

STATE OF NORTH CAROLINA
COUNTY OF TRANSYLVANIA

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO. 12 CVS 526

HOMETRUST BANK,)
)
 Plaintiff,)
)
 v.)
)
 JOHN ANTHONY FISHER, III, and)
 RICHARD ALLEN SHIARLA,)
)
 Defendants.)

JUDGMENT

FILED
2013 APR 12 AM 9:35
COURT CLERK, C.O.C.

This matter came before the Court on February 18, 2013 during the regular civil session of Transylvania County Superior Court upon the Motion for Summary Judgment and Motion to Strike and for Gatekeeper Order by Plaintiff HomeTrust Bank ("Bank"). The Bank was represented by counsel at the hearing. Defendants John Anthony Fisher, III ("Fisher") and Richard Allen Shiarla ("Shiarla") did not appear. At the conclusion of the hearing, the Court orally allowed the Bank's Motions. [The "May 24 Orders" of Judge Bradley Letts defined in this Court's Findings of Fact numbers 8 & 9 below are incorporated herein in their entirety.]

On February 27, 2013, Shiarla filed a Notice of Hearing, which set a hearing on a Motion for Rehearing on April 8, 2013. On February 28, 2013, Shiarla filed a Motion for Rehearing and on March 2, 2013, he filed a First Amended Motion for Rehearing.

The matter came back before the Court on April 8, 2013 during the regular civil session of Transylvania County Superior Court. The Bank again appeared through counsel and Defendants again did not appear.

After reviewing and considering the Court files in this matter and 11 SP 168 and 11 SP 169, the Bank's Motions, Shiarla's Motions, and all associated materials, and after receiving the arguments of counsel for the Bank, the Court is of the opinion that the Bank's Motions should be granted and Shiarla's Motions for Rehearing should be denied. In connection, the Court makes the following:

Henderson
Assistant
Transylvania County, N.C.



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TRANSYLVANIA CO, NC FEE \$26.00
PRESENTED & RECORDED
04-17-2013 02:23:47 PM
CINDY M OWNBEY
REGISTER OF DEEDS
BY BETH C LANDRETH
ASSISTANT

BK: DOC 651
PG: 411-419

FINDINGS OF FACT

1. Fisher and Shiarla are adult citizens and residents of Transylvania County.

2. Fisher, his wife Jeanette K. Fisher, and a limited liability company Fisher created or controlled named The Gorges at Lake Toxaway, LLC, previously owned real property located in Transylvania County (the "Property").

3. The Bank held deeds of trust on the Property securing certain debts.

4. The Bank foreclosed its interests under the deeds of trust as shown in 11 SP 168 and 11 SP 169 ("Foreclosure Proceedings").

5. Following the Foreclosure Proceedings, the Substitute Trustee, by Deeds recorded with the Transylvania County Register of Deeds on February 10, 2012, transferred ownership of the Property to the Bank.

6. Notwithstanding the Foreclosure Proceedings, notices to Defendants to relinquish possession of the Property, and Orders for Possession of Real Property, and Writs of Possession and Orders for Ejectment, one or both Defendants maintained a presence on the Property, including but not limited to, by leaving personal belongings and other abandoned items on the Property, by posting No Trespassing signs, and otherwise attempting to bar or impede access to the Property.

7. Throughout the Foreclosure Proceedings, Fisher and Shiarla filed or recorded numerous documents with the Office of the Clerk of Superior Court and the Office of the Register of Deeds.

8. By Orders filed on May 24, 2012 in the Foreclosure Proceedings ("May 24 Orders"), the Honorable Bradley Letts found that various filings and/or recordings by Defendants were improper and extraneous. Consequently, the May 24 Orders struck many of those documents, and cautioned Defendants that a "Gatekeeper" Order may be entered if they continued to make such filings.

9. Specifically, the May 24 Orders admonished Defendants that a "Gatekeeper" order may be entered should Defendants file "any new action, proceeding or document which is not grounded in fact and/or is filed for the purpose of harassment, delay and hindrance."

10. Subsequent to the May 24 Orders, and notwithstanding them, Defendants filed and/or recorded additional documents that the Bank contends are improper and should be stricken. For example, on November 30, 2012, Fisher filed a document in the instant case entitled "Plaintiff's Voluntary Withdrawal of Complaint," in which Fisher asserted that he was the "designated and appointed attorney-in-fact" for the Bank and that the Bank wished to dismiss its claims in this action. A "Private General Warranty Deed," which is signed by both Defendants, was also recorded on February 22, 2013, at Book 645, Pages 510-519.

