 U.S.C. § 1635;
- c. Awarding recoverable costs and attorney's fees under 15 U.S.C. § 1640; and
- d. Awarding such other relief as is equitable and just.

COUNT IV
Home Ownership and Equity Protection Act
(Against Donald Thomas)

1.-83. Plaintiffs repeat and reallege paragraphs 1 through 83 of Count III as though fully set forth herein.

84. This Count is pled against Donald Thomas.

85. Because [Plaintiffs]' mortgage loan transaction was covered by the Home Ownership and Equity Protection Act ("HOEPA"), Donald Thomas was required to give [Plaintiffs] a special cautionary notice setting forth the terms of the loan, including, *inter alia*, the APR and the required monthly payments, three of more business days prior to the loan closing. 12 C.F.R. §§ 226.31 and 226.32.

86. Donald Thomas did not give [Plaintiffs] this required notice.

87. HOEPA prohibits balloon payments on covered with a term of less than five years. 12 C.F.R. § 226.32(d)(1).

88. Because [Plaintiffs]' loan is covered by HOEPA and requires a balloon payment after three years, it violates the HOEPA statute.

89. Both of the above HOEPA violations give [Plaintiffs] an extended three-year right to rescind the equitable loan transaction, which automatically voids the lienhold interest held by Donald Thomas. 15 U.S.C. §§ 1635, 12 C.F.R. § 226.23.

90. [Plaintiffs] have exercised their right to rescind the loan by delivering a notice of rescission to Donald Thomas. (*See Exhibit G.*)

91. Subsequent to rescission, Donald Thomas must take whatever action is required to void the lien, and it must take steps to ensure the return of any money or property that has been given to anyone in connection with the subject transaction (including but not limited to returning to [Plaintiffs] all of the monthly payments made on the loan). 15 U.S.C. § 1635.

WHEREFORE, [Plaintiffs] ask this Court to enter an order:

- a. Voiding the mortgage lien executed in favor of Donald Thomas;
- b. Requiring Donald Thomas to take whatever actions are required by 15 U.S.C. § 1635;
- c. Awarding recoverable costs and attorney's fees under 15 U.S.C. § 1640; and
- d. Awarding such other relief as is equitable and just.

COUNT V

Illinois Consumer Fraud and Deceptive Business Practices Act

(Against J.T. Foxx, David Ruiz, Second Chance, Harrison & Chase, and Donald Thomas)

1.-91. Plaintiffs repeat and reallege paragraphs 1 through 91 of Count IV as though fully set forth herein.

92. This Count is pled against J.T. Foxx, David Ruiz, Second Chance, Harrison & Chase, and Donald Thomas (“the Count V Defendants”)

93. [Plaintiffs] are “persons” and “consumers” as defined by the Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”), 815 ILCS §§ 505/1(c) and 505/1(e).

94. At all times relevant to this case, the Count V Defendants were engaged in commerce and trade in Illinois.

95. The Count V Defendants employed deceptive acts and practices and made fraudulent misrepresentations and misstatements and omissions of material fact, with the intent that [Plaintiffs] rely upon such acts, practices, representations, misstatements and omissions of material fact.

96. Said deceptive acts and practices and fraudulent misrepresentations and misstatements and omissions of material fact include but are not limited to the following:

- a. Soliciting [Plaintiffs] with misleading advertising;
- b. Repeatedly misrepresenting the deed transfer and lease as a mortgage refinance;
- c. Misrepresenting the fact that deed transfer was, purportedly and formally, a sale and transfer of title;
- d. Misrepresenting that the papers were not available on February 3, 2005, when [Plaintiffs] had their attorney present, deliberately and

for the sole purpose of rescheduling the closing for a time when their attorney would be unavailable;

- e. Taking action to encumber the Property with a new mortgage loan in an amount substantially higher than the payoffs made on behalf of [Plaintiffs], without the knowledge or consent of [Plaintiffs], and using the funds acquired from that loan to benefit the Count V Defendants, and not [Plaintiffs];
- f. Misleading [Plaintiffs] into thinking they could afford the monthly payments or the final balloon payment;
- g. Misleading [Plaintiffs] into thinking they would not lose their Home and the equity therein;
- h. Misleading [Plaintiffs] as to the nature of the services being offered by Second Chance and Harrison & Chase;
- i. Misleading [Plaintiffs] into thinking Second Chance and Harrison & Chase was offering its services for free;
- j. Acting as an unlicensed real estate broker;
- k. Acting as an unlicensed mortgage broker;
- l. Acting as an unlicensed mortgage lender; and
- m. Suing [Plaintiffs] for eviction.

