

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

~~JUDICIAL DEPARTMENT - CIVIL DIVISION~~  
COUNTY CHANCERY

DEUTSCHE BANK NATIONAL TRUST )  
Plaintiff, )

v. )

WILLIE SMITH )  
Defendant )

Case No. 2006 CH ~~0000~~ 25073

LESSIE TOWNS )  
Petitioner, )

v. )

DEUTSCHE BANK NATIONAL TRUST, )  
WILLIE SMITH, PETER BLYTHE, )  
TRUST ONE MORTGAGE CORP. )  
Respondent. )

FILED - 3  
2008 APR 25 AM 11:41  
CLERK

PETITION TO VACATE A VOID JUDGMENT AND COLLATERAL ATTACK

JURISDICTION

This Court has jurisdiction under 735 ILCS 5/2-1401 et seq. and 765 ILCS 940/1 et seq., the Illinois Mortgage Rescue Fraud Act.

STATEMENT OF FACTS

1. Petitioner Lessie Towns is a 72 year old Chicago resident who has lived in and owned the single family home at 9430 S. Ada in Chicago, IL (the "subject Matter property") for the past 40 years.
2. Petitioner Towns got behind in her mortgage payments in 2005 according to Chancery case #2004-CH-00417.
3. Under the pressures of impending foreclosure, mail and home solicitation by Respondent Trust One Mortgage induced Towns into an agreement to stop her foreclosure.

4. Respondent Trust One Mortgage led Petitioner Towns to believe that once her house was put in another name for six months, they would quit claim it back to her.
5. Respondent Trust One Mortgage led Towns to believe that she would be quit claiming her house to them temporarily, however Cook County Recorder of Deeds shows the property was deeded to Respondent Peter Blythe. See Attached 'Exhibit A'
6. Respondent Blythe subsequently deeded the property to Respondent Willie Smith. See 'Exhibit A'.
7. Respondent Deutsche Bank financed a mortgage loan for Respondent Willie Smith for over \$195,000.
8. Towns paid Respondent Trust One Mortgage a monthly amount of \$695.00 from December 2005 to December 2006.
9. The mortgage was not paid by Trust One Mortgage, fell into default, and Respondent Deutsche Bank filed a foreclosure complaint against Respondent Willie Smith on <sup>11/17</sup> ~~12/10~~/2006, Chancery case number 2006-CH-<sup>25073</sup> ~~88399~~.
10. A default Judgment was entered against Respondent Willie Smith on <sup>JANUARY</sup> ~~February~~ 20, 2007. Attached 'Exhibit B'
11. An Order for Possession was entered on <sup>JUNE 27</sup> ~~February 21~~, 2007.
12. On August 24, 2007 a Complaint for Forcible Entry and Detainer was filed into the Civil Division, case number 2007-M1-721753.
13. A judgment for possession was subsequently entered on 12/28/2007.
14. Petitioner Towns was never made aware of the multiple transfers of her title and received no notification of foreclosure proceedings against her property because all

correspondence was sent to Respondent Willie Smith, with whom Petitioner Towns is not acquainted.

15. Respondent Trust One Mortgage, through fraud and misrepresentation, committed acts which resulted in the judgment of foreclosure against Petitioner Towns.
16. Respondent Trust One Mortgage intentionally misrepresented the material nature of the transaction, stating that Petitioner Towns would be quit claiming the subject matter property to them and that it would be quit claimed back to her.
17. Respondent Trust One Mortgage also misrepresented her payments would be applied to the payment of the new mortgage taken out in Respondent Willie Smith's name, a statement upon which Petitioner Towns reasonably relied and was thereby harmed.
18. Petitioner Towns was injured by the entry of said judgment, not limited to her home being foreclosed against, losing title and equity in her home, and suffered intense emotional distress as a result of an impending eviction process of which she has had no warning.
19. Respondent Deutsche Bank National has been targeted as one of the major predatory lenders around the country by government agencies, attorney generals and various community groups.
20. Respondent Deutsche Bank National Trust was grossly negligent in not ensuring that they were not participating in a fraudulent scheme while transacting the loan.
21. Respondents Deutsche Bank was unjustly enriched as a result of their own gross negligence, as they knew, should have known, and had the responsibility of knowing Respondent Trust One Mortgage Corporation was involved in fraud.

22. From language in the Illinois Mortgage Rescue Fraud Act, in the transaction between Petitioner Towns and Respondent Trust One Mortgage, subject Matter property is "distressed property", Lessie Towns is "owner", Trust One Mortgage Corporation is "distressed property consultant" and Respondent Willie Smith is "distressed property purchaser".

23. According to sections 940/50 (a)(7)(b)(7) and (8) of 765 ILCS Respondent Trust One Mortgage Corporation's quit claiming actions violate the Illinois Mortgage Fraud Act:

*It is a violation for a distressed property consultant to:*

*(7) fail to reconvey title to the distressed property when the terms of the conveyance contract have been fulfilled;*

*(8) induce the owner of the distressed property to execute a quit claim deed when entering into a distressed property conveyance*

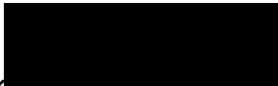
24. The judgment is voidable and should be set aside and vacated because according to Illinois Civil Practice Law, the Petitioner has grounds to attack the judgment.

*Whenever a judgment is procured through the fraud of either of the parties, or through their collusion, for the purpose of defrauding some third person, that third person may avoid the judgment by showing, even in a collateral proceeding, the fraud or collusion by which the judgment was obtained. Green v. Hutsonville Tp. High School Dist. No. 201, 356 Ill. 216, 190 N.E. 267 (1934); Roosevelt Federal Sav. & Loan Ass'n of St. Louis v. Sugar Hollow Apartments, Inc., 99 Ill. App. 2d 317, 241 N.E. 2d 45 (5<sup>th</sup> Dist. 1968); Shapiro v. DiGuillio, 95 Ill. App. 2d 184, 237 N.E.2d 771 (1<sup>st</sup> Dist. 1968).*

25. Defendant seeks time from this court to properly defend this action and work out a fair and equitable solution for all parties.

20. Defendant has a meritorious defense to judgment and is exercising due diligence in attacking judgment prior to eviction.

WHEREFORE, defendant prays that this Honorable Court grants this vacate the order, set aside the Order of Forcible Entry of the Property located at 9430 S. Ada, Chicago, Illinois 60620 and re-open discovery and until such time as all issues in this Matter are resolved and any and all relief this Court deems just and necessary.

  
\_\_\_\_\_  
Lessie Towns  
9430 S. Ada  
CHICAGO, IL 60620

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
MUNICIPAL DEPARTMENT - CIVIL DIVISION

DEUTSCHE BANK NATIONAL TRUST)  
Plaintiff, )

v. )

WILLIE SMITH )  
Defendant )

Case No. 2006 CH <sup>25073</sup> ~~20005~~

LESSIE TOWNS )  
Petitioner, )

v. )

DEUTSCHE BANK NATIONAL TRUST, )  
WILLIE SMITH, PETER BLYTHE, )  
TRUST ONE MORTGAGE CORP. )  
Respondent. )

AFFIDAVIT IN SUPPORT OF PETITION TO VACATE JUDGMENT

LESSIE TOWNS DOES HEREBY STATE AND AFFIRM AS FOLLOWS:

1. That she is a layman and without any law school training.
2. That she has filed a Notice of Motion and Petition to Vacate on April 25, 2008, has read and is familiar with its contents.
3. That the contents of said Notice of Motion and Petition to Vacate are true and correct to the best of her knowledge and belief.
4. That said Notice of Motion and Petition to Vacate is not presented for the purpose of delay but presented as a good faith challenge to the Plaintiff's complaint.
5. That she truly believes that there are proper challenges to the Plaintiff's Complaint.
6. That she is a competent witness and can testify to the above, if called.

And Further Affiant Saith Not.

  
Lessie Towns

SUBSCRIBED AND AFFIRMED BEFORE me, a Notary Public for and in the County of Cook, State of Illinois on this 25 day of APRIL, 2008.

IL my Commission expires



Subscribed and sworn to before me

this 25 day of 04 20 08  
at Chicago, County of Cook, State of Illinois.

Notary Public



IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
 COUNTY DEPARTMENT — CHANCERY DIVISION

**FILED**  
 08 MAY 27 PM 4:05  
 CIRCUIT COURT OF COOK COUNTY  
 CHANCERY DIV.  
 CLERK  
 DOROTHY RADWIN

DEUTSCHE BANK NATIONAL TRUST  
 COMPANY, AS TRUSTEE FOR LONG BEACH  
 MORTGAGE LOAN TRUST 2006-5

Plaintiff,

v.

