

STATE OF MICHIGAN
JUDICIAL BRANCH
CLERK OF DISTRICT COURT

STATE OF MICHIGAN
THE DISTRICT COURT FOR THE 61ST JUDICIAL DISTRICT

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(11 pp.)

U. S. Home and Realty Corporation
Plaintiff,

v

CASE NO. 87-SP-930
OPINION

Helen Lehnartz and Helen Cummings,
Defendants.

This case began as an action filed by the Plaintiff for forfeiture on a land contract. The Plaintiff alleges that payments on the land contract are in arrears. The Defendants do not dispute the fact that the payments on the land contract are in arrears, rather the Defendants have filed a counterclaim alleging fraud, violation of a fiduciary duty, violation of the Michigan Usury Statutes, and violation of the Michigan Consumer Protection Act in regard to said land contract. The trial proceeded in this case on two separate dates, the first date being August 6, 1987 and the continuation date being September 10, 1987. The trial essentially addressed the Defendants counterclaim.

A brief synopsis of the case is that the Defendants were buying a home in the City of Grand Rapids at 1127 Cooper, Southeast and had been buying that property on a land contract for several years. There was a final balloon payment due in January of 1987 and the Defendant Helen Lehnartz, who is the mother of Defendant Helen Cummings, was looking for a way to raise money to make that balloon payment. Additionally, Helen Lehnartz had entered into an Buy and Sell Agreement to purchase a rundown piece of property in the City

of Grand Rapids which contained a defunct restaurant and some apartments above the restaurant. Helen Lehnartz had given realtor Mike Samra a \$200.00 check as earnest money on this Buy and Sell Agreement although the check was not good and had not been cashed. Mike Samra was putting some amount of pressure on the Defendant to come up with the balance of the down payment which was \$4300.00 in order to effectuate the closing on the property. The Defendant Helen Lehnartz' only source of income was Aid to Dependent Children from the Department of Social Services and therefore she was anxious to receive the benefits of any refinancing program which would put cash in her pocket. Therefore, the Defendant Helen Lehnartz was looking for cash to pay off the balloon payment on the land contract, to help her raise some money for a down payment on the rundown restaurant and apartments and for some personal living expenses and improvements to her own home because it's clear that the house at 1127 Cooper was in a state of disrepair.

To effectuate the refinancing, Helen Lehnartz contacted one Al Mosley who does business as Home Assistance Services. She paid Al Mosley \$400.00 to help her find a source of cash. Mosely contacted Terry Hunefeld, an officer of Plaintiff corporation and set up a meeting with Hunefeld, Mosley and Defendant Helen Lehnartz. This meeting took place on November 17, 1986 at the Defendant's home on Cooper Street. On the next day, November 18, 1986, Terry Hunefeld sent to Defendant Lehnartz an offer to purchase her property for the sum of \$20,000.00. When the Defendant received this offer through the mail on the 19th of November, 1986 she began

making calls to Terry Hunefeld's office and as a matter of fact made many such calls. The Defendant was obviously eager to obtain some cash. On the evening of the 20th of November 1986 the Defendant Helen Lehnartz, Al Mosley, and Terry Hunefeld met at Defendant's house on Cooper Street for the second time and at that meeting the Defendant's daughter signed a Power of Attorney naming Defendant Lehnartz as her attorney for the purpose of any real estate transaction involving 1127 Cooper. On the morning of the 21st of November, 1986, Defendant Lehnartz was picked up at her home by realtor Mike Samra and transported to Terry Hunefeld's office. At the Plaintiff's office, the Defendant signed numerous documents which on their face sold the Defendant's property to the Plaintiff corporation for \$20,000.00 and in a separate land contract document the Defendant purchased the same property back on a land contract from the Plaintiff for \$32,000.00 at interest beginning at 9 percent and increased to 11 percent. It is this transaction which is the focus of this lawsuit. The Defendant claims that this land contract should be voided as a violation of the Michigan Consumer Protection Act, the Usury Statutes, and because it was obtained through fraud and through a breach of fiduciary duty.

In addition to the descriptive synopsis of the facts which the Court just gave, the Court now offers the following specific findings of fact.

1. That Defendant Helen Lehnartz was originally looking for a way to refinance her house and raise some cash to use to pay off the balloon payment on her house, personal expenses, home

improvements on the home at issue, and down payment on a restaurant with apartments.

2. That Defendant paid Al Mosley of Home Assistance Services \$400.00 to procure a source for refinancing.

3. That Terry Hunefeld, an officer of Plaintiff corporation, was contacted by Al Mosley and visited Defendant's home on November 17 and November 20th, 1986.

4. That on November 18, 1986 Terry Hunefeld sent an offer to purchase on behalf of the Plaintiff corporation to the Defendant Helen Lehnartz.

