

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

██████████ PARRILLO,

Plaintiff,

vs.

TOMMY WOOTEN, PHILLIP WALLER, ENVISION
MORTGAGE SOLUTIONS, AURORA LOAN
SERVICES, LLC, AND UNKNOWN OTHERS

Defendants.

AURORA LOAN SERVICES, INC.,

Counter-Plaintiff,

vs.

TOMMY WOOTEN, et al.,

Counter-Defendant.

08 CH 37378

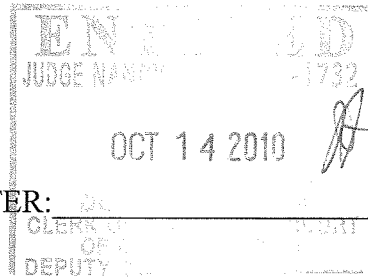
and

08 M1-718320
consolidated case,

Hon. Nancy J. Arnold
Judge Presiding

On the court's own motion,

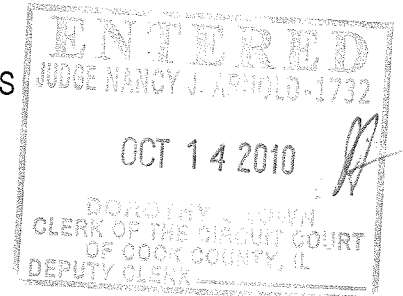
IT IS HEREBY ORDERED THAT these consolidated cases are set for status on the counterclaim by Aurora Loan Services for mortgage foreclosure and on 08 M1-718320, Wooten v. Parrillo, on December 7, 2010 at 10:15 a.m.



ENTER: _____

JUDGE

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FINDINGS OF FACT AND JUDGMENT AFTER TRIAL

THIS CAUSE WAS HEARD on trial on Plaintiff's Complaint. By the time the case was set for trial, Defendant Aurora Loan Services, Inc. was substituted as a Defendant party in lieu of Mortgage Electronic Systems. Shortly before trial, Aurora Loan Services was given leave to file a counterclaim for mortgage foreclosure, naming Defendant Tommy Wooten as the mortgagor. That counterclaim remains pending and was not part of the trial. Also still pending, and not part of the trial is a consolidated case, 08 M1 – 718320, Wooten v. Parrillo. This is a claim for possession of the subject real estate under the Forcible Detainer Act, 735 ILCS 5/9 et. seq. No dispositive ruling has yet been made on that case. Defendants Aurora Loan Services and Waller were represented at trial by their respective attorneys. Defendant Wooten, whose attorney had been given leave to withdraw a year earlier, did not appear at trial personally or by an

attorney. All claims against Defendant Envision Mortgage were dismissed at the commencement of the trial.

The Complaint

Plaintiff alleges that in 2006, the 2006 real estate taxes on her home were in distress. She alleges that she was able to pay the first 2006 installment, but was unable to pay the second installment. She alleges that on or about February 2007, she received an unsolicited telephone call from Defendant Waller, who told her that her name "came up on his computer" as someone with a high-interest loan, and that he could help her refinance on better terms. Plaintiff alleges that she orally gave Defendant Waller permission to check her credit and told him about the tax bill she could not pay. Plaintiff alleges further that a few days later, Defendant Waller told her that he could not find her a loan because she had a low credit score, but that he had a friend who could "invest" in her property and give her money to pay the tax bill and other debt. Thereafter, Plaintiff alleges, Defendant Waller sent her a prepared real estate contract form and a prepared land contract form. Plaintiff and Defendant Tommy Wooten were the parties named in both. Plaintiff alleges that after receiving these, she told Defendant Waller she would not sign them because she did not want to sell her home. Plaintiff alleges that Defendant Waller assured her that she was not selling it and she would get it back in one year. A closing followed, as did this lawsuit.