97. Said deceptive acts and practices and fraudulent misrepresentations and misstatements and omissions of material fact are part of a larger, growing problem known as foreclosure rescue fraud, a type of fraud perpetrated by these Defendants and by similar individuals and business entities preying upon homeowners facing foreclosure.

98. Said acts and practices and fraudulent misrepresentations and misstatements and omissions of material fact were unfair, deceptive, and contrary to public policy and generally recognized standards of business.

99. As a direct and proximate cause of Defendants' actions, [Plaintiffs] have suffered substantial economic harm including but not limited to the purported loss of title to the Home, the loss of equity in the Home, the further encumbrance of their Home due to the mortgage executed by Donald Thomas, the monthly payments made since February 2005, and the imminent prospect of being evicted from their Home of 35 years.

WHEREFORE, [Plaintiffs] ask this court to enter an order:

- a. Voiding the mortgage lien executed in favor of Donald Thomas;
- b. Awarding actual and punitive damages in an amount to be determined at trial;
- c. Awarding recoverable costs and attorney's fees; and
- d. Awarding such other relief as is equitable and just.

COUNT VI

Common Law Fraud (Against J.T. Foxx, David Ruiz, Second Chance, Harrison & Chase, and Donald Thomas)

1-99. Plaintiffs repeat and reallege paragraphs 1 through 99 of Count V as though fully set forth herein.

100. This Count is pled against J.T. Foxx, David Ruiz, Second Chance, Harrison & Chase, and Donald Thomas ("the Count VI Defendants")

101. As described above, the Count VI Defendants knowingly and intentionally made fraudulent representations and misrepresentations and omissions of material fact in order to induce [Plaintiffs] to enter into the subject transaction.

102. [Plaintiffs] reasonable relied on these representations in executing the subject loan transaction.

103. As a direct and proximate cause of Count VI Defendants' actions, [Plaintiffs] have suffered substantial economic harm including but not limited to the loss of title to the Home, the loss of equity in the Home, the further encumbrance of their Home due to

the mortgage executed by Donald Thomas, the monthly payments made since February 2005, and the imminent prospect of being evicted from their Home of 35 years.

WHEREFORE, [Plaintiffs] ask this court to enter an order:

- a. Voiding the mortgage lien executed in favor of Donald Thomas;
- b. Awarding actual and punitive damages in an amount to be determined at trial;
- c. Awarding recoverable costs and attorney's fees; and
- d. Awarding such other relief as is equitable and just.

COUNT VII
Unconscionability

(Against J.T. Foxx, David Ruiz, Second Chance, Harrison & Chase, and Donald Thomas)

1.-103. Plaintiffs repeat and reallege paragraphs 1 through 103 of Count VI as though fully set forth herein.

104. This Count is pled against J.T. Foxx, David Ruiz, Second Chance, Harrison & Chase, and Donald Thomas (“the Count VII Defendants”)

105. Throughout the course of the subject transaction, an enormous disparity in bargaining power existed between [Plaintiffs] and the Count VII Defendants. Plaintiffs are one-time homebuyers who were facing desperate financial circumstances and the loss of their home of 35 years. In contrast, Defendants are experienced business entities and individuals that sought to profit from the disparity in bargaining power, and who did so by deliberately targeting [Plaintiffs] with misinformation.