WILLIE SMITH, et al

Defendants.

Case No. 06 CH 25073  
 Calendar 55  
 Judge Lisa R. Curcio

LESSIE TOWNS

Petitioner,

v.

DEUTSCHE BANK NATIONAL TRUST CO.  
 LONG BEACH MORTGAGE COMPANY,  
 WASHINGTON MUTUAL BANK,  
 WILLIE SMITH,  
 TRUST ONE MORTGAGE CORPORATION,  
 PETER BLYTHE,  
 PERCILLA MORENO,  
 PAUL L. SHELTON, and  
 SHELTON LAW GROUP, LLC

Respondent.

**AFFIDAVIT OF LESSIE TOWNS TO SUPPORT HER PETITION FOR RELIEF OF  
 JUDGMENT PURSUANT TO 5/2-1401 OF THE CODE OF CIVIL PROCEDURE**

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

I, **Lessie Towns**, on oath state as follows:

1. That I was not a named defendant in the above captioned original action.
2. That I am the Petitioner in this later action pursuant to 5/2-104 of the Illinois Code of Civil Procedure (CCP) and the Civil Practice Law (CPL) and that I make this affidavit in support of my petition for relief of judgment as entered on January 30, 2007 and relief of order confirming sale as entered on June 27, 2008 as mainly against Defendant Willie Smith.



3. That I am elderly, 72 years of age.
4. That I reside at 9430 S. Ada, Chicago, Illinois, Cook County (the Property).
5. That I have resided at Property and owned the Property for over 40 years and that I have never sold the Property.
6. That I was erroneously placed in foreclosure in the year 2004 when I was timely making all of my mortgage payments because Homecomings was not crediting my mortgage payments.
7. That after correcting the problem with Homecomings I later discovered, while seeking a home improvement loan to make repairs to the Property, that the Property was scheduled for sheriff sale around July 5, 2005.
8. That I was visited at my home, the Property, by a representative of Trust One Mortgage named Priscilla Moreno (Moreno). Moreno informed me that Trust One saw I was in foreclosure, that I would lose my home on July 5, 2005, and that Trust One could immediately help me and save my home.
9. That I was in a panic and did not know what to do so I agreed to accept assistance from Trust One.
10. That Trust One was to secure a new mortgage loan and create a trust.
11. That a fraudulent sale of the Property occurred in which an individual named Peter Blythe (Blythe) secured interest in my home, the Property.
12. That Blythe then conveyed the Property to Willie Smith (Smith).
13. That Smith allegedly secured a mortgage from the Plaintiff to purchase the Property yet defaulted on the mortgage.

14. That due to Smith's default on the mortgage the Property was foreclosed upon without my knowledge.
15. That I did not become aware of this until after the foreclosure case against Smith was finalized.
16. That I became aware of the foreclosure of Smith as against the Property from a real estate investor who visited my home seeking Smith and when I received a notice of my eviction from the Cook County Sheriff.
17. That I immediately sought legal assistance from Attorney Jorgensen, various government agencies, and legal services.
18. That I later discovered Attorney Jorgensen never took any real and true action to protect my home and to return the home to the proper person, myself.
19. That Attorney Jorgensen only sought relief through the eviction court and that I have reason to believe Attorney Jorgensen never did anything with the eviction court or any other court to bring forth my claims and to protect my interest in the Property.
20. That I drafted and filed my own pleadings with the assistance of friends and family once I realized Attorney Jorgensen did not take steps to protect my interest in the Property as I paid for such services.
21. That my motions before the foreclosure court and before the eviction court were each denied.
22. That the eviction stay will be lifted on June 3, 2008 and that I will be left homeless because Trust One and other parties colluded to deprive me of my rights to my home, my home of over 40 years.



**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
 COUNTY DEPARTMENT — CHANCERY DIVISION**

RECEIVED BY LEGAL DEPARTMENT

**DEUTSCHE BANK NATIONAL TRUST  
 COMPANY, AS TRUSTEE FOR LONG BEACH  
 MORTGAGE LOAN TRUST 2006-5**  
 Plaintiff,

**JUN 6 2008**  
 DEUTSCHE BANK AG NY BRANCH

v.

**WILLIE SMITH, et al.**  
 Defendants.

**Case No. 06 CH 25073  
 Calendar 55  
 Judge Lisa R. Curcio**

**LESSIE TOWNS**  
 Petitioner,

v.

**DEUTSCHE BANK NATIONAL TRUST CO.  
 LONG BEACH MORTGAGE COMPANY,  
 WASHINGTON MUTUAL BANK,  
 WILLIE SMITH,  
 TRUST ONE MORTGAGE CORPORATION,  
 DAVID OFFETT,  
 PETER BLYTHE,  
 PERCILLA MORENO,  
 PAUL L. SHELTON, and  
 SHELTON LAW GROUP, LLC**  
 Respondent.

**FILED-4**  
**2008 MAY 27 PM 4:20**  
 CLERK OF THE CIRCUIT COURT OF COOK COUNTY  
 CHANCERY DIV.  
 DOMINIQUE BROWN  
 CLERK

**AMENDED PETITION FOR RELIEF OF JUDGMENT PURSUANT TO 5/2-1401 OF  
 THE CODE OF CIVIL PROCEDURE**

Now comes Petitioner Lessie Towns ("Petitioner" or "Towns"), by and through her attorneys, Sabrina Herrell of LOGIK Legal LLC, pursuant to 735 ILCS 5/2-1401 of the Illinois Code of Civil Procedure (CCP) and the Civil Practice Law (CPL), and submits her *Petition for Relief of Judgment Pursuant to 5/2-1401 of the Code of Civil Procedure* (Petition) to move this Court to vacate the judgment of foreclosure and sale and to vacate the order confirming sale as entered by this Court. Towns' affidavit in support of this Petition is attached and made a part of this Petition. Towns states as follows:

## INTRODUCTION

1. This Petition is filed by Petitioner pursuant to the fraudulent conveyance of the real estate located at 9430 S. Ada, Chicago, Illinois; Cook County (the Property). 60620
2. Petitioner proceeds with these pleadings pursuant to the wrongful actions of the named Plaintiff, Defendant, and Respondents in which such wrongful acts have caused considerable harm to Petitioner, surmounting to significant financial loss, outside litigation, loss of real estate, and public embarrassment and humiliation.
3. Petitioner seeks a determination by this Court 1) to maintain possession and ownership of the Property; 2) that Defendant Willie Smith was never a true and valid owner of the Property and never had any valid interest in the Property; 3) that the alleged conveyance of the Property to Defendant Willie Smith from Respondent Peter Blythe was fraudulent; 4) that the alleged mortgage between Plaintiff and Defendant Willie Smith is void; 5) that the alleged conveyance of the Property as between Defendant Willie Smith and Respondent Peter Blyth is void; 6) that the alleged conveyance of the Property as between Petitioner and Respondent Peter Blyth is void; 7) that Respondents Trust One Mortgage Corporation, Priscilla Moreno, Peter Blythe, Paul L. Shelton, and the Shelton Law Group, LLC intentionally made false and misleading statements to Petitioner to defraud Petitioner of the Property; and 8) that the named parties have been unjustly enriched for their bad acts to the detriment and humiliation of Petitioner.

## JURISDICTION

5. This Petition arises under the case of Deutsche Bank National Trust v. Willie Smith, et al., case number 06 CH 25073 in the Circuit Court of Cook County, First, District, County Department, Chancery Division.

6. This Court has jurisdiction to grant the relief sought by Petitioner pursuant to 5/2-1401 of the CCP and CPL.

#### PARTIES

7. Petitioner Lessie Towns (Towns) is a natural person 72 years of age and the true owner of the Property.
8. Towns initially acquired the Property over 40 years ago. See Exhibit 'A' as attached herein.
9. Plaintiff/Respondent Deutsche Bank National Trust Company ("Plaintiff" or "Deutsche Bank") is a Germany based company with a regional United States of America headquarters located at 60 Wall Street, New York, New York 10005-2858. Deutsche Bank is doing business in the State of Illinois as foreign entity under numerous names.<sup>1</sup> Its Illinois registered agent is C T Corporation System located at 208 S. LaSalle Street, Suite 814, Chicago, Illinois 60604. Deutsche Bank is allegedly the current owner of the Property pursuant to a foreclosure of the Property as against Defendant Willie Smith.
10. Respondent Long Beach Mortgage Company (Long Beach) was the original lender of the alleged loan to Defendant Smith for the purchase of the Property. Long Beach is a California company located at 1400 S. Douglass Road, Suite 100, Anaheim, California 92806. Long Beach is now a subsidiary of Respondent Washington Mutual Bank.
11. Respondent Washington Mutual Bank (WAMU) is a Washington corporation with its corporate headquarters located at 1301 Second Avenue, Seattle, Washington 98101. WAMU is doing business in the state of Illinois as a foreign entity under numerous

<sup>1</sup> Deutsche Bank is doing business in Illinois as Deutsche Bank Securities Inc., Deutsche Bank Futures Inc., Deutsche Bank Berkshire Mortgage, Inc., and Deutsche Financial Services Holding Corporation.

names.<sup>2</sup> Its Illinois registered agent is Illinois Corporation Service C located at 801 Adlai Stevenson Drive, Springfield, Illinois 62703.