In Count I, Plaintiff sues Defendant Wooten and (the substituted Defendant) Aurora Loan Services on the theory of fraud in the inducement, and seeks to quiet title to the property in her name. Count II is against the same defendants and seeks to quiet title on the theory of equitable mortgage. In both of these counts, Plaintiff alleges that the mortgagee's predecessor was on notice of the incidence of fraud or of the circumstances revealing an equitable mortgage because the closing agent at the closing was the agent of the lender, and knowledge of the nature of the transaction was thus imputed to the lender. Count III was plead against Defendants Wooten and Waller under the Mortgage Rescue Fraud Act, 765 ILCS 940/1 et.

seq. Count IV is plead against the same defendants under the Consumer Fraud Act 815 ILCS 505/1 et seq., and Count V under common law fraud. The other counts are: Count VI against all defendants on a theory of unjust enrichment; Count VII against Defendant Wooten on a theory of unconscionability of contract, and Count VIII against Defendant Wooten under the Truth in Lending Act, 15 U.S.C. § 1601 (2001) et. seq.

Judgment Entered at the Close of Plaintiff's Case

At the close of the Plaintiff's case, the court granted Defendant Aurora Loan Services' motion for judgment in its favor on all claims against it. Judgment in favor of that Defendant was entered as to Count VI (unjust enrichment) because the evidence was that the lender had given substantial consideration for the mortgage interest it took in the property. Judgment in its favor on Count I and II was entered because there was no evidence to substantiate Plaintiff's allegations that the closing agent was the agent of the lender and no evidence as to what knowledge the closing agent had as to any part or all of the transaction in any event. There was evidence that the "loan contract," giving Plaintiff the right to buy the property back from Wooten, had been executed before the closing, and there was no convincing evidence that it was physically present at the closing. Further, as will be discussed infra, there was no convincing evidence that Plaintiff was led to and did endorse over to Defendant Wooten at the closing a check made out to her representing the lion's share of the equity in her home. There was some inconclusive evidence, however, that this event occurred after and outside of the closing, and there was nothing to suggest knowledge of that by the lender, through a purported agent or otherwise.

FINDINGS OF FACT

The court proceeds, then, to make its findings with regard to the case against the remaining defendants, Waller and Wooten. Plaintiff, 52 years old at the time of these events, had not purchased the home that is the subject of this suit. It had been the home of her in-laws, and when Plaintiff came to live

there, apparently in 1989, there was no mortgage on the property. Before moving into her in-laws' home, Plaintiff had lived with her own parents. Their home was deeded to her, and she sold it in 1996. Plaintiff came into title in the in-laws' home in 1996, after both her husband and mother-in-law had died. As indicated, the home was not encumbered by any mortgage at that time.

Plaintiff's Financial Situation

In 2000, the Plaintiff initiated the first of six transactions through which she steadily drew out the equity in the property. In 2000, she borrowed \$40,000 from Ameriquest and gave a mortgage interest to that company. In 2001, that mortgage was paid off through a loan by and new mortgage to Option One, for \$78,000. In 2002, another refinance resulted in a mortgage of \$90,000. In 2004, there was a refinance and a new mortgage of \$107,500. In 2005, a refinance and mortgage of \$125,000, and in 2006, a refinance and new mortgage of \$154,000. Plaintiff acknowledged that she is familiar with documents entitled "mortgage" and that she understands how a mortgage functions. Plaintiff acknowledged that she had read some of the mortgage documents from her previous refinancing and that in each there had been a document entitled "Mortgage."

Plaintiff testified that in 2006, she received notices of real estate tax delinquencies. Her subsequent inquiries revealed that, apparently in contrast to her earlier mortgage arrangements, the most recent one or ones did not include an escrow for taxes; therefore the mortgagee had not been paying them. Plaintiff received these delinquency notices late in 2006. She was able to pay the first delinquent installment, but she did not have the money to pay the rest. These delinquency notices were for the tax year 2005.

Plaintiff's income has been modest. She has been working part-time as a merchandiser for various companies. In 2006, her annual income was \$7,000. In the years thereafter it was under \$3,000. In 2007, the time at issue here, she earned only \$2,300 and Plaintiff testified that she was afraid, since she did not

have the money to pay the rest of the taxes, that eventually she would lose her home. There was some confusion during Plaintiff's testimony on cross examination as to whether by April, 2007, when the subject events began, Plaintiff had paid off the full 2005 delinquent taxes and whether it was only the first installment for 2006 that she had not paid. No notices of delinquency or real estate tax bills were introduced into evidence. The court notes, however, that the HUD-1 statement refers only to both installments of the 2006 taxes. The closing was June 15, 2007.