106. The terms of the subject transaction, especially in combination with the subsequent mortgage executed by Donald Thomas, are so one-sided as to be abusive and unconscionable. The Count VII Defendants exploited the disparity in bargaining power to induce plaintiffs to transfer title to their home and enter into a highly disadvantageous equitable loan when plaintiffs believed they were merely refinancing and would still

formally own the Home. Said procedural and substantive unconscionability renders void and unenforceable the purported February 4, 2005 transfer of title.

WHEREFORE, [Plaintiffs] ask this court to enter an order:

- a. Voiding the deed transfer and declaring that said transfer was in fact an equitable mortgage lien (securing a sum to be determined at trial), with sole title to the Home restored to [Plaintiffs];
- b. Awarding such other relief as is equitable and just.

COUNT VIII

Breach of Fiduciary Duty (Against J.T. Foxx, David Ruiz, Second Chance, and Harrison & Chase)

1.-106. [Plaintiffs] repeat and reallege paragraphs 1 through 106 of Count VII as though fully set forth herein.

107. This Count is pled against J.T. Foxx, David Ruiz, Second Chance, Harrison & Chase and Donald Thomas (“the Count VIII Defendants”)

108. Defendants are individuals or entities regularly engaged in and knowledgeable of the interrelated businesses of real estate investment, mortgage lending, and mortgage foreclosure.

109. Conversely, [Plaintiffs] are unsophisticated consumers and one-time homeowners with extremely little experience in the businesses of real estate investment, mortgage lending, or mortgage foreclosure.

110. Defendants specifically targeted [Plaintiffs] knowing (and because) they were unsophisticated homeowners facing a desperate financial situation.

111. Defendants advertised and stated that they could “protect” and “save” [Plaintiffs]’ Home, and promoted their expertise to [Plaintiffs] as “foreclosure prevention” and “loss mitigation” experts.

112. Defendants and/or their representatives came to [Plaintiffs]’ Home and took actions to earn [Plaintiffs]’ trust to act in their best interest, and on their behalf.

113. Defendants did not present themselves to [Plaintiffs] as an arm's length buyer of the property, or as a lender, neither of which would ordinarily create a fiduciary duty. Rather, defendants offered to help and assist plaintiffs to keep their home.

114. Foxx told [Plaintiffs] that his company, Second Chance, was "number one in Chicago", was well-known and could be trusted, and that they had had hundreds of satisfied clients.

115. [Plaintiffs] trusted Foxx because he appeared to be an expert at saving homeowners from foreclosure, he had been so kind to them, and because they found him very sophisticated and articulate.

116. As a result of [Plaintiffs]' desperation to save their home, and the trust and confidence they reposed in Foxx and the Second Chance Program as professional "foreclosure prevention" experts, defendants obtained a position of dominance, superiority and influence over [Plaintiffs].

117. In light of the disparity in the commercial background and needs of the parties, the active solicitation of [Plaintiffs]' business, and the trust and confidence placed in Defendants to help save their Home, Defendants owed [Plaintiffs] a fiduciary duty.

118. Defendants had a fiduciary duty to perform the duties they advertised to [Plaintiffs], and, in so doing, to put the interests of [Name] above its own interests.

119. By virtue of their deceptive acts and practices, misrepresentations, and misstatements and omissions of fact, as set forth above, Defendants breached their fiduciary duty to [Plaintiffs].

120. As a direct and proximate cause of Defendants' actions, [Plaintiffs] have suffered substantial economic harm including but not limited to the loss of title to the Home, the loss of equity in the Home, the further encumbrance of their Home due to the mortgage executed by Donald Thomas, the monthly payments made since February, 2005, and the imminent prospect of being evicted from their Home of 35 years.

WHEREFORE, [Plaintiffs] ask this court to enter an order:

- a. Awarding actual and punitive damages in an amount to be determined at trial;
- b. Awarding recoverable costs and attorney's fees; and
- c. Awarding such other relief as is equitable and just.

Attorney for Plaintiffs

Michelle A. Weinberg
Legal Assistance Foundation of Metropolitan Chicago
111 W. Jackson Blvd., 3rd Floor
Chicago, IL 60604
(312) 347-8363
Attorney Code No. 91017