

IN THE CIRCUIT COURT OF PLATTE COUNTY, MISSOURI
AT PLATTE CITY

FILED
MAR 22 2016
KIMBERLY K JOHNSON
Clerk of the Circuit Court Platte County, MO

THERESA GRISHAM,

Plaintiff,

v.

THE MISSION BANK, *et al.*,

Defendants.

Case No. 13AE-CV02207

Division II

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND JUDGMENT**

Now, on this 22nd day of March, 2016 the Court takes up the above

captioned matter. On December 14, 2015, the above captioned cause came on regularly for hearing. The Plaintiff appeared in person and with counsel. The Defendant appeared through its corporate representative and with counsel. Both parties announced ready for trial, presented their preliminary matters, gave opening statements, and then commenced their presentation of the case. The parties presented their evidence on December 14, 15, 16 and 17, 2015. Each party rested their respective cases, and closing arguments were presented to the Court. Following closing arguments, the Court took the matter under advisement, giving both parties opportunity to submit proposed Findings and Conclusions. After considering the evidence presented, the credibility of the witnesses, and the arguments of counsel, the Court Finds, Concludes and enters Judgment as follows:

1. Plaintiff Theresa Grisham is a natural person, who resides in Platte County, Missouri.

This court has personal jurisdiction over Plaintiff by her residence here in Platte County.

2. Defendant The Mission Bank is a Kansas Banking institution, and which is located at 5201 Johnson Drive, Mission, Kansas. This Court has personal jurisdiction over Defendant pursuant to RSMO 506.500, and further, Defendant has filed its Answer to the First Amended Petition, and in its Answer it has admitted that this Court has personal jurisdiction over the Defendant.
3. This action arises from a foreclosure by Defendant on Plaintiff's home and real estate located at 18975 Highway 371, located in Platte County, Missouri. Both parties have agreed that venue for this suit is proper in Platte County, Missouri.
4. As a Court of general jurisdiction, this court has subject matter jurisdiction over the claims and defenses made in this suit.
5. The Plaintiff Theresa Grisham, testified that she grew up in Platte City, Missouri, went to high school in Platte City with Richard Grisham, and married Richard Grisham after she graduated from high school.
6. Plaintiff testified that she and Richard Grisham purchased the farm property which is the subject of this suit in approximately 1995. That she and Mr. Grisham would go to the property frequently and make plans for the property. And, that she and Mr. Grisham built the house, the buildings and the ponds on the property.

7. The Defendant The Mission Bank provided financing for the family business (Grisham Grading & Excavating Company, Inc.). As additional collateral for the business loans, Plaintiff signed four Deeds of Trust pledging a portion of the equity in the farm and her personal home, to wit:

A. In 2001, Plaintiff signed a Deed of Trust in favor of Gold Bank, which was Dated September 19, 2001, and recorded on October 11, 2001 as Instrument Number 0018260, in Book 0955, at Page 0952. (Exhibit H)¹. On December 3, a representative of Gold Bank executed a Deed of Release for this Deed of Trust, and the Deed of Release was recorded on December 14, 2004 in Book 1048 at Page 703. On November 24, 2004, a representative of Gold Bank signed an Assignment of Deed of Trust, and that Assignment was recorded on January 11, 2005 at Book 1050, Page 359. On October 30, 2008, M&I Bank signed an "Affidavit and Reinstatement of Deed of Trust" and this document was filed on November 14, 2008 as Instrument number 2008015688.

B. In 2004, Plaintiff signed a Deed of Trust in favor of Mission Bank, which was recorded as Instrument number 2004019766, in Book 1044, Page 345 (the "2004 Deed of Trust) (Exhibit M);

¹ The Court finds that this Deed of Trust was prior in time to the outstanding loan from Bank of America. All other Deeds of Trust were subordinate to the Bank of America Deed of Trust. From the evidence presented at trial, the Court finds that the amount secured by the Bank of America Deed of Trust was approximately \$125,000.00

C. Also in 2004, Plaintiff signed a Deed of Trust in favor of Mission Bank, which was recorded as Instrument number 2004019767, in Book 1044, Page 346. This Deed of Trust was later assigned to the Defendant along with the Note it secured. (Exhibit N).

D. In 2011, Plaintiff signed a Deed of Trust which was recorded as Document number 2011003610, at Book 1172, Page 65 (hereinafter the "2011 Deed of Trust"). (Exhibit 2T). This is the Deed of Trust that was foreclosed by Defendant.

8. The amount due on the business loans exceeded the amounts secured by the Deeds of Trust. Each of the Deeds of Trust contains a clause stating that the maximum amount secured by the deed of trust is limited. The proper interpretation of these clauses was disputed by the parties.
9. In approximately 2007, Plaintiff and Richard Grisham divorced, with Plaintiff receiving title to the Platte County farm and residence in the Divorce Judgment.
10. In 2012, Plaintiff informed the loan officer at Mission Bank (Mike Morgan) that she was considering selling the farm in Platte County. In December 2012, Plaintiff received an offer from Mark Hill (also a resident of Platte County) to purchase the farm and her home for \$1,800,000.00. Plaintiff rejected that offer as too low.
11. In the Spring of 2013, Plaintiff listed the farm along with her home, for sale through a realtor. The property was listed for sale at approximately \$2,400,000.00.