Contact by Waller

Plaintiff testified that Defendant Waller called her in April, 2007. She considered it a sales call. He asked her what her current interest rate was and then asked her whether she would like to refinance again. She gave him the information he requested and also gave him her social security number and permission to run a check on her credit.

Mr. Waller confirmed this part of Plaintiff's testimony. He is a loan originator, and licensed as such. Waller said that from this phone call somehow he was under the impression that her income was \$24,000; Plaintiff denied having told him that, and the court believed the Plaintiff. Mr. Waller testified that after the phone call he tried but could not find a refinancing vehicle for her.

Both Plaintiff and Defendant Waller testified that after the initial call, Defendant Waller called Plaintiff again and advised her that he could not find refinancing for her because her credit was not good. They both said that Defendant Waller then suggested that he might have an "investor" for her. Plaintiff thought he meant an investor who would give her a loan and refinancing; Defendant Waller testified that, no, it was "the investor" who would be getting a loan. Waller would assist "the investor" in getting a loan. Waller said he had discussed this with Plaintiff.

Documents Executed before Closing

Plaintiff testified that the next thing that happened was that Defendant Waller faxed her a real estate sales contract. The document was admitted into evidence; it identifies "Tommy Wooten" as Buyer and Plaintiff as Seller. Defendant Waller is identified as the loan officer. The purchase price is shown as \$250,000. Plaintiff testified that when it arrived, she recognized it as a sales contract, so she called Defendant Waller and told him she would not sign it. Plaintiff's testimony was self-contradictory, however, because on cross-examination she said she had not even looked at the title of the document. She did initial it several times, each time after the word "seller," and she signed it. Then she faxed it right back. She said she signed it because Defendant Waller told her it was a refinancing document. The court does not believe this testimony.

Plaintiff testified that the next thing that happened was that a document called "Loan Contract" was faxed to her home. Excerpts from Defendant Wooten's deposition in this case were admitted into evidence as party admissions. Defendant Wooten testified that he had drafted the land contract and that Defendant Waller passed it on to Plaintiff. Wooten testified that Waller had contacted him and suggested this deal to him. He said Defendant Waller had told him it involved a property in tax distress; that the owner had mediocre credit, but that if Defendant Wooten invested he could be repaid within one year; and that there was plenty of equity in the property. Wooten testified that Waller suggested a "land contract" by which the owner could buy the property back from Wooten within the year and that Defendant Waller should get a "finder's fee" of \$25,000 out of the deal.

The "Land Contract" that Defendant Wooten prepared was dated June 1, 2007. It identifies Tommy Wooten as Seller and Plaintiff as Buyer. It contains a purchase price of \$250,000, calls for no initial deposit, but monthly payments of \$1,100.00, with the entire balance being due on June 1, 2008. Plaintiff said she did not read this contract, but signed it and sent it back. Plaintiff testified that she thought her

property was worth \$250,000, based on sales by some of her neighbors. Wooten had viewed the property from the outside and thought it was worth \$300,000. An appraisal came in at \$309,000.

The Closing

Plaintiff appeared for a closing on June 15, 2007. There she signed a warranty deed. Despite self-contradictory testimony earlier, Plaintiff admitted under cross examination that she signed the warranty deed at the closing, and she knew what a deed was. Nonetheless, Plaintiff testified that she still thought this whole transaction was a loan and a refinance. She thought that after a year she would get her property back and her previous loan/mortgage back. She said she would "refinance" then. She said no one told her that; she just thought so. Plaintiff admitted that Defendant Waller never told her that the transaction she was entering with Defendant Wooten was a loan; she just thought it was. Plaintiff thought Wooten was going to get her a mortgage.

