

The ultimate failure of the scheme in this case, however, does not make the circumstances any less grievous nor does it decrease the toll taken on the Plaintiffs and their family over the last two and one half years.

A Complaint was filed by Amy Parsons and David J. Parsons, hereinafter "Plaintiffs," in the Circuit Court for Frederick County, Maryland on December 12, 2007 alleging violations under the Maryland Protection of Homeowners in Foreclosure Act, hereinafter PHIFA, under Section 7-301 et seq. of the Real Property Act.

Initially enacted as emergency legislation effective May 26, 2005, PHIFA was subsequently amended in 2008. In the matter at hand the transactions occurred in August and September of 2006, therefore the Act before the Amendment applies.

The Plaintiffs purchased their Walkersville home at 130 Sandalwood Court in 2002. They originally financed it, and subsequently refinanced it through National City Mortgage, a division of National City Bank, herein after "Bank."

Mortgage payments were kept current until sometime in 2006 when due to unexpected expenses, the Parsons fell behind. They suffered the sudden death of their three year old daughter. Around the same time, the Plaintiffs had to put in a new heating system to accommodate another daughter's disability.

A foreclosure action (Case No. 06-2024, Plaintiffs' Exhibit No. 5) was filed against the Parsons' property in the Circuit Court for Frederick County on August 22, 2006. Shortly thereafter they received a circular from the Defendant Fresh Start Solutions Inc., hereinafter "Fresh Start" and Defendant David Ato hereinafter "Ato" (Plaintiffs' Exhibit No. 1) offering to "give them a second chance" and "supplying you with cash while allowing you to live in your home."

According to the Plaintiffs' testimony Ato was very sympathetic with their circumstances and instilled in them confidence that he would assist them by allowing them to stay in the premises, while giving them a right of first refusal to buy back the property at \$150,000. Under the evidence admitted, there was no legal right to do so.

From the beginning of their landlord tenant relationship, there were problems. No one seemed to have "the file" to resolve the problem at hand, the Plaintiffs testified. Although at settlement the Parsons had paid a partial payment on the first month's rent, Modern was reluctant to credit this payment. At one time during the first few months of their occupancy the Plaintiffs testified they received a call from their Bank stating the Bank had not received several mortgage payments.

Repeated phone calls to Modern by the Plaintiffs did little to correct the situation. At one point Mrs. Parsons testified she told Ato she was going to discuss the situation and the facts regarding the transactions with Ato with the Bank. Ato warned her, she testified, that if she advised National City of their arrangements with Ato, their deal with him would be void.

Mrs. Parsons said they concluded that they, the Plaintiffs, would have to make the mortgage payments directly to the Bank. Otherwise, she testified, they had no confidence the mortgage payments would be made and they would be in foreclosure again.

In August of 2007, claiming the Plaintiffs owed \$10,500 in rent, Modern filed for eviction in a landlord tenant action in the District Court for Frederick County, Maryland. Judge Milnor Roberts, finding the landlord had no interest in the property and that the lease was void, the Court refused to evict

The Parsons then filed the above-captioned action. An Order of Default was entered in favor of the Plaintiffs against both Fresh Start and Ato on June 26, 2008. Trial by Jury was scheduled for March 11, 2009 in regard to the Claims and Counter Claims of Parsons and Defendants Vincent Abell, hereinafter "Abell", Modern and 610.

A settlement between the Plaintiffs and Defendants Abell, Modern and 610, was placed on the record the day of trial, March 11. In a hearing that afternoon before the Court, the Answer to Complaint filed pro se by JKV, a corporation, was stricken and testimony taken in regard to damages suffered by the Parsons under Count I of the Complaint at the hands of Fresh Start, Ato and JKV.

If not herein stated to the contrary, all findings made by the Court are made by a preponderance of the evidence. The Court finds that the transactions in question between the Plaintiffs and the Defendants were governed by the Maryland Protection of Homeowners In Foreclosure Act, "PHIFA" under Real Property Section 7-301 et seq. of the Real Property Act. The Court find further that the requirements of the Act were not complied with for the reasons set herein.