12. In March, 2013, Defendant The Mission Bank presented the Plaintiff with a document in which it requested the Plaintiff to increase the maximum lien limitation in the 2011 Deed of Trust from \$500,000.00 to \$1,350,000.00. (Exhibit 58). The Plaintiff refused to sign that document.
13. In April or May, 2013, Plaintiff received an offer to purchase the farm from Mr. Howard Alter, for \$1,725,000.00.
14. The Plaintiff testified that as part of her consideration of whether to accept the offer, she wanted to know how much would be required to release the deeds of trust. Plaintiff engaged her attorney (James Kessinger) to obtain a payoff quote from Mission Bank.
15. Plaintiff emailed the loan officer (Mike Morgan) at the Mission Bank seeking a payoff letter on May 5, 2013. (Exhibit 16).
16. Plaintiff's attorney James Kessinger, began what became a series of letters exchanged with Mission Bank's attorney Kelly Tobin, in which Mr. Kessinger requested a payoff letter on behalf of Plaintiff. Those letters were marked and received into evidence and included Exhibits 19-26, and 30-32.
17. Defendant The Mission Bank did not provide a payoff letter in response to Plaintiff's emailed request to the loan officer of Defendant.

18. The letters sent by Defendant's attorney did not constitute a proper payoff letter and were not sufficient for Plaintiff or the title company to rely on to sell the farm and grant clear title to a purchaser.

19. In June, Plaintiff entered into a sale agreement with Benny Hoy for \$1,350,000.00.

Plaintiff and Plaintiff's counsel requested Platte County Title to contact the Defendant and obtain a payoff letter. Billie Middleton, a representative of Platte County Title contacted Marilyn Hillix an employee of Defendant on several occasions seeking a payoff letter. Defendant's loan officer, Mike Morgan, instructed Marilyn Hillix not to send a pay off letter to the title company. The Defendant The Mission Bank did not provide a payoff letter to Platte County Title.

20. On July 12, 2013, Kelly Tobin acting as Successor Trustee and the attorney representing The Mission Bank conducted a foreclosure sale and sold the farm and house on the Courthouse steps under the 2011 Deed of Trust, for a credit bid by The Mission Bank for the sum of \$673,155.28.

21. The Court finds that the maximum lien clause in the 2011 Deed of Trust secured the sum of \$500,000.00 in principal, plus the interest accrued on the note secured by that Deed of Trust (Exhibit 2T).

22. Following the foreclosure sale, Defendant The Mission Bank filed its action for unlawful detainer in the Circuit Court of Platte County, Missouri to evict Plaintiff from the farm and her home. Following Judgment against Plaintiff in that case, the Defendant filed its request and accompanied the Sheriff's deputy to the farm and took possession of the farm and Plaintiff's home.

23. The Court finds that the Defendant refused to provide a payoff letter to Plaintiff in order to prevent Plaintiff from selling her farm and home.

24. The Court finds that the Defendant's intent in refusing to provide a payoff letter is best determined by considering the unsigned Modification Agreement (Exhibit 58), in conjunction with the letters of its counsel (whom Defendant stipulated was at all times acting on behalf of Defendant), including the following:

A. The letter dated May 28, 2013 which states in part, "[t]he fact that they/you are insistent for a letter indicating that the Deeds of Trust will be released upon payment of \$1,250,000.00 raises concerns that your clients are attempting to divert the real estate sale proceeds instead of pay their obligations to The Mission Bank." (Exhibit 22)

B. In reference to the 2011 Deed of Trust, the letter dated June 28, 2013 which states in part, "[i]f \$500,000.00 was ever paid, it would be applied against the

outstanding Obligations owed but the deed of trust still secures repayment of a principal sum of \$500,000.00 of the remaining Obligations." (Exhibit 26).

25. The Court finds that in 2013 the Bank, through Exhibit 58, recognized that there was value in the farm that was not secured by liens of the existing Deeds of Trust. The Court further finds that the Bank's conduct was motivated by its desire to obtain the value that it perceived exceeded the amounts secured by the Deeds of Trust.
26. The Court finds that the Bank had a duty to the Plaintiff to provide a payoff letter.
27. The Court finds that the Bank's conduct was wrongful.
28. The Court finds that the Bank demanded more than the sums secured by the Deeds of Trust, and that the Bank's demands were improper and constituted a wrongful act.
29. The Court finds that the Bank's wrongful conduct prevented the Plaintiff from making a tender of the amount secured by the Deeds of Trust.
30. The Court finds that a tender of the amounts secured by the Deeds of Trust would have been a futile act. The Court finds that even had the Plaintiff been able to determine the amount properly securing the Deeds of Trust, the Bank's demand that Plaintiff satisfy all the obligations in her personal guaranty before releasing the Deeds of Trust, made any tender of the amount actually secured a futile act.