Other Documents signed at Closing

The HUD-1 statement from the closing shows total cash to seller in the amount of \$79,494.69. Plaintiff testified that at the closing she also signed what was captioned as a "rider" to the original real estate purchase contract. This rider states that from the proceeds of the sale, \$16,000 is to be paid to Plaintiff. All remaining proceeds were to be "made payable" to the purchaser, Tommy Wooten.

Introduced into evidence were two checks issued on the title company's account dated June 15, 2007. One was drawn payable to Plaintiff in the amount of \$16,000; this one was endorsed by Plaintiff and deposited into a Citizens Bank account (her bank account). The other was also drawn payable to Plaintiff and dated June 15, 2007; it was in the amount of \$63,494.69. This one was endorsed by Plaintiff, but over the words "pay to the order of Tommy Wooten."

The evidence was inconclusive as to the delivery of these checks; it is inconclusive because the credibility of all the parties was somewhat wanting. At first Plaintiff testified that she received both the

checks at the closing. The she said that she actually did not receive the smaller one until after the closing, at a restaurant. She said she left the closing and went to a restaurant because “they” were waiting for the funds. Then Plaintiff testified that she actually did receive the larger check at the closing and that she endorsed it over to Defendant Wooten because another Mr. Waller (not Defendant Waller) was at the closing and told her to. Plaintiff said that that “other” Waller told her the \$63,000 would “go into an escrow and then [her] loan would go back to \$159,000.” There were no escrow documents introduced into evidence, and Plaintiff did not testify as to having seen any such document. Defendant Waller said the \$63,000 check was given to Plaintiff at the restaurant. He said both checks were brought there at the same time. In his deposition testimony, Defendant Wooten first said that Plaintiff “signed” (presumably, “endorsed”) the \$63,000 check at the closing. But he concurrently said that there was a hold-up with the checks (plural) and that he (Defendant Wooten) and Defendant Waller waited for the checks (plural) and met Plaintiff at the restaurant afterwards. If it were not in order to obtain an endorsement to himself on the \$63,000 check, the court is at a loss to understand why Defendant Wooten would have any reason to see Plaintiff after the closing.

At any rate, what is clear is that Plaintiff endorsed over to Defendant Wooten \$63,000 of the total proceedings from the closing. Also clear is that \$25,000 was paid from those funds to Defendant Waller by Defendant Wooten as Defendant Waller’s “finder’s fee.”

DECISION

Turning first to Plaintiff’s claim plead under the Mortgage Rescue Fraud Act, 765 ILCS 940/1 et. seq., Defendant Waller argues that the Act does not apply to the case at hand because Plaintiff’s property was not a “distressed property” as defined in the Act. Section 5 of the Act defines a “distressed property” as:

"residential property . . . that is in foreclosure or at risk of loss due to nonpayment of taxes, or whose owner is more than 30 days delinquent on any loan that is secured by the property."

Defendant Waller argues that Plaintiff's property was not "at risk of loss due to nonpayment of taxes," because there was no evidence that she had received any delinquency notice as to the current, unpaid first installment of the 2006 taxes. Plaintiff argues that merely being late with a payment and being unable to afford it, as Plaintiff was, cannot be understood to be equated with having one's property "at risk of loss due to nonpayment of taxes." Defendant Waller effectively argues that the definition should be interpreted as encompassing only situations in which the local taxing authorities have taken affirmative steps toward selling the taxes at an annual tax sale. Defendant Waller argues, without citation, that a notice of delinquency is such an affirmative step under the Property Tax Code, 35 ILCS 200/1 et. seq.