5. That on the second visit of November 20, 1986 Defendant Helen Lehnartz signed a listing agreement to sell her home with the Plaintiff corporation and Defendant Lehnartz' daughter Cummings signed a Power of Attorney but not the listing agreement; said Power of Attorney gave power to Defendant Lehnartz to execute transactions involving the real estate at issue.

6. That between November 19 and November 21st, Defendant Helen Lehnartz called Terry Hunefeld on numerous occasions to discuss the refinancing plan. Defendant Lehnartz was definitely anxious to receive money as a result of this transaction because Defendant Lehnartz was a necessitous borrower, that is, she was in dire need of money for various reasons including the fact that her only source of income was Aid to Dependent Children through the Department of Social Services.

7. That on the 21st day of November 1986 the Defendant was picked up by the realtor Mike Samra and transported to Plaintiff

corporation's office where she executed a Quit Claim Deed in favor of the Plaintiff corporation and also signed a land contract wherein she repurchased her own property from the Plaintiff corporation. Under the terms of the Quit Claim Deed the Defendant Lehnartz sold her property to the Plaintiff corporation for \$20,000.00 minus certain listed expenses and repurchased the same property from Plaintiff corporation for \$32,000.00 at interest beginning at 9 percent and increasing to 11 percent.

8. That the persons present at the signing of the papers on the 21st of November were Mike Samra, Defendant Helen Lehnartz and Terry Hunefeld. Clearly both Mike Samra and Terry Hunefeld had much to gain by this transaction. Specifically Mike Samra stood to gain his commission out of the sale of the restaurant with apartments that he had listed and sold to the Defendant Lehnartz. Hunefeld through the Plaintiff corporation stood to gain by getting a land contract sale for \$32,000.00 and interest increasing from 9 to 11 percent on a house for which the Plaintiff corporation effectively paid \$14,800.00. The land contract contained several overbearing provisions such as requirement that the property be maintained according to the Grand Rapids Housing Code and a "pay on sale" clause. Plaintiff corporation knew that they would get a total of \$135,366.48 over the life of the contract or more likely, they would get the house back when the Defendant failed to make payments. Said payments were clearly too high for Defendant to make on an ADC income.

9. Defendant Lehnartz did not see any of the papers

signed by her on November 21st, 1986 prior to their signing.

10. Defendant Lehnartz is an uneducated woman who did not understand the transaction or the documents she was signing.

11. The purchase and the resale and the various other documents executed comprise a very complex transaction not easily comprehensible and certainly not understood by Defendant Lehnartz.

12. Plaintiff corporation knew that the Defendant was on Aid to Dependent Children and could not afford the payments set out in the land contract executed by the Defendant Lehnartz.

13. The terms of the land contract included a provision whereby the Defendant buyer is required to maintain the property on Cooper Street in conformance with all City Housing Codes. This is an onerous provision since Plaintiff corporation knew that there were numerous City Housing Code violations because of the rundown condition of the property.

14. Plaintiff's realtor fee on the purchase under the Quit Claim Deed was unwarranted, and unconscionable and has no reasonable basis in standard realty fees. The realty fee sales commission was \$4200.00 which is more than 20 percent of the sale price. Testimony indicated that standard real estate commissions for sale of property are around 7 percent of the sale price. Terry Hunefeld testified that the fee for their guaranteed purchase program was another 4 to 6 percent. These fees would total 11 to 12 percent. In addition, there were no services rendered to warrant such a sales commission.

15. The \$1,000.00 fee to Home Assistance Service is in reality a finder's fee that Plaintiff corporation should pay to Al

Mosley and Home Assistance Service and there is no basis in fact or law to require Defendant Lehnartz to pay such a fee.

16. The repayment rate on the land contract is 23.64 percent interest if the principal figure is \$14,800.00 which is the net amount that the Defendant Lehnartz received from the sale of her home to Plaintiff corporation.

It is the Opinion of the Court that the above transaction violated the Michigan Consumer Protection Act found at MSA 19.418. Specifically sections N, O, and X of Section 3 have been violated by this transaction. Those sections read as follows:

Section 3, subsection 1, "unfair, unconscionable, or deceptive methods, acts or practices in the conduct of trade or commerce are unlawful and are defined as follows:

- (n) causing a probability of confusion or of misunderstanding as to the legal rights, obligations, or remedies of a party to a transaction.
- (o) causing a probability of confusion or of misunderstanding as to the terms or conditions of credit if credit is extended in a transaction.
- (x) taking advantage of the consumer's inability reasonably to protect his interest by reason of disability, illiteracy, or inability to understand the language of an agreement presented by the other party to the transaction who knows or reasonably should know the consumer's inability."