PHIFA Violations by Ato

Plaintiff Exhibit No. 1 and the testimony given at trial show Alto was a "foreclosure consultant" as defined under both Section 7-301(b) (1) "...person who ...solicits or contacts a homeowner in writing, in person, or through any electronic or telecommunications medium ..." and Section 7-301 (b) (2) "...systematically contacts owners of property that court records or newspaper advertisements shown are in foreclosure or in danger of foreclosure."

Ato failed to comply with PHIFA when he entered into a contract with the Parsons to obtain an interest in their residence in foreclosure without providing the required notices. He acted as a "foreclosure purchaser," as defined under Section 7-301 (e) "...a person who acquires title or possession of a deed or other document to a residence in foreclosure as a result of a foreclosure reconveyance" when he entered into the contract (Plaintiff Exhibit No. 2) to buy the Parsons home.

As a foreclosure purchaser under PHIFA, Ato failed to provide the Plaintiffs with notice as required by Section 7-301 "...if a foreclosure reconveyance is included in a foreclosure consulting contract or arranged after the execution of a foreclosure consulting contract, the foreclosure purchaser shall provide the homeowner with a document entitled 'Notice of Transfer of Deed or Title'"

Ato failed also to comply with Section 7-310 (d) which provides "Same... Copy to homeowner... the foreclosure purchaser shall provide the homeowner with a copy of the Notice of Right to Cancel Transfer of Deed or Title immediately on execution of any document that includes a foreclosure reconveyance."

Plaintiffs Exhibit No. 3, Ato's Foreclosure Consulting Agreement, did not comply with PHIFA. The Agreement does not disclose that a foreclosure reconveyance would be involved, as required under Section 7-311 (3) "...Fully disclose the exact nature of the foreclosure consulting services to be provided, including any foreclosure reconveyance that may be involved, and the total amount and terms of any compensation to be received by the foreclosure consultant or anyone working in association with the consultant."

The Agreement failed to provide the amount of compensation that Ato would receive. The contract stated a fee of \$3,000 to be paid by Vincent Abell. Yet the Plaintiffs were charged \$5,000 which was not paid by Abel in any part.

Further the Foreclosure Consulting Agreement under Section 7-311 (4) was required to be "...dated and personally signed by the homeowner and the foreclosure consultant and be witnessed and acknowledged by a notary public appointed and commissioned by the State." It was not signed by Ato, witnessed or notarized. Further Ato failed to give the Plaintiffs notice under Section 7-311(5) of their rights of rescission relating to rescinding any deed or transfer.

PHIFA Violations by JKV

Under Section 7-302 (a) (6), PHIFA does not apply to "A title insurance producer licensed in the State, while performing services in accordance with the person's license." JKV, a title insurance producer would come under PHIFA if it performed services that were not in accordance with its license.

PHIFA does apply under Section 7-302 (b) to an individual who (1) "is functioning in a position listed under subsection (a)" such as JKV "and" (2) "is engaging in activities or providing services designed or intended to transfer title to a residence in foreclosure directly or indirectly to that individual, or an agent or affiliate of that individual."

JKV was subject to PHIFA as a title insurance producer if it performed services that were not in accordance with its license or that as a title insurance producer if it also engaged in activities set out in Section 7-302 (b) (2) services intended to transfer title to a residence in foreclosure.

JKV would be deemed a foreclosure consultant. They provided settlement services for a foreclosure reconveyance. This fact was obvious on the face of the documents JKV had in its possession. The settlement statement lists clearing charges of \$275.00 for title examination, \$10,000.00 for an abstract or title search and \$60.00 for the title insurance binder

Under Plaintiff Exhibit No. 2, the contract of sale under Paragraph 7, the "Buyer" is to pay all taxes and assessments up to and including the month of September 2006. Under Paragraph 8, "Closing costs shall be paid by Purchaser." On the settlement statement prepared by JKV, "Closing costs" of \$375.00 were assessed to buyer and "closing costs" of \$300.00 were assessed to seller. If the closing costs totaled \$675.00, all of them should have been paid by the Buyer.