12. Defendant/Respondent Willie Smith (Smith) with no known address is the alleged former owner of the Property and the alleged former mortgagor of an alleged mortgage between Long Beach and Smith.
13. Respondent Trust One Mortgage Corporation (Trust One) is an Illinois corporation with its principal place of business located at 1010 Jorie Boulevard, Suite 140, Oak Brook, Illinois 60523.<sup>3</sup>
14. Respondent Peter Blyth (Blyth) of 1010 Jorie Boulevard, Suite 140, Oak Brook, Illinois is an alleged former owner of the Property who allegedly conveyed the Property to Smith. Blyth is also an employee and/or agent of Trust One.
15. Respondent Percilla Moreno (Moreno) of 1010 Jorie Boulevard, Suite 140, Oak Brook, Illinois is an employee and/or agent of Trust One.
16. Respondent Paul L. Shelton (Attorney Shelton) is an Illinois attorney and officer of this court as well as the sole owner of Trust One. Attorney Shelton is located at 1010 Jorie Boulevard, Oak Brook, Illinois 60523.
17. Respondent the Shelton Law Group, LLC (Shelton Law) is an Illinois limited liability company located at 1010 Jorie Boulevard, Suite 144, Oak Brook, Illinois 60523. Its registered agent is Attorney Shelton.

<sup>2</sup> WAMU was formerly known as Sears Mortgage Securities Corporation, PNC Mortgage Securities Corp., Washington Mutual Finance Corporation, Washington Mutual Finance, LLC, Washington Mutual Home Loans, Inc., and Washington Mutual Finance Corporation of Illinois. WAMU in Illinois is currently known as Washington Mutual Mortgage Securities Corp. and Washington Mutual Insurance Services, Inc.

<sup>3</sup> Trust One also operates under the assumed names of Etrustone.com and Etrustone.com Corporation.

## STATEMENT OF FACTS

18. Petitioner Towns was not a named Defendant in the above captioned original action and as such never received notices related to the subject action.
19. Towns is 72 years of age and resides at the Property.
20. Towns has owned and resided at the Property for over the past 40 years.
21. In 2004 Towns was wrongfully placed in foreclosure while she was timely making all of her mortgage payments to Homecomings, case number 04 CH 00417.
22. Towns later discovered Homecomings failed to timely and properly credit Towns mortgage payments. See Exhibit 'B' as attached herein.
23. Towns became aware of such while seeking a home improvement loan to make repairs to the Property towards the end of June 2005.
24. Towns was informed that the sale of the Property was pending for July 5, 2005.
25. On or around Saturday, June 25, 2005 Moreno, uninvited, solicited Towns at the Property. Moreno informed Towns that Moreno was a representative of Trust One.
26. At such time Moreno informed Towns that Trust One noticed Towns was in foreclosure and that Towns would lose her home on July 5, 2005.
27. Moreno further informed Towns that Trust One could immediately help Towns save her home from foreclosure.
28. Moreno left a business card with Towns and asked Towns to contact the office of Trust One to arrange a meeting to save her home.
29. Towns, elderly, under immense pressure, and in a panic pursuant to the pending sale of the Property contacted Trust One by telephone and was connected to David Offett (Offett).



30. Offett arranged an appointment for Towns at Trust One's south suburban office in Homewood, Illinois on or around the following Saturday, July 2, 2005.
31. On or around July 2, 2005 Moreno picked up Towns from the Property and drove Towns to the Trust One office located at 1820 Ridge Road, Homewood, Illinois, Cook County.
32. Towns met with Offett and informed him she was making her mortgage payments and as such she did not know and understand the Property was foreclosed upon that she did not know what to do.
33. At such time Offett informed Towns that 1) Trust One would save the Property for Towns; 2) Towns could remain in the Property for there would be no further threat of foreclosure; 3) Trust One would place the Property in a trust to protect Towns and the Property by listing both Towns and Trust One as beneficiaries of the trust; 4) Trust One would secure a new mortgage loan; 5) Towns would make payments to Trust One for six months to one year; 6) the Property would be taken out of trust after six months to one years in which Trust One would remove itself from the Property; and 7) Towns would make monthly mortgage payments to the new lender.
34. Towns, under the pressure of a foreclosure sale in three days for an unknown reason to Towns, agreed to accept assistance from Trust One to save her home of over 40 years.
35. Towns never saw a trust agreement and did not fully understand the nature of the trust but wanted and needed to act quickly to save the Property. Furthermore, Towns trusted and believed in Trust One because Towns initial purchase of the Property was similar.<sup>4</sup>
36. Trust One held itself out to Towns as a mortgage broker with the ability to secure a mortgage for Towns.

<sup>4</sup> Towns initially purchased the Property with Calvin Thompson because Towns was not approved for the purchase on her own. Shortly thereafter Thompson conveyed his interest to Towns.

37. Towns never agreed to sell the Property to anyone and Towns further never agreed to relinquish her interest in the Property.
38. Offett, Moreno, Blythe, Shelton, and Shelton Law are all either employees, agents, affiliates, subsidiaries, or representatives of Trust One.
39. Trust One did not take any financial information from Towns.
40. The Property was not inspected or appraised.
41. Towns is unsure of what action Trust One took, but Towns knows the Property was not sold at a foreclosure sale.
42. Offett later contacted Towns, informing Towns that the Property was secure and not sold at the foreclosure sale, but that Towns needed to sign a trust document at Trust One's Oak Brook office.
43. As such, Moreno once again picked up Towns from the Property and drove Towns to Trust One's headquarters located at 1010 Jorie Boulevard, Oak Brook, Illinois.
44. Upon arrival Towns was placed in a room with Moreno, David, and a male of small stature whom Towns presumed was an attorney although Towns is unsure of his role and his name was never stated or given to Towns.
45. Towns was presented with a single page document for signing and told where to sign.
46. Towns understood the single page document to be the trust as previously explained to Towns by Offett. Towns did not receive a copy of the single page document.
47. After signing the single page document, Towns was placed in a waiting corridor with Offett and Moreno.
48. Offett informed Towns they were waiting on someone but never informed Towns of who the someone was and if the someone had any relation to the trust or the Property.

49. After waiting for close to an hour Offett informed Towns they were done and that Moreno could return Towns to the Property.
50. Offett informed Towns her monthly mortgage payment was \$695 per month for six months to a year and that payments should be made payable to Moreno.
51. Moreno collected the monthly payments from Towns at the Property. Moreno informed Towns this was best because Moreno had to pick up other payments on behalf of Trust One from other Trust One clients with situations similar to Towns.
52. Other payments Moreno collected for real estate near the Property include, but is not limited to, 9400 S. Throop, 6419 S. Throop, 9423 S. Throop, 9430 S. Throop, and 9436 S. Throop, in Chicago, Illinois, Cook County. Such other properties likewise have been foreclosed upon or are in foreclosure.
53. After several months Towns contacted Offett regarding the status of the removal of the trust so Towns could begin directly making payments to her new lender..
54. At such time, Offett informed Towns Trust One was working on taking the Property out of trust so Towns could make direct payments to the lender.
55. Moreno failed to collect Town's December 2006 monthly payment.
56. As such, Towns went to the Homewood office to tender her December 2006 mortgage payment. At such time, Towns found the office empty with no forwarding information posted.
57. Towns attempted to contact Moreno and Offett at the telephone numbers supplied to her; however, all of the telephone numbers were out of service.
58. Around January or February 2007 individuals began arriving at the Property seeking Blythe and Smith.

