

**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI**

MIDDLEWEST PROPERTIES, INC.,)	
)	
Plaintiff,)	
)	
v.)	Cause No. 09SL-AC00620
)	
)	Division 42
RONALD MEYERS and)	
FRANCES MEYERS,)	
)	
Defendants.)	
)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT

On November 19, 2009, this matter came before the Court for trial without a jury on Plaintiff's Suit On Deficiency On A Note After Foreclosure. Evidence was adduced and the Court heard testimony from Middlewest's agent, Leda Sander ("Sander"), Investor's Title employee, Barbara Bohler ("Bohler"), Notary, Deborah Pendleton ("Pendleton") and Defendant Ronald Meyers. Being now fully advised, the Court hereby enters the following Findings of Fact, Conclusions of Law and Judgment.

FINDINGS OF FACT

1. On December 12, 2007, Plaintiff Middlewest Properties, Inc., ("Middlewest") entered into a real estate sale contract with Defendants Ronald and Frances Meyers ("the Meyers") for a residential property at 506 Oak Tree Crossing Court, Ballwin, MO 63021. Middlewest acted as the lender and seller in this transaction.

2. The real estate contract was signed by Frances Meyers, who also signed on behalf of her husband Ronald Meyers, asserting that she had obtained a Power of Attorney ("POA") to do so. Frances Meyers also signed a Balloon Note ("Note") in the original amount of \$209,000.00,

which stated that the full amount of the Note was due on the maturity date, which was July 1, 2008. The Note was recorded in the Office of the Recorder of Deeds for Saint Louis County, Missouri.

3. At the time of closing, the title policy issued to the Meyers did not reflect any liens and/or encumbrances on the property.

4. Ronald Meyers testified that he did not sign the real estate contract, the POA used to place his signature on the real estate contract, or the Note.

5. Pendleton, the notary public that notarized the POA, testified that she never met Ronald Meyers and could not attest to his signature on the POA. Pendleton also could not identify Ronald Meyers in the courtroom. She further testified that Ronald Meyers did not come to her home to have the POA notarized and that she does not know who signed the POA.

6. A two million dollar lien was placed on the Meyers' residential property in favor of Middlewest in January 2008. The lien was in the form of a line of credit used by Middlewest to purchase the property for \$157,000.00 before it was sold to the Meyers. Sander stated that the line of credit used by Middlewest to purchase the residential property, which they later sold to the Meyers, was not paid off at the time the property was sold to the Meyers.

7. Sander stated that the two million dollar lien on was not placed on the Meyers property until some thirty days after the Meyers closed on the property. She further characterized the lien as a "master lien" (*emphasis added*) that would not have prevented refinancing of the loan. Sander explained that in her experience if a lien appeared in the chain of title, a lender or title company would contact the lien holder and request removal. According to Sander this would fix the title defect. Sander admitted that placement of the lien on the Meyers' property was a

lien.

18. Sander testified that her efforts to assist the Meyers with refinancing were limited to speaking with the title company regarding the lien prior to foreclosure and assuring them that the lien would go away; contacting USA Mortgage and providing them with the Meyers phone number and contacting USA a second time to determine whether the Meyers were qualified for refinancing.

19. Sander stated that her original line of credit that the lien was based on was paid off prior to foreclosure. However, Sander provided no documentation at trial evidencing that the lien was removed during the time the Meyers were attempting to refinance the property to avoid foreclosure.

20. Sander initially testified that the two million dollar lien on the property would not have prevented the Meyers from refinancing and further that it would not impact the chain of title. Later during her testimony she admitted that the lien did have an impact on the chain of title. Sander further admitted that the lien would have shown up in the title company check on the chain of title.

21. Bohler, Investor's Title employee, testified that a seller would have expected a refinancing within the time before the Balloon Note became due. Bohler further testified that a refinancing purchaser would be required to have any liens discovered through a title search, released or paid off at closing to complete the transaction.

22. The Meyers attempted to refinance, but were unsuccessful due to the two million dollar lien on the property.

two million dollar lien on the Meyers property was an error and a hindrance to refinancing; when they failed to make any efforts, directly or indirectly, to ensure removal of the two million dollar lien on the Meyers' property.

6. Middlewest's conduct as outlined in paragraph 5 above demonstrates that they were instrumental in preventing the Meyers from refinancing the loan and their conduct interfered with the ability of the Meyers to refinance their loan. As a result, the Meyers were forced into foreclosure.

7. The Court finds the testimony of Middlewest's agent, Leda Sander, not credible and further finds and concludes that Middlewest, by and through their agent Leda Sander, did not act in good faith and comes into court unclean hands.

JUDGMENT

Accordingly, Judgment is entered in favor of Ronald J. Meyers and Frances A. Meyers and against Middlewest on Middlewest's Petition for Suit On Deficiency On A Note After Foreclosure. Cause dismissed by Plaintiff as to John Doe. Costs assessed against Plaintiff Middlewest.

SO ORDERED:

2/18/10
Date

Sandra Farragut-Hemphill
Sandra Farragut-Hemphill, Judge
Div. 42

cc: Jeffrey Weisman
Blake Hill
Wayne C. Harvey
Rufus J. Tate, Jr.