As noted, the evidence as to whether at the time of this transaction Plaintiff had satisfied all tax indebtedness as to which delinquency notices had been given was far from clear. In any event, the court determines that the statutory definition cannot be interpreted to include the requirement as Defendant Waller suggests. Section 5 identifies three different situations in which property will be considered "distressed" under the Act. The court believes that all three of those described situations should be consulted in order to interpret this definitional section. The first situation identified is one in which a property is "in foreclosure." Presumably this would refer to properties as to which mortgage foreclosure proceedings have been initiated under 735 ILCS 5/15-110/ et. seq. In such cases, a public filing would have occurred. The third situation identified in the definition is one in which the owner is more than thirty days delinquent on any loan secured by the property. No public filing would have occurred in such a situation, and conceivably it would be only the borrower and the mortgage loan servicer who would even know that the owner was late in making a payment. Here, at best, Plaintiff was "late" with the first installment of 2006, and by June of 2007 that would be more than thirty days late. The court determines

that that is enough to be "at risk of loss" due to non-payment of taxes because it is equivalent to the third situation described in the definitional provision. Therefore the court concludes that Plaintiff's property was "distressed property" within the meaning of the Mortgage Rescue Fraud Act.

There is no dispute and no doubt that Defendants Waller and Wooten were a "distressed property consultant" and a "distressed property purchaser," respectively, under the Act.

The court finds that Defendant Waller has violated §50(a)(2) of the Act by receiving a fee that exceeded two of Plaintiff's prior monthly mortgage payments. Defendant Waller's argument that his \$25,000 fee was paid by Defendant Wooten rather than by Plaintiff is to no avail, because it is clear that that fee was paid out of the seller's (Plaintiff's) proceeds from the closing. Defendant Waller's taking his fee from Defendant Wooten would be a violation of §50(a)(4) in any event. Defendant Waller has also violated §50(a)(7) of the Act by failing to provide Plaintiff with a written contract for his services and thus failing to provide Plaintiff with the written notices required by Sections 10 and 15 to be in such a contract.

The court determines that Defendant Wooten violated §50(b)(1) of the Act by entering into a conveyance of the subject property without verifying that Plaintiff had a reasonable ability to pay for the subsequent conveyance back (per the "Loan Contract") or to make the required monthly payments prior to that time. The court determines that Defendant Wooten violated §50(b)(2) of the Act by failing to pay to Plaintiff at closing consideration in an amount at least equal to 82% of the property's fair market value. The court determines that the fair market value of Plaintiff's property was \$250,000, per the Plaintiff's own testimony and per the real estate contract between herself and Defendant Wooten. The HUD-1 statement indicates that, after pay-off of Plaintiff's existing mortgage and charges assessed to Plaintiff (including closing costs and 2006 taxes), the cash proceeds to Plaintiff from the closing were \$79,494.69. Of this amount, only \$16,000 was actually delivered (and not endorsed over) to the Plaintiff. "Consideration" paid to the Plaintiff, therefore, consists of this \$16,000, plus \$159,486.42, which paid off the pre-existing

mortgage, plus \$3,264 in real estate and real estate transfer taxes. The sum of these three figures equals \$178,750.42. 82% of the fair market value (\$250,000) equals \$205,000. Defendant Wooten has thus NOT complied with §50(b)(2), and has violated that section of the Act.

The court determines that Plaintiff's damages incurred by reason of the violations of the Mortgage Rescue Fraud Act by Defendants Waller and Wooten consist of the loss of the remaining equity in her home, less the small portion thereof that was actually given to her. The court concludes that Plaintiff's equity in the home can be determined from the HUD-1 statement, which places it at \$79,494.69. Subtracting the \$16,000 that was actually delivered and retained by the Plaintiff, her damages are in the amount of \$63,494.69. The court finds that Defendants Waller and Wooten are jointly liable for these damages. The court further finds that, because Plaintiff has an adequate remedy at law, no equitable relief is necessary or appropriate.

ENTRY OF JUDGMENT

IT IS HEREBY ORDERED THAT:

1. Judgment is entered in favor of the Plaintiff, [REDACTED] Parrillo, and against Defendants Tommy Wooten and Phillip Waller, jointly and severally, in the amount of \$63,494.69, for violation of the Mortgage Rescue Fraud Act, 765 ILCS 940/1 et. seq. on Count III of the Complaint.
2. Count II of the Complaint is dismissed, the court having determined not to award equitable relief.
3. Judgment is entered against the Plaintiff on Counts I, IV, and V for failure of proof.
4. Counts VI, VII, and VIII are dismissed.

ENTER:

JUDGE