59. Towns continually informed the various parties that no one by the names of Blythe or Smith resided at the Property. The parties would not provide Towns with any further information.
60. Eventually, although a couple of months later, one of the visitors to the Property informed Towns that he was a real estate investor and that the Property was in foreclosure.
61. Towns immediately sought legal assistance through Attorney Bruce L. Jorgensen.
62. Attorney Jorgensen researched and informed Towns it appeared that Smith had secured ownership of the Property and that Smith was foreclosed upon.
63. Attorney Jorgensen informed Towns he could handle the matter to save Towns home but that it could be costly. Jorgensen advised Towns to seek assistance through various government agencies and free legal services and to return to him if none of such agencies were able to timely assist.
64. Towns sought the assistance of various government agencies and legal services agencies, including the Attorney General's Office, and the Illinois Department of Financial and Professional Regulation.
65. None of the agencies were able to timely assist Towns.
66. As such, Towns returned to Attorney Jorgensen.
67. Towns paid Attorney Jorgensen \$1500.
68. By such time an eviction action was filed against Towns for possession of the Property. See Exhibit 'C' as attached herein.
69. Attorney Jorgensen agreed to help Towns retain proper ownership of the Property and to prevent any eviction of Towns from the Property.

70. After several months in the eviction court, around April 2008, Towns discovered Attorney Jorgensen wanted Towns to agree to vacate the Property and give up her interest in the Property.
71. Towns became concerned that Attorney Jorgensen may not have taken steps to actually return possession and ownership of the Property to Towns.
72. Towns dissatisfied with Attorney Jorgensen's advice and concerned that Attorney Jorgensen may not have proceeded properly, sought new counsel.
73. Towns later discovered that Attorney Jorgensen was working on a short sale with Plaintiff for Towns purchase of the Property and that Attorney Jorgensen took no action in the foreclosure case and no attempts to present to any court what occurred.
74. A family friend referred Towns to Denise Culpepper (Culpepper). Culpepper informed Towns that she was an attorney and that she could assist Towns.
75. Towns paid Culpepper a total of \$4500 for Culpepper's assistance. Culpepper has failed to communicate with Towns and has failed to respond to Towns telephone inquiries as well as other inquiries.
76. To date and to Towns knowledge Culpepper has not performed any services for Towns.
77. Towns later discovered through her present counsel that Culpepper is not a licensed and practicing attorney in the state of Illinois.
78. Shortly thereafter Towns was referred to her present counsel.
79. Since such time Towns has discovered that a fraudulent sale of the Property occurred on or around September 8, 2005 allegedly from Towns to Blythe. See Exhibit 'D' as attached herein.
80. Towns has no knowledge of Blythe and did not enter into any agreement to sell or transfer her ownership of the Property to Blythe.

81. There was no real estate contract between Blythe and Towns.
82. There was no agreement between Blythe and Towns meeting the elements required by the Statute of Frauds.
83. Towns never conveyed the Property to Blythe and Towns had no knowledge of the purported Warranty Deed conveying the Property to Blythe.
84. There was no inspection of the Property or appraisal of the Property near the alleged time of the conveyance of the Property from Towns to Blythe.
85. Towns is "Lessie M. Towns" yet the purported Warranty Deed from Towns to Blythe is conveyed by "Leslie M. Towns".
86. The Warranty Deed is dated September 8, 2005 and recorded September 28, 2005.
87. The Warranty Deed was prepared by Shelton and Shelton Law on behalf of the Grantor which is purported to be Towns.
88. Yet, Towns has no knowledge of Shelton or Shelton Law, did not retain Shelton or Shelton Law to provide any services for her, and did not authorize the preparation of a Warranty Deed.
89. On or around September 27, 2005 a Release was filed by Gateway Financial Corporation releasing Towns from her then existing June 20, 2001 refinance. See Exhibit 'E' as attached herein.
90. On or around April 13, 2006 Blyth conveyed his fraudulent interest in the Property to Smith. See Exhibit 'F' as attached herein.
91. There was no inspection of the Property or appraisal of the Property near the alleged time of the conveyance of the Property from Blythe to Smith.
92. At such time Long Beach financed a mortgage loan to Smith for Smith's initial acquisition of the Property in the amount of \$157,500. See Exhibit 'G' as attached herein.

93. Smith failed to make any payments to Long Beach. Inasmuch, on November 17, 2006 Plaintiff filed its Complaint to Foreclose an recorded notice of the foreclsoure. See Exhibit 'H' as attached herein.
94. On January 30, 2007 a default judgment was entered against Smith, the Property was sold at the foreclosure sale and the sale was confirmed on June 27, 2007. See Exhibit 'I' as attached herein.
95. Subsequently, on July 3, 2007 the Property was dedeed to Plaintiff. See Exhibit 'J' as attached herein.
96. Through the assistance of family and friends Towns attempted to proceed *pro se* before securing new counsel in order to protect her interest in the Property and filed for injunctive relief in her eviction matter and filed for relief in the foreclosure court as well. See Exhibit 'K' as attached herein.
97. Towns was unsuccessful in both and now faces eviction from her home of over 40 years on June 3, 2008. See Exhibit 'L' as attached herein.
98. The Property was never inspected or appraised for the alleged purchase by Smith and the mortgage between Smith and Loan Beach.

#### APPLICABLE LAW

99. Relief from a final order or judgment entered by a court may be sought pursuant to Section 2-1401 of the CCP and CPL, 30 days after the entry of judgment but less than two years from the entry of judgment. 735 ILCS 5/2-1401.
100. The purpose of 5/2-1401 is to allow a party to bring forth facts to the judgment court's attention, facts that would have caused the court to rule otherwise if the court had such knowledge at the time of the its entry of judgment or order in favor of the plaintiff. Kalan v. Palast, 220 Ill.App.3d 805, 581 N.E.2d 175 (1<sup>st</sup> Dist. 1991).

101. The relief must be obtained through the filing of a petition. 735 ILCS 5/2-1401(a).
102. The petition must be considered by the court in light of justice and fairness in which the Court should invoke its equitable powers to promote justice and fairness between the parties. Brewer v. Moore, 121 Ill.App.3d 423, 459 N.E.2d 1153 (1<sup>st</sup> Dist. 1984).
103. The 5/2-1401 petitioner must typically show a meritorious defense to the plaintiff's claims as well as a showing of due diligence in presenting the meritorious defenses and the petition. Murray v. Korshak, 52 Ill.App.2d 119, 201 N.E.2d 737 (1<sup>st</sup> Dist.).
104. Petitioner must show she did not act negligently in failing to resist the entry of judgment, but rather that the petitioner's failure to defend was a reasonable and excusable mistake. Vrozos v. Sarantopoulos, 195 Ill.App.3d 610, 552 N.E.2d 1093 (1<sup>st</sup> Dist. 1990).
105. As such, petitioner must show 1) a meritorious defense or claim; 2) due diligence in presenting her defense or claim; 3) that she did not timely present her valid defense or claim due to no fault or negligence of her own; and 4) due diligence in filing her petition for relief from the judgment. Id.
106. The Court may vacate a judgment or order even if the due diligence requirement is not met by a petitioner if the Court finds the judgment or order was entered under unfair, unjust, or unconscionable circumstances. Hardware Wholesalers, Inc. v. Clemenic, 124 Ill.App.3d 304, 464 N.E.2d 700 (1<sup>st</sup> Dist. 1984).
107. The due diligence standard should be relaxed where a petitioner shows unconscionable behavior of a respondent. Connelly v. Gibbs, 112 Ill.App.3d 257, 445 N.E.2d 477 (1<sup>st</sup> Dist. 1983).
108. The due diligence standard should be waived to avoid unfair, unjust, and/or unconscionable results. In re Marriage of Kantar, 220 Ill.App.3d 323, 581 N.E.2d 6 (1<sup>st</sup> Dist. 1991).



109. If a 5/2-1401 petitioner seeks relief on the grounds of voidness the petitioner is not required to show a meritorious defense and due diligence. Sarkissian v. Chicago Bd. Of Educ., 201 Ill.2d 95, 776 N.E.2d 195 (2002).
110. A void judgment may be set aside anytime. 735 ILCS 5/2-1401(f).
111. The burden lies with the petitioner by a preponderance of the evidence. Smith v. Airoom, Inc., 114 Ill.2d 209, 499 N.E.2d 1381 (1986).
112. Plaintiff as the alleged assignee, holder, and/or owner of Smith's mortgage note pursuant to the alleged loan from Long Beach is liable for all claims and defenses Towns could assert against Long Beach and WAMU. 15 U.S.C. 1641(d)(1).
113. Plaintiff took Smith's alleged mortgage loan with Long Beach subject to all infirmities to which it is liable in the hands of Long Beach or WAMU. Hirsh v. Arnold, 318 Ill. 28, 148 N.E. 882 (1925).
114. Liability for fraud can be extended to Plaintiff because Plaintiff accepted the fruits of the fraud. Moore v. Pinkert, 28 Ill.App.2d 320, 333 (1960).

