

55603c

IN THE CIRCUIT COURT OF LINCOLN COUNTY, WEST VIRGINIA

JACKIE LUCAS, JANICE
 LUCAS, JACK OVERBAUGH,
 CHARLOTTE OVERBAUGH,
 DALE MICHAELSON, PANSY
 MICHAELSON, and ANGELA
 KENNEDY, individually and
 on behalf of all others similarly situated,

Plaintiffs,

v.

CIVIL ACTION NO. 03-C-2

FAIRBANKS CAPITAL CORP., a
 corporation, and R. VANCE GOLDEN,
 III,

Defendants.

ORDER

This day came the plaintiffs, by counsel, the defendant, R. Vance Golden, III, in person, and the defendant Fairbanks Capital Corp., by counsel, on for hearing on the Plaintiffs' Motion for Temporary Injunction, seeking to temporarily enjoin: (1) foreclosure of homes in West Virginia until practices are reformed, (2) the adding of impermissible fees to borrowers' accounts, and (3) the failure to timely credit payments to homeowners' account balances immediately upon receipt.

The defendant Golden recognizes his fiduciary duty as a trustee to both the creditor and the debtor, and that consistent therewith he cannot proceed with foreclosure until he is satisfied that all amounts claimed to be due are in fact due, and that amounts claimed to be due are consistent with law, and, therefore, he does not oppose the suspension of all foreclosures on

behalf of defendant Fairbanks Capital Corp. until the issues raised in this proceeding are resolved.

Thereupon, the Court finds that: the plaintiff class has a reasonable likelihood of success on the merits; the plaintiff class has no adequate remedy at law; a preliminary injunction is necessary to prevent potentially unjustified foreclosures; the potential harm to class members outweighs any harm to the defendants; and the preliminary injunction would serve the public interest of preserving home ownership, and thereupon

It is hereby TEMPORARILY ORDERED and DECREED that:

1. The defendant Golden shall not proceed with any foreclosure on behalf of defendant Fairbanks or on loans serviced by the defendant Fairbanks in the State of West Virginia until further Order of this Court; and no substitute trustee will be appointed until further Order of this Court.
2. This Temporary Restraining Order is granted without the posting of bond in light of the security being held by the defendant Fairbanks Capital Corp.
3. The defendant Golden will not collect or seek to collect any interest or other charge, fee or expense incidental to a principal real estate secured consumer obligation including but not limited to preforeclosure default charges or attorneys fees, unless such interest or charge or expense is authorized by the agreement creating the obligation and by statute, including, but not limited to, W. Va. Code § 46A-3-101 et seq. and W. Va. Code § 38-1-7 (post sale only trustee commissions); and that he will obtain that documentation needed from the lender to achieve this goal.
4. The parties will come back before the Court on January 30, 2003, at 3:30 p.m., to consider issues relative to preliminary injunction or dissolution.

ENTER this 7 day of January, 2003. *A*

Jay M. Hoke
HONORABLE JAY M. HOKE

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