This was a transaction that occurred within a four day period; the Defendants Lehnartz and Cummings had no one to counsel them and no one acting in their best interests; Defendant Lehnartz is an uneducated person whose sole source of income is Aid to Dependent Children; Terry Hunefeld recognized that this was a

transaction fraught with "risk"; the Defendant never had time to examine the papers she was signing; the only people with her at the transaction were those who were feeding off her and stood to gain by the transaction.

The Court further finds that there was in effect a loan of \$14,800.00 based on the fact that the commissions and fees totalling \$5,200.00 are unconscionable, unwarranted, and totally unsupportable by services rendered. The \$5200.00 is comprised of the \$4200.00 sales commission which has been previously addressed and the \$1,000.00 finder's fee to Al Mosley, Home Assistance Services, which has been previously addressed. Using the amortization schedule provided by the Defendant, it is clear that the repayment schedule set up under the land contract if the principal balance is determined to be \$14,800.00 is in fact usurious because the interest rate figures out to be 23.64 percent. Therefore, the Court finds that the land contract is usurious and void.

This case involves an equitable claim in that the Defendant asks that the land contract be rescinded. The District Court has specific equity power under the provisions of MSA 27A.8302(3),

"in cases brought under Chapter 57, the District Court may hear and determine an equitable claim relating to or arising under Chapters 31, 33 and 38, or involving a right, interest, obligation, or title in land. The Court may issue and enforce any judgment or order necessary to effectuate the Court's equitable jurisdiction as provided in this subsection, including the establishment of escrow accounts and receiverships."

Based upon the fact that the Court has found that this

equitable jurisdiction as provided in this subsection, including the establishment of escrow accounts and receiverships."

Based upon the fact that the Court has found that this land contract is void as being usurious and that the entire transaction is a violation of the Michigan Consumer Protection Act, the Court is exercising its specific equity power and declaring the sale of the home and the land contract and all accompanying documents null and void. It is clear that the Defendant Lehnartz received \$14,800.00 from the Plaintiff corporation. Any and all payments made by the Defendants to the Plaintiff corporation on the previously existing land contract are to be credited in full against the outstanding land contract balance of \$14,800.00. The balance remaining is to be paid back by the Defendants at the rate of \$147.00 per month, which is the amount that the Defendant was paying on her original land contract. The balance of the \$14,800.00 shall accrue interest at the rate of 7 percent per annum and the entire balance shall be secured by a standard Grand Rapids land contract form number two which also requires Defendant to pay all taxes.

Michael R Smolenski

Michael R. Smolenski
District Court Judge

SEPTEMBER 30, 1987

5.32 yrs @ 250/mo for 0% interest
10.75 yrs @ 147

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FOR LEGAL SERVICES

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U.S. Home and Realty Corporation,
a Michigan Corporation,
Plaintiff,

v

No. 87-SP-930

Helen Lehnartz and
Helen Cummings,
Defendants.

ORDER

Timothy P. Elve (P-34197)
Attorney for Plaintiff
9 Fairbanks N.E.
Grand Rapids, Michigan 49503

Legal Aid of Western Michigan
Attorneys for Defendants
by Michael Chielens (P-35374)
430 Federal Square Building
Grand Rapids, Michigan 49503

At a session of this court held in the
Hall of Justice in the city of Grand Rapids,
Kent County, Michigan, on January 8, 1988.

PRESENT: Honorable Michael R. Smolenski
District Court Judge

Pursuant to a written opinion dated September 30, 1987,
after trial on the merits,

IT IS ORDERED:

1. The land contract is usurious and void.
2. The entire transaction is a violation of the Michigan Consumer Protection Act.
3. Any and all payments made by Defendants to Plaintiff are to be credited in full against the outstanding land contract balance.
4. The parties shall execute a new land contract securing an original outstanding balance of \$14,800.00 and use a standard Grand Rapids land contract form number two.

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5. This land contract shall provide the following:

a. An interest rate of seven percent (7%) per annum with interest to accrue from June 1, 1987.

b. Monthly payments of \$147.00 per month.

c. Defendant is to pay all taxes.

6. Plaintiff may add to the land contract balance amounts paid out of escrow for taxes and insurance on defendants' behalf. The escrow account shall be closed and future taxes and insurance shall be paid directly by defendants.

7. Plaintiff shall pay Defendants' costs and reasonable attorney's fees, adjudged to be \$1,295.20, directly to Defendants' attorneys, Legal Aid of Western Michigan.

Michael R. Smolenski
Michael R. Smolenski (P-20728)
District Court Judge

Approved as to form:

Timothy P. Elve
Timothy P. Elve (P-34197)
Attorney for Plaintiff

ATTEST: A TRUE COPY

Aimee Perkins
DEPUTY CLERK

Approved as to form:

Michael Chielens
Legal Aid of Western Michigan
Attorneys for Defendants
by Michael Chielens (P-35374)