#### VOIDNESS

115. The January 30, 2007 default judgment as well as the June 27, 2007 confirmation of sale were erroneously entered and should be voided by this Court because the mortgage as between Long Beach and Smith is an invalid mortgage. Thereby, the Court lacked subject matter jurisdiction.
116. The mortgage between Long Beach and Smith is invalid because Long Beach allegedly lent money to Smith for a Property which could not legally be conveyed to Smith by Blythe considering Blythe secured the Property through fraud.
117. The mortgage between Long Beach and Smith is also invalid because Long Beach did follow its standard and proper lending guidelines for Long Beach allegedly lent monies to

Smith for the initial acquisition of the Property without any basis for such loan amount considering no appraisal of the Property was ever performed.

118. Considering Blythe has managed to secure a substantial volume of real estate in the Chicago land area in which majority of such real estate was quickly sold and financed to borrower by Long Beach, Long Beach being skilled and experienced in the making of mortgages, had notice that Blythe was involved in illegal activities. On information and belief Long Beach closed most of Blythe's real estate conveyances with a valid appraisal.
119. In addition, at the time of entry of the January 30, 2007 default judgment and the June 27, 2007 order confirming sale of the Property, the above mentioned facts were unknown to the Court and to Petitioner, as such the January 30, 2007 default judgment and the June 27, 2007 order confirming sale of the Property was entered without fault or negligence of Towns. Inasmuch, the default judgment and order confirming the sale of the Property are voidable.
120. Towns was unaware of the 1) conveyance of the Property to Blythe; 2) conveyance of the Property to Smith; 3) the mortgage between Long Beach and Smith for Smith's alleged initial acquisition of the Property; 4) the January 30, 2007 default judgment; 5) the sale of the Property and the June 27, 2007 order confirming the sale of the Property; and 6) the inaction by Jorgensen and Culpepper who were retained and paid by Towns to seek legal action to protect Towns home of over 40 years. Inasmuch, the default judgment and order confirming the sale of the Property are voidable.

#### MERITORIOUS DEFENSES AND CLAIMS

121. Towns has meritorious defenses or claims to this as follows:
- a) **Count I: Illinois Consumer Fraud and Deceptive Business Practices Act** as against Plaintiff and all Respondents.

- 1) Towns re-state and incorporate paragraphs 1 – 120.
- 2) The Illinois Consumer Fraud and Deceptive Business Practices Act (ICFA) prohibit fraudulent, deceptive, misrepresentation, concealment, and suppression of any material fact during the conduct of trade or commerce. 810 ILCS 505/1
- 3) Unfair or deceptive acts and practices, including but not limited to, deception, fraud, false pretense, false promise, and misrepresentation, of any material fact with the intent that others rely upon the deception of such material fact is unlawful regardless of whether or not any person has in fact been misled, deceived, or damaged thereby. Id.
- 4) Trust One, Offett, and Moreno deceived Towns to believe Trust One could secure a mortgage to pay-off Towns then existing mortgage loan to save Towns home from foreclosure.
- 5) Trust One, Offett, and Moreno deceived Towns to believe Trust One would create a trust for the protection of the Property for a six month to one year period.
- 6) Trust One, Offett, and Moreno deceived Towns to believe the Property was properly protected and that there was no threat of foreclosure.
- 7) Trust One, Offett, and Moreno made numerous false statements under false pretense to Towns.
- 8) Shelton, Shelton Law, and Blythe committed fraud by creating a false Warranty Deed to elude the public record to believe Towns sold the Property to Blythe.

- 9) Trust One, Offett, Moreno, Blythe, Shelton, and Shelton Law deceptive practices, false pretense, false statements, and fraud were material to Towns partaking in any activities with Trust One.
- 10) Trust One, Offett, Moreno, Blythe, Shelton, and Shelton Law engaged in deception, misrepresentation, false promises, and fraudulent practices by taking advantage of Towns, knowing that she lacked knowledge, and that she was in a dire situation and in a desperate need.
- 11) Trust One, Offett, Moreno, Blythe, Shelton, and Shelton Law intentionally mislead Towns to believe she had secured monies and a trust to protect the Property from foreclosure in order for Trust One, Offett, Moreno, Blythe, Shelton, and Shelton Law to profit to Towns' detriment.
- 12) Trust One, Offett, Moreno, Blythe, Shelton, and Shelton Law knew their statements and representations were false.
- 13) Long Beach made a loan to Smith for the purchase of the Property without an inspection and appraisal of the Property and without taking any reasonable steps to ensure the validity of the Blythe's ownership of the Property when all other public records clearly reflected Towns' interest in the Property and at a time when Towns continued to reside in the Property.
- 14) Trust One, Offett, Moreno, Blythe, Shelton, Shelton Law, Plaintiff, Long Beach, and WAMU knowingly accepted the benefits of the various parties' deceptive and fraudulent practices through misrepresentation is a violation of the ICFA. Saltzman v. Enhanced Servs. Billing, Inc., 348 Ill. App. 3d 740, 811 N.E. 2d 191 (1<sup>st</sup> Dist. 2004). See also, Cunningham v. Equicredit, 256 F.Supp.2d 785 (N.D.Ill. 2003).

- 15) Knowing violations of other consumer protection statutes is an automatic violation of the ICFA. 815 ILCS 505/2Z.
- 16) The ICFA statute of limitations is three years. 815 ILCS 505/10(e).
- 17) The ICFA statute of limitations is unlimited as a defense to foreclosure. 735 ILCS 5/13-207.
- 18) The ICFA is enforceable upon subsequent holders of the note. 810 ILCS 5/3-305(a).
- 19) Pursuant to Hirsh v. Arnold, 318 Ill. 28, 148 N.E. 882 (1925), Plaintiff and WAMU took Smith's consumer loan subject to all infirmities to which it is liable in the hands of Long Beach.
- 20) Towns is therefore entitled to every defense against Plaintiff and WAMU which she would make against Loan Beach.

**WHEREFORE**, Towns respectfully prays that this Honorable Court award her actual damages, punitive damages, equitable relief, attorney fees, litigation expenses, and cost of suit pursuant to Plaintiff and the Respondents violations of the ICFA.

b) **Count II: Common Law Fraud as against Plaintiff and all Respondents.**

- 1) Towns re-states and incorporates paragraphs 1 – 121(a).
- 2) The elements of common law fraud require: 1) a false statement of material fact; 2) the party making the statement knew or believed the statement was false; 3) the party to whom the statement was made had the right to rely upon the statement; 4) the party to whom the statement was made actually relied upon the statement; 5) the statement was made to induce the other party to act; and 6) reliance upon the statement led to

injury. Siegel v. Levy Organization Development Co., 153 Ill.2d 534, 542 (1992).

- 3) Liability for common law fraud can be extended when one accepts the fruits of the fraud. Moore v. Pinkert, 28 Ill.App.2d 320, 333 (1960).
- 4) As previously mentioned herein, Trust One, Offett, Moreno, Blythe, Shelton, and Shelton Law made numerous false statements to Towns, and furthermore created false documents to support their false statements.
- 5) The statements, misrepresentations, fraud, false pretense, and false documents are material to this foreclosure action of Smith and the Property.
- 6) As previously mentioned herein, the parties making the deceiving statements and deceptive actions knew the statements and documents were false.
- 7) As previously mentioned herein, the parties further knew Towns would rely upon the statements, and misrepresentations and that Towns was in a desperate and dire situation.
- 8) Towns relied upon the statements and misrepresentations to her detriment.
- 9) The statements and misrepresentations were stated for Towns' reliance to induce Towns' to act and trust that her home was protected and that she was safe from foreclosure.
- 10) The statements, misrepresentations, and false documents were stated and created for the purpose of stealing the Property from Towns to make a significant profit through loan monies from Long Beach.

- 11) Towns relied upon the false statements, misrepresentations, and deceptive acts to her detriment which has created her injury and harm thereof.
- 12) Towns has been injured thereby, unknowingly losing her home of over 40 years and facing the pending eviction.
- 13) Said actions amount to consumer fraud the parties mentioned herein.
- 14) The statute of limitation for consumer fraud is 5 years, and is unlimited as a defense to foreclosure. 735 ILCS 5/13-205, 735 ILCS 5/13-207.
- 15) Trust One, Offett, Moreno, Blythe, Shelton, Shelton Law, Plaintiff, Long Beach, and WAMU are thereby liable to Towns for actual damages, punitive damages, and equitable relief. Lucas v. Downtown Greenville Investors Limited Partnership, 284 Ill.App.3d 37 (1996).

**WHEREFORE**, Towns respectfully prays that this Honorable Court award her actual damages, punitive damages, equitable relief, attorney fees, litigation expenses, and cost of suit pursuant to Plaintiff and the Respondents common law fraud.