11. The Bank has also discovered other and miscellaneous documents that Defendants filed and/or recorded prior to the May 24 Orders and that the Bank contends are improper and should be stricken. These documents include a Lis Pendens filed by Fisher on May 21, 2012 in File No. 12 M 166, and a "Declaration of Claim of Lien" filed by Shiarla on February 21, 2012 in File No. 12 R 15, in which he appears to assert a claim on behalf of Fisher against numerous individuals and entities in the amount of Five Hundred Twenty-Five Million Dollars (\$525,000,000.00).

Based upon these findings of fact, the Court makes the following:

CONCLUSIONS OF LAW

1. The Court has subject matter jurisdiction over this matter and personal jurisdiction over all parties.

2. The Bank is the sole and lawful owner of the Property as conveyed to it by the Deeds from the Substitute Trustee. Any objections or defenses Defendants may have had with respect to this transfer and the Foreclosure Proceedings have been overruled or waived.

3. Defendants' continued efforts to retain possession of or exercise control over the Property, including but not limited to, by leaving personal belongings and other abandoned items on the Property, by posting No Trespassing signs, and otherwise attempting to bar or impede access to the Property are unauthorized, unlawful, and interfere with the Bank's right to use and enjoy the Property.

4. Defendants are competent to understand the rules and procedures governing court proceedings and the filing and recording of documents, and are competent to understand directions from court officials concerning these matters.

5. This Court has the inherent authority, and the obligation, to safeguard the judicial process and to protect the

fairness of the process for all citizens and to prevent abuse and harassment of litigants and court officials as well as conduct that creates needless expense.

6. A Gatekeeper Order may be entered to preserve the orderly and efficient administration of justice and when a lesser remedy is not available or likely to provide adequate protection for litigants and court officials affected by frivolous and groundless filings.

7. In connection with the Foreclosure Proceedings and this case, Defendants have made numerous filings and recordings that are frivolous and groundless. These filings and recordings have disrupted the orderly administration of justice, confused the litigation process and the public real estate records with respect to the Property, and needlessly increased the costs of the Foreclosure Proceedings and associated matters. Some of these documents were stricken by the May 24 Orders.

8. Other improper documents have been filed/recorded by Defendants subsequent to the entry of the May 24 Orders or were filed/recorded prior to the entry of May 24 Orders but subsequently discovered by the Bank. These documents are also frivolous and groundless, often nonsensical, with no basis in fact or in procedural or substantive law. Said filings and/or recordings appear to be an attempt by Defendants to obfuscate and confuse the orderly proceedings of the Court and to continue to interfere with the Bank's interest in the Property.

9. Having considered other sanctions and alternatives, the Court in its discretion is of the opinion that a lesser alternative would not be sufficient to prohibit future abuses of the judicial process and the public records by Defendants.

10. Defendants are not attorneys. However, if they were admitted to practice, their conduct would be subject to review by this Court and the North Carolina State Bar for potential disciplinary measures.

11. There is no genuine issue as to any material fact and the Bank is entitled to judgment as a matter of law.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. Defendant Shiarla's Motion for Rehearing and First Amended Motion for Rehearing are **DENIED**;

2. The Bank's Motion for Summary Judgment is **GRANTED** and judgment is entered in favor of the Bank and against Defendants;
3. Defendants shall remove all personal property or other belongings from the Property within thirty (30) days from the date of this Judgment. This removal shall be at Defendants' own expense. Defendants shall provide forty-eight (48) hours advance written notice to the Bank, with a copy to the Transylvania County Sheriff's Department, of the times they or their agents plan to be on the Property for this purpose. Any personal property or belongings remaining on the Property following this thirty (30) day time period shall be deemed unwanted and abandoned and may be disposed of in the Bank's discretion. Further, during this thirty (30) day period, Defendants may only remove personal property and belongings that are owned by them. They may not place additional belongings, including but not limited to signage, on the Property and shall not damage or alter the Property in any way;
4. Except for the purpose of removing their personal property and belongings as described above, Defendants, and any persons acting with Defendants or on their behalf, are permanently and perpetually enjoined from entering the Property and/or interfering with the Bank's use and enjoyment of the Property, including but not limited to any efforts by the Bank to market or sell the Property, absent express written permission from the Bank;
5. The Bank's Motion to Strike and for Entry of Gatekeeper Order is **GRANTED**;
6. The documents filed and/or recorded by Defendants in the Office of the Clerk of Court for Transylvania County and in the Office of the Register of Deeds for Transylvania County, as listed on Exhibit A, shall be and are hereby stricken and declared of no effect;
7. Each Defendant, or any person acting with Defendants or on their behalf, is further enjoined from filing or recording any document pertaining to the Property or the Bank's ownership thereof and referencing the Bank, its officers, directors, agents, and employees, including but not limited to its attorneys, with the Office of the Clerk or the Office of the Register of Deeds except as follows:

- a. With Prior Court Approval
 - i. Any Defendant wishing to file or record a document must obtain prior approval from the Senior Resident Superior Court Judge, or his designee, to file or record the document;
 - ii. A request by Defendants for leave to file or record a document shall be in writing, shall state the nature of the proposed filing/recording and its legal basis, and must include a copy of the proposed document that is being submitted for approval;
- b. With Prior Certification by an Attorney
 - i. In the alternative, any Defendant wishing to file or record a document may obtain a certification from an attorney licensed to practice law in North Carolina;
 - ii. In the certification, which must be in writing, the attorney must certify that he or she has read and is familiar with this Judgment, has carefully reviewed the document to be filed or recorded, has investigated the matter sufficiently to determine that there is a legitimate and lawful basis for filing or recording the document, and does not believe the document to be frivolous or nonsensical nor that it is being filed or recorded for the purpose of harassment, intimidation, or any improper purpose. Such certification shall not be construed as establishing an attorney-client relationship between the rendering attorney and Defendant(s);
8. If any Defendant presents a document to be filed or recorded without either an accompanying approval from the Court or a certification from an attorney, as described above, neither the Office of the Clerk nor the Office of the Register of Deeds shall accept the document for filing or recording;
9. Should Defendants, despite this Judgment, file or record any document without the required approval or certification, the Clerk of Court or Register of Deeds shall notify the Court and is authorized to remove the document from the public records and strike any

references to it without further Order or authorization from the Court;

10. The pre-filing approval procedures contained in Sections 6-9 above shall remain in effect until vacated or modified by subsequent Order of the Court. Defendants may petition with notice to the Bank to have these provisions modified or vacated at any time beginning one (1) year from the entry of this Judgment;
11. Violation of this Judgment in any respect by Defendants, or by any person acting on behalf or in concert with Defendants, shall constitute contempt and may be sanctioned accordingly. This Court may also impose sanctions permitted under Rule 11 of the North Carolina Rules of Civil Procedure or any other sanctions available through statute, rule, or this Court's inherent authority;
12. The Transylvania County Sheriff's Office shall serve a copy of this Judgment upon each Defendant personally and shall submit a return of service;
13. A copy of this Judgment shall be filed in 11 SP 168 and 11 SP 169 and shall be recorded in the Office of the Register of Deeds for Transylvania County; and,
14. The Bank is directed to post a bond with the Clerk's Office in the amount of \$200 in connection with this Judgment.

This 10th day of April, 2013.


The Honorable Alan Z. Thornburg
Superior Court Judge Presiding

Documents Filed with the Clerk of Superior Court

1. Plaintiff's Voluntary Withdrawal of Complaint, filed in Civil Action 12 CVS 526 on November 30, 2012;
2. Public Notice of-Non Response; and Declaration of Breach of Contract; and Public Notice of Default; and Computation of Financial Damages, filed in 12 R 13 on February 17, 2012;
3. Claim of Lien, filed in 12 R 14 on February 21, 2012;
4. Declaration of Claim of Lien, filed in 12 R 15 on February 21, 2012; and,
5. Lis Pendens, filed in 12 M 166 on May 21, 2012.

Documents Recorded with the Register of Deeds

1. Public Notice of Declaration of Revocation, Rescission, Cancellation, Annulment and Expungement of Substitute Trustee's Notice of Foreclosure, filed on December 21, 2012 at Book 638, Page 138; and also re-recorded on the same date at Book 638, Pages 16, 75, and 197; and,
2. Declaration of Revocation, Cancellation, and Abatement of the Real Estate Subdivision Known As The Gorges, filed on January 10, 2013 at Book 640, Page 336; and,
3. Private General Warranty Deed, filed on February 22, 2013 at Book 645, Pages 510-519.