Under Plaintiff Exhibit No. 3, Foreclosure Consulting Agreement, the paragraphs that were applicable to the agreement between the parties had boxes beside the provision that had to be initialed by both parties. There were also certain provisions that had no boxes for initials which if not crossed out by the parties, would be a part of the contract.

Under the contract, Paragraph 5 would apply "Homeowner: In exchange for the Foreclosure Consulting Services described above, Consultant shall be entitled to a fee of \$3,000, payable upon full performance of this agreement." But in this case, paragraph 5(a) (which contains a box which was not initialed by the parties) states the homeowner shall pay all except those as set out in (b) below which states the fee in (a) shall be paid by Vincent Abell, in the amount of \$5,000.

Construing the ambiguity against the drafter, the Buyer, the fee of \$3,000.00 should have been paid by Abell. The Seller was charged \$5,000.00

for a consulting fee to Fresh Start Solution, which under the documents in the hands of JKV should have been assessed to the Buyer. Under the most liberal construction of this clause in favor of the Buyer, the Seller could not have been charged more than \$3,000.00. Therefore in the light most favorable to the Buyer, JKV should have dispersed \$2,000.00 at a minimum to the Seller, the Plaintiffs.

DAMAGES

Under PHIFA (Count I – Violation of PHIFA) the Defendants are responsible to the Plaintiffs for up to treble damages they suffered that were a direct result of the Defendant's conduct including economic damages and non-economic damages, such as emotional distress where the plaintiffs have presented evidence of physical manifestations of emotional distress.

If the Court finds that the defendant willfully or knowingly violated PHIFA, the Court may award damage equal to three times the amount of actual damages. The Plaintiff must prove each item of damages, the natural, necessary and logical consequence of the Defendants' conduct by a preponderance of the evidence. The award must adequately and fairly compensate the plaintiff but should not be based on guesswork.

Under *Hoffman v. Stamper*, 385 Md 1(2005), the Court of Appeals found that in an action seeking non-economic damages for emotional injury or emotional distress, the Plaintiff must show some objectively ascertainable accompanying or consequential physical injury.

Setting aside the fact that there were other stressors in the Plaintiffs' lives with the loss of a child, the Court is convinced both Plaintiffs suffered physical

manifestations of emotional distress, feelings of sadness, anger, humiliation, embarrassment and stress as a direct result of the Defendants' conduct.

There was testimony by both Plaintiffs of individual physical symptoms of depression, insomnia, loss of appetite, headaches, inability to work or perform routine household chores, withdrawal from socialization, upset stomach and migraines.

Obviously there came a time when the Plaintiffs recognized the realities of their legal situation. Mrs. Parsons testified she felt personally responsible for their involvement with Ato because she was the one who had the original contact with him.

She was humiliated, she testified, as a reasonably intelligent person, at having been lured into the scam as they had been and determined, to the point of obsession, of getting the family out of the situation. At one time, she testified, she lost a job because of her need to take off time to attend to matters involved in the foreclosure scam and attendant litigation.

General compensatory damages are those damages necessarily expected and logically probable from the Defendants' actions. The Plaintiffs have produced evidence demonstrating economic damages of: \$2018.00 in mortgage payments, lost wages totaling \$2090.00 for a total of \$4,108.00. The Court finds non economic damages for mental anguish demonstrating physical manifestations in the amount of \$350,000.00.

Based upon the evidence and the fair and reasonable conclusions drawn there from, the Court finds that each Defendant willfully or knowingly violated the provisions of PHIFA and the Plaintiffs are entitled to an award of damage equal to three times the amount of actual damages (\$354,108.00 trebled).

**ORDERED, this 17th day of March, 2009, by the Circuit Court for
Frederick, Maryland,**

**Judgment be entered in favor of Plaintiffs against each Defendant Ato,
Fresh Start and JKV in the amount of \$1,062,324.00.**



Mary Ann Stepler

JUDGE

Circuit Court for Frederick Co., MD

FILED

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SANDRA K. DALTON

CLERK _____

BY _____