- c) **Count III: Illinois Fairness in Lending Act Violations as against Plaintiff, Long Beach, WAMU, and Trust One.**
  - 1) Towns re-states and incorporates paragraphs 1 – 121(b).
  - 2) The Illinois Fairness in Lending Act, hereinafter “IFA”, prohibits equity stripping and loan flipping. 815 ILCS 120/2(d) – (e).
  - 3) Equity stripping involves assisting a consumer in securing a loan for the primary purpose of receiving fees related to the financing of said loan when 1) the loan decreased the person’s equity in their principal residence; and 2) at the time of the loan the financial institution did not reasonably

believe the consumer could make the scheduled payments to repay the loan. 815 ILCS 120/2(d).

- 4) Trust One informed Towns that it secured a mortgage loan to save to Towns home from foreclosure.
- 5) Trust One did not take any financial information from Towns, did not verify Towns' income, and did not appraise the Property to ascertain the fair market value of the Property.
- 6) At the time of the 2004 foreclosure of Towns, Towns mortgage was \$85,000.
- 7) Long Beach made a loan to Smith in the amount of \$157,500 for Smith's alleged initial acquisition of the Property.
- 8) Long Beach lent the alleged monies to Smith without any verification of the value of the Property.
- 9) On information and belief Long Beach lent monies to Smith without any verification of Smith's income.
- 10) On information and belief the Property appraised at \$85,000 pursuant to Towns' previous appraisal.
- 11) The Property is in need of repairs.
- 12) The principal amount of the Loan to Smith from Long Beach is \$157,500, more than the appraised value of the Property at the time of the making of the Loan.
- 13) As such, the equity in the Property was reduced.
- 14) Towns did not complete a loan application with either Trust One, Long Beach, WAMU, or Plaintiff.



- 15) On information and belief, Smith as well did not complete a loan application.
- 16) Inasmuch, neither Trust One, Plaintiff, Long Beach, or WAMU had any reasonable expectations that either Towns or Smith would be able to make timely payments.
- 17) Thereby the making of the loan to both Towns and Smith decreased the equity in the Property in which their was no reasonable expectations that either Towns or Smith would be able to make timely mortgage payments.
- 18) Long Beach, WAMU, Trust One, and Plaintiff violated the IFA by stripping the equity in the Property.
- 19) Towns has been harmed thereby.
- 20) Plaintiff, Long Beach, WAMU, and Trust One are therefore liable to Hodges for actual damages and equitable relief. 815 ILCS 120/2

**WHEREFORE**, Towns respectfully prays that this Honorable Court award her actual damages, statutory damages, and equitable relief pursuant to Plaintiff and the Respondents violations of the IFA.

**d) Count IV: Breach of Contract as against Trust One.**

- 1) Towns re-states and incorporates paragraphs 1 – 1521(c).
- 2) Parties to a contract have an implied duty to uphold that contract and honor their obligations thereof, which consist of an implied duty of good faith and fair dealings. Hill v. St. Paul Federal Bank, 329 Ill.App.3d 7.5, 710 (1<sup>st</sup> Dist. 2002).
- 3) Frustrating a borrower's ability to perform may be a breach of contract and a breach of one's contractual duty of good faith and fair dealing. Id.

- 4) Trust One as a mortgage broker had a contractual duty to work on behalf of Towns and to work in Towns' best interest, requiring Trust One to act in good faith and fair dealings.
- 5) Trust One, Offett, Moreno, Blythe, Shelton, and Shelton Law are all either employees, agents, affiliates, subsidiaries, or representatives of Trust One.
- 6) Trust One, Offett, Moreno, Blythe, Shelton, and Shelton Law did not take any financial information from Towns.
- 7) Towns did not complete a loan application.
- 8) Trust One, Offett, Moreno, Blythe, Shelton, and Shelton Law intentionally deceived Towns to believe they were securing a mortgage to protect the Property from foreclosure, were creating a short term trust for the benefit and Towns, and that Towns would not lose her interest in the Property.
- 9) In actuality, Trust One, Offett, Moreno, Blythe, Shelton, and Shelton Law worked collectively to deprive Towns of her rights and interest in the Property.
- 10) Trust One, Offett, Moreno, Blythe, Shelton, and Shelton Law failed to act in good faith and fair dealings pursuant to matters stated herein.
- 11) Trust One, Offett, and Moreno failed to make proper disclosures to Towns.
- 12) Trust One, Offett, and Moreno failed to act in Towns' best interest.
- 13) Trust One failed to provide full and complete loan brokerage services to Towns.
- 14) Trust One failed to provide material disclosures to Towns.

- 15) Trust One, Offett, Moreno, Blythe, Shelton, and Shelton Law conspired to deprive Towns of the Property at a profit for themselves and to the detriment of Towns.
- 16) As such, Trust One breached its contractual duty to Towns.
- 17) Trust One breach of contract has caused injury to Towns through the loss of her home in which she now faces eviction on June 3, 2008.
- 18) Trust One's breach of contract has frustrated Towns' ability to perform.
- 19) Trust One, Offett, Moreno, Blythe, Shelton, and Shelton Law are thereby liable to Towns for actual damages.
- 20) The statute of limitations for breach of contract is 10 years for affirmative claims and unlimited as a defense to foreclosure. 735 ILCS 5/13-206 - 207.

**WHEREFORE,** Towns respectfully prays that this Honorable Court award her actual damages, punitive damages, equitable relief, attorney fees, litigation expenses, and cost of suit pursuant to Trust One's breach of contract.

e) **Count V: Breach of Fiduciary Duty as against Trust One.**

- 1) Towns re-states and incorporates paragraphs 1 - 121(d).
- 2) A mortgage broker breaches its fiduciary duty if 1) a fiduciary duty was present; 2) the fiduciary duty was breached; and 3) the breach proximately caused the injury of which the party complains. Martin v. Heinhold Commodities, Inc., 163 Ill.2d 33, 50, 205 Ill. Dec. 443, 643 N.E.2d 734 (1994).
- 3) Parties to a contract have an implied duty to uphold that contract and honor their obligations thereof, which consist of an implied duty of good

faith and fair dealings. Hill v. St. Paul Federal Bank, 329 Ill.App.3d 7.5, 710 (1<sup>st</sup> Dist. 2002).

- 4) Trust One holding itself out to Towns as a mortgage broker had a contractual duty to work on behalf of Towns and to work in Towns' best interest, requiring Trust One to act in good faith and fair dealings.
- 5) For the foregoing reasons previously mentioned herein, Trust One, through its employees, agents, affiliates, subsidiaries, and representatives, failed to act in good faith and fair dealings pursuant to matters stated herein involving Towns.
- 6) Rather, as previously stated herein, Trust colluded against Towns to gain ownership of the Property for financial gain yet to the detriment of Towns.
- 7) Trust One failed 1) to act in good faith and fair dealings pursuant to matters previously stated herein; 2) to make proper disclosures to Towns; 3) to fully apprise Towns of the action it was taking; 4) to work in Towns best interest; 5) to provide full and complete loan brokerage services to Towns; and 6) to provide material disclosures to Towns.
- 8) Trust One breached its fiduciary duty to Towns.
- 9) Trust One's breach of fiduciary duty has caused injury to Towns through the loss of her home of over 40 years.
- 10) Trust One is liable to Towns for actual damages and equitable relief for its breach of fiduciary duty.
- 11) The statute of limitations for breach of fiduciary duty is 5 years. 735 ILCS 5/13-205.

**WHEREFORE,** Towns respectfully prays that this Honorable Court award her actual damages, punitive damages, equitable relief, attorney fees, litigation expenses, and cost of suit pursuant to Trust One's breach of fiduciary duty.

f) **Count VI: Unjust Enrichment as against Plaintiff and All Respondents.**

- 1) Towns re-states and incorporates paragraphs 1 - 121(e).
- 2) Plaintiff and the Respondents have been unjustly enriched by making a profit of its misrepresentations, deception, and fraudulent acts.
- 3) Trust One intentionally misrepresented to Towns that Towns was making monthly payments of \$695 which were going to pay-off a new mortgage that saved the Property from the 2004 foreclosure action.
- 4) In actuality Towns monthly payments were for the enjoyment and use of Trust One without any benefit to Towns.
- 5) Plaintiff and the Respondents have been enriched by fraudulently increasing their real estate portfolio by stealing Towns' home from her and by securing funds through the sale of Towns' home to Smith for a profit.
- 6) It would be unjust and inequitable for the parties to benefit and continue to benefit from their actions.

g) **Count VII: Uniform Fraudulent Transfer Act and Conspiracy as against Respondents Trust One, Offett, Moreno, Blythe, Shelton, and Shelton Law.**

- 1) Towns re-states and incorporates paragraphs 1 - 121(f).
- 2) Pursuant to the Illinois Uniform Fraudulent Transfer Act (UFTA) "Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an antecedent debt is secured or

satisfied, but value does not include an unperformed promise made otherwise than in the ordinary course of the promisor's business to furnish support to the debtor or another person." 740 Ill. Comp. Stat. § 160/4(a).