31. The Bank's refusal to provide a payoff letter prevented a proper tender. The Court finds that the law precludes the bank from refusing a tender and proceeding to sale. The court finds that a valid tender stops interest from further accruing on the loans. The Court finds that the Bank's wrongful act prevented and thus relieved Plaintiff from the obligation to make a full tender, and therefore interest secured by the deed of trust stopped accruing when the Defendant refused to provide the payoff letter.
32. The Court finds that the foreclosure was wrongful.
33. The Court concludes that the appropriate measure of the Plaintiff's economic damages is the difference in the fair market value of the property and the amount secured by the Deeds of Trust.
34. The Court finds that the Howard Alter offer of purchase was the most credible evidence of the value of the farm at the date of the foreclosure sale. The Court finds that the fair market value of the farm was \$1,700,000.00. Based upon the credible evidence presented to the Court, the Court has calculated the amounts secured by the Deeds of Trust to be \$975,000.00. The Court has also carefully considered the circumstances of the Plaintiff and has determined that she suffered stress and emotional damages that were actually and proximately caused by the Defendant's conduct, and which the court has considered in its award.

35. The Court finds that the Plaintiff is entitled to recover from Defendant \$725,000.00 in economic damages and \$25,000.00 for emotional distress. This amount will fairly and adequately compensate Plaintiff for all of her actual, consequential and special damages which were caused by the Defendant.
36. The Court finds that when applying Missouri law, and considering the Bank's refusal to allow Plaintiff to sell her farm and satisfy the amounts secured by refusing to give a payoff letter, it would be appropriate to assess punitive damages to punish the Bank's wrongful conduct and to deter the Bank and others similarly situated from engaging in such conduct in the future.
37. After considering all the circumstances, the Court finds that the sum of \$100,000.00 would be appropriate under the circumstances to assess against Defendant for punitive damages.
38. The Court declares that the credibility of the witnesses was considered and did effect the factual findings of the Court.
39. The Court appointed Master has incurred fees of \$18,300.00. The Court finds these fees to be fair and reasonable. The Court further finds the Master's fees should be assessed against Defendant Mission Bank.

It is therefore Ordered, Adjudged and Decreed that all issues raised by Plaintiff in Counts 2, 5, 6, 7 and 13 of the First Amended Petition are found in favor of Plaintiff and Judgment is entered in favor of Plaintiff and against Defendant on Counts 2, 5, 6, 7, and 13 of the First Amended Petition;²

It is further Ordered, Adjudged and Decreed that Plaintiff notified counsel for Defendant and the Court after submission of the evidence that she made her election of remedies and she no longer wished to pursue the relief requested in Counts 1, 3, 4 and 8 of the First Amended Petition and therefore Judgment is entered denying the relief requested by Plaintiff in Counts 1,3,4 and 8.

It is further Ordered, Adjudged and Decreed and Judgment is entered against Defendant on its affirmative defenses as set out in its Answer to Plaintiff's First Amended Petition and as presented at trial;

It is further Ordered, Adjudged and Decreed that Judgment is entered in favor of Plaintiff and against Defendant The Mission Bank in the sum of \$750,000.00 for her actual, consequential and special damages.

It is further Ordered, Adjudged and Decreed and Judgment is entered awarding Plaintiff the sum of \$100,000.00 in punitive damages against Defendant The Mission Bank.

It is further Ordered, Adjudged and Decreed and Judgment is hereby entered declaring that all facts presented by the parties were considered by the Court, and that any claim or relief that was requested but was not specifically described in this Judgment is denied, and all facts and issues not specifically set out above were determined consistent with the Judgment entered here

² The Court notes that on November 13, 2015 Plaintiff voluntarily dismissed counts 9, 10, 11 and 12 without prejudice, in open court.

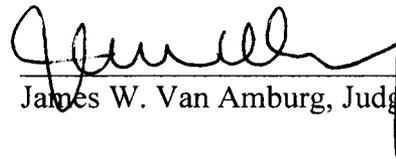
in, it being the intent of the Court that this is a final Judgment with all matters determined consistent with the Findings, Conclusions and Judgment which is specifically set out above.

It is further Ordered, Adjudged and Decreed that Abe Shafer IV, the Court appointed Master, is granted Judgment against the Defendant Mission Bank in the sum of \$18,300.00.

The Lis Pendens filed by Plaintiff with the Platte County Recorder of Deeds on October 24, 2013 as instrument number 2013016491 at Book 1220 and Page 248, and the Lis Pendens filed with the Platte County Recorder of Deeds on October 25, as instrument number 2013016565, in Book 1220 and Page 248 are hereby cancelled.

The court costs in this action are assessed against Defendant.

Let execution issue.


James W. Van Amburg, Judge