- 3) Furthermore, pursuant to the UFTA, a transfer is fraudulent as to a creditor if the transfer is made without receiving any reasonable equivalent value in exchange, with consideration being given to one who still retains possession of the property after the transfer. *Id* at 160/5.
- 4) Pursuant to actions previously stated herein, Trust One, Offett, Moreno, Blythe, Shelton, and Shelton Law conspired together to fraudulent secure conveyance and ownership of the Property from Towns to Blythe without the knowledge and consent of Towns and to Towns extreme detriment. Plaintiff and the Respondents have been unjustly enriched by making a profit of its misrepresentations, deception, and fraudulent acts.
- 5) Trust One failed to perform and provide Towns with a new mortgage and protection of the Property.
- 6) The conspiracy was to perform an unlawful tortuous act, the transfer of the Property to Blythe, unbeknown to Towns in which Towns has been harmed thereby.
- 7) Trust One, Offett, Moreno, Blythe, Shelton, and Shelton Law understood the objectives of the conspiracy and intended to benefit from the conspirators actions to give Blythe an interest in the Property.
- 8) Pursuant to such actions Towns has suffered substantial economic loss with the loss of title to the Property, the loss of equity in the Property, the

mortgage on the Property, the loss of mortgage payments to Trust One, and the foreclosure of the Property.

- 9) Towns' economic losses are a direct and proximate cause of Trust One, Offett, Moreno, Blythe, Shelton, and Shelton Law conspiracy to deprive Towns of the Property.

**WHEREFORE**, Towns respectfully prays that this Honorable Court grant her actual and punitive damages for Trust One's actions in its conspiracy.

- h) **Count VIII: Negligence as against Trust One, Plaintiff, Long Beach, and WAMU.**

- 1) Towns re-states and incorporates paragraphs 1 - 121(g).
- 2) Trust One did not secure any financial information from Towns to support the granting of a mortgage or any such payoffs on behalf of Towns and to ensure Towns had the ability to payoff the alleged mortgage loan.
- 3) On information and belief Long Beach, WAMU, and Plaintiff did not secure any financial information from Smith to support the granting of a mortgage for Smith's alleged initial purchase of the Property.
- 4) Plaintiff, Long Beach, WAMU, and Trust One's actions surmount to a pattern or practice of extending credit to consumers based on consumer's collateral without regard to the consumer's repayment ability, thereby violating 15 U.S.C. § 1639(h).
- 5) Trust One, Offett, Moreno, Shelton, and Shelton Law assisted Blythe in securing a fraudulent interest in the Property to the detriment of Towns while misleading Towns to believe she was securing a new mortgage and

creating a trust with Trust One to save the Property from the 2004 foreclosure lawsuit.

- 6) Trust One failed to abide by various federal requirements and prohibitions and failed to provide Towns with the true nature of the alleged mortgage.
- 7) Trust One owed Towns a duty of care to provide consumer loans within the legal framework of consumer laws opposed to providing Towns with a loan which violates numerous consumer laws including but not limited to the Truth-In-Lending Act and the Home Ownership Equity Protection Act.
- 8) As previously mentioned herein, Trust One's actions are discussed herein were negligent.
- 9) Trust One, Offett, Moreno, Blythe, Shelton, and Shelton Law misrepresentations and failure to make accurate representations were material to Towns dealings with Trust One and to the alleged mortgage loan as between Smith and Long Beach.
- 10) Said misrepresentations and failure to make accurate representations were made with the intent that Towns rely thereon.
- 11) Towns did reasonably rely on the representations and misrepresentations of Trust One, Offett, Moreno, Shelton, and Shelton Law to her detriment and has been damaged thereby.

**WHEREFORE,** Towns respectfully prays this Honorable Court award her damages for Plaintiff and Trust One negligence and void the alleged transfer of the Property to Smith from Blythe and to Blythe and Towns and find Towns as the sole owner of the Property, striking any and other alleged interest holders.



- i) **Count IX: Quiet Title**
- 1) Towns re-states and incorporates paragraphs 1 - 121(h).
  - 2) As previously mentioned herein, the alleged deed from Towns to Blythe was fraudulent and not a conveyance of the Property from Towns to Blythe.
  - 3) Inasmuch, Blythe never held valid title to the Property and could not legally transfer the Property to Smith.
  - 4) Further, Smith never held valid title to the Property and could not encumber the Property in favor of Plaintiff, Long Beach, or WAMU.
  - 5) Thereby, Plaintiff does not hold a secured interest in the Property because Blythe and Smith never secured any real interest in the Property that would grant either Blythe or Smith the right to encumber the Property with a secured interest in favor of Plaintiff.

**WHEREFORE,** Towns respectfully prays that this Honorable Court quiet title in favor of Towns by voiding the alleged conveyances of the Property to Blythe from Towns and to Smith from Blythe and find Towns as the sole owner of the Property, striking any and other alleged interest holders, including Plaintiff.

#### **DUE DILIGENCE**

122. Upon knowledge of this foreclosure action as against Smith, Towns timely sought legal assistance to protect her interest in the Property.
123. Towns sought and paid for the assistance of Attorney Jorgensen.
124. Attorney Jorgensen misled Towns to believe he would properly assist her yet Attorney Jorgensen never took any action with the foreclosure court. Rather, Attorney Jorgensen

only sought to secure additional time to stay the eviction of Towns and sought an agreement for Towns' to re-purchase the Property.

125. Towns had no reason to suspect Attorney Jorgensen was not acting in her best interest and was not taking the necessary steps to protect Towns interest in the Property.
126. Upon Towns knowledge of her defenses and claims to this foreclosure action, immediately acted and immediately petitioned this Court for relief upon her knowledge of a defense and claim once she realized other paid counsels failed to act accordingly.
127. Inasmuch, Towns has meritorious defenses and claims, has shown due diligence in presenting her defenses and claims to this Court upon her knowledge of such defenses and claims, did not present her defenses and claims sooner due to know fault of her own but yet due to the failure of her retained counsel to act accordingly, and immediately filed her 5/2-1401 petition once she became aware that her defenses and claims were not presented.
128. The due diligence standard should be relaxed where a petitioner shows unconscionable behavior of a respondent. Connolly v. Gibbs, 112 Ill.App.3d 257, 445 N.E.2d 477 (1<sup>st</sup> Dist. 1983).
129. The due diligence standard should be waived to avoid unfair, unjust, and/or unconscionable results. In re Marriage of Kantar, 220 Ill.App.3d 323, 581 N.E.2d 6 (1<sup>st</sup> Dist. 1991).
130. Here, the due diligence standard should be waived to avoid the unjust and unconscionable result of the lost of Towns' home of over 40 years pursuant to the fraudulent activities of the named parties herein pursuant to such parties' unconscionable acts upon Towns.

**WHEREFORE**, Petitioner Lessie Towns respectfully prays that this Honorable Court:

- A. Provide Towns relief of judgment;

- B. Stay the eviction of Towns from the Property;
- C. Vacate the January 30, 2007 Order for Summary Judgment and Judgment of Foreclosure and Sale;
- D. Vacate the foreclosure sale of the Property;
- E. Vacate the June 27, 2007 order confirming the report of sale of the Property;
- F. Award Towns damages for the Plaintiff and Respondents common law fraud, gross negligence, violation of the ICFA, violation of the IFA, unjust enrichment, intentional infliction of emotional distress, breach of contract, breach of fiduciary duty, conspiracy, and violation of the UFTA.
- G. Grant such other and further relief as this Court deems meet and just.

Respectfully submitted,

/s/

Sabrina Herrell of LOGIK Legal LLC  
Attorneys for Petitioner Lessie Towns

[Redacted Signature]

Lessie Towns, Petitioner

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Atty No.: 39846

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

[Redacted Signature]

Lessie Towns, Petitioner

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT — CHANCERY DIVISION**

<b>DEUTSCHE BANK NA</b>	)	
<b>Plaintiff,</b>	)	
	)	
	)	<b>Case No. 06 CH 25073</b>
<b>v.</b>	)	<b>Calendar 55</b>
	)	<b>Judge Lisa R. Curcio</b>
<b>WILLIE SMITH, et al.</b>	)	
<b>Defendants.</b>	)	

<b>LESSIE TOWNS</b>	)
<b>Petitioner,</b>	)
	)
<b>v.</b>	)
	)
<b>DEUTSCHE BANK NA</b>	)
<b>Respondent.</b>	)

**AFFIDAVIT OF LESSIE TOWNS IN SUPPORT OF HER REPLY TO PLAINTIFF'S  
RESPONSE TO LESSIE TOWNS' PETITION FOR RELIEF OF JUDGMENT  
PURSUANT TO 5/2-1401 OF THE CODE OF CIVIL PROCEDURE**

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

**I, Lessie Towns, on oath state as follows:**

1. That I am the Intervening Petitioner in this later action pursuant to 5/2-104 of the Illinois Code of Civil Procedure (CCP) and that I make this affidavit in addition to and in furtherance of my previous affidavit in support of my petition for relief of judgment and in support of my reply to Plaintiff's response to my Amended Petition.
2. That I am elderly, 72 years of age.
3. That I reside at 9430 S. Ada, Chicago, Illinois, Cook County (the Property).
4. That I have owned the Property for over 40 years and that I have never sold the Property since my initial acquisition of the Property.
5. That I was erroneously placed in foreclosure in the year 2004 when I was timely making all of my mortgage payments and that I understood my home was fine although a foreclosure action had been filed against my in 2004. That I did not understand and was not aware that an actual judgment of foreclosure was entered against me.

6. That I never received notice that my home was not fine and that the 2004 foreclosure action was still active and against me until late June 2005 when I was seeking a home improvement loan to make repairs to the Property.
7. That I was visited at my home, the Property, by a representative of Trust One Mortgage (Trust One) named Percilla Moreno (Moreno) who informed me that I was in foreclosure, that I would lose my home on July 5, 2005, and that Trust One could immediately help me and save my home.
8. That I was in a panic and did not know what to do so I agreed to accept assistance from Trust One.
9. That I later discovered a fraudulent sale of the Property occurred in which an individual named Peter Blythe (Blythe) secured interest in my home, the Property, allegedly per Plaintiff through my sale of the Property to Blythe.
10. That I did not enter into any agreement to sell my Property to Blythe and that I did not attend a closing to sell my Property to Blythe.
11. That to my knowledge I never met anyone named Blythe.
12. That I worked only through Trust One to stop the July 5, 2005 sale of the Property and to secure a mortgage loan for the repairs to the Property.
13. That the Trust One representatives who worked with me were David Offett (Offett) and Moreno.
14. That Trust One explained to me that they could secure a mortgage loan for me to save the Property and to make repairs to the Property.
15. That Trust One informed me that they were mortgage brokers.
16. That Trust One further explained to me that they would put the Property in trust and that I would make mortgage payments directly to them and then directly to the lender after the Property was taken out of trust.
17. That I never had any discussions with Trust One regarding selling my home.
18. That I never signed any documents with Trust One or anyone agreeing to the sale of the Property.
19. That I have had the opportunity to review Plaintiff's Response to my Amended Petition, particularly the closing documents Plaintiff alleges I signed on September 8, 2005.
20. That although I cannot recall the exact date Moreno took me to Oak Brook and I cannot state for sure if she took me to the Trust One office or to a title company's office, I certainly know that she told me she was taking me to Oak Brook. I certainly know that both Moreno and Offett were in the office at the time for Moreno took me and Offett was

present when I arrived. I certainly know that I was only presented with a single page document, was told that such document would create the trust, and I was directed where to sign.

21. That at that time I did not give Trust One a copy of my identification for I gave Trust One my identification when Moreno first took me to Trust One's Homewood office in July 2005 as I explained in my Amended Petition.
22. That I was never provided with a copy of the single page document.
23. That I am certain that it was not all of the documents Plaintiff allege I signed for it was only one single page document.
24. That such documents were not presented to me and that I did not sign such documents.
25. That several weeks later Moreno did bring a check to my home for me to complete the repairs in the Property.
26. That such repairs were completed.
27. That I am further aware that Plaintiff alleges to have appraised the Property in 2006.
28. That this appraisal is certainly false because no one appraised my Property at such time.
29. That my Property was appraised in my last refinance over six years ago.
30. That Ms. Culpepper also sent an appraiser to my home in 2008 when she alleged she was an attorney that could help me save my home once I became aware of this action against Mr. Smith involving my home as I explained in my Amended Petition.
31. That no one appraised the Property in between the above mentioned times.
32. That the only person with or on behalf of Trust One who has been in the Property is Moreno.

Respectfully,

[REDACTED]

Lessie Towns, Affiant

Dated this 1st of October 2008.

SUBSCRIBED AND SWORN TO Before me this 1st of October 2008.

[REDACTED]

Illinois Notary Public



**CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION  
MORTGAGE FORECLOSURE AND MECHANICS' LIEN SECTION**

Deutsche Bank National Trust	)	
Company as Trustee for Long Beach	)	
Mortgage Loan Trust 2006-5	)	
	)	
Plaintiff,	)	
	)	
v.	)	06 CH 25073
	)	
Willie Smith,	)	
	)	
Defendant.	)	
<hr style="border-top: 1px dashed black;"/>		
Lessie Towns,	)	
	)	
Intervenor.	)	
	)	

**ORDER**

This cause comes to be heard on the petitions of Lessie Towns (Towns) for leave to intervene as a defendant in this matter and to vacate pursuant to Illinois Code of Civil Procedure section 2-1401 the order approving sale entered June 27, 2007 and judgment of foreclosure entered January 30, 2007. There was no objection to the petition for leave to intervene, and it was granted on the basis of Towns' claim of an interest in the real estate which is the subject of this lawsuit for foreclosure. The petition to vacate the order approving sale and judgment of foreclosure is granted for the reasons set forth below.

**BACKGROUND**

On November 17, 2006, Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-5 (Deutsche Bank) filed its Complaint to Foreclose Mortgage against Willie Smith (Smith). The complaint alleged that Smith

gave a mortgage on property commonly known as 9430 S. Ada Street, Chicago, Illinois, to Long Beach Mortgage Company on April 13, 2006 to secure a loan in the amount of \$157,500.00, and that Smith defaulted on that loan. Smith was the only named defendant in the lawsuit. He did not appear in the lawsuit and was found to be in default. A judgment of foreclosure was entered on January 30, 2007 which allowed sale of the property after June 14, 2007. The sale was conducted on June 15, 2007 with the plaintiff being the successful bidder at sale, and the court entered an order approving the sale on June 27, 2007. A deed was subsequently issued to plaintiff.

Deutsche Bank thereafter filed a separate action for forcible entry and detainer against Towns, which was how she learned about the foreclosure. After contacting attorneys who did nothing to assist her in this case, on April 25, 2008, Towns filed in this case her *pro se* petition to vacate pursuant to 735 ILCS 5/2-1401. Counsel then appeared in behalf of Towns and filed an amended petition for relief from judgment on May 27, 2008, and a petition for leave to intervene on June 24, 2008. Both the original petition and the amended petition were supported by affidavits signed by Lessie Towns. The amended petition contains her proposed Counterclaim/Third Party Complaint which, in essence claims in Counts I, II and IX, a) that she is the rightful owner of the property which is the subject of this lawsuit for mortgage foreclosure, and b) that she was fraudulently deprived of title to the property. She asserts she has a meritorious claim in this matter and that she has been diligent in discovering it and presenting it to the court.

The petition to vacate was fully briefed and Deutsche Bank responded on the merits to the petition to vacate. The plaintiff did not dispute Towns' claim of diligence, but asserts that Towns was not defrauded of her interest in the property in that she



knowingly sold it to Peter Blythe (Blythe), who subsequently sold the property to Smith. Deutsche Bank further argued that even if Towns was defrauded by Blythe it had no actual or constructive notice of the fraud and was a bona fide purchaser. The court determined that an evidentiary hearing on the petition was required based upon the evidence set forth in the petition and the factual dispute.

Hearing commenced February 4, 2009 and was continued to and concluded on May 7, 2009. At the conclusion of the hearing, the court took the matter under advisement.

#### **EVIDENCE PRESENTED**

On February 4, 2009, Towns and Deutsche Bank presented testimony and offered documents into evidence. On May 7, Deutsche Bank presented one witness. All exhibits offered into evidence by both parties were admitted without objection.

There is no dispute that Lessie Towns is a 72 year old woman who has continuously lived at 9430 S. Ada Street, Chicago, Illinois, since May, 1970, when she obtained title to the property as Leslie M. Towns, also known as Lessie M. Towns. She was the owner of record until September 28, 2005 when a warranty deed dated September 8, 2005 conveying the property to Peter Blythe was recorded. The only person who lives with her and who has lived with her since 2005 is her foster child who is now about five years old

On June 20, 2001 Towns gave a mortgage to Gateway Financial Corporation to secure a loan in the amount of \$84,950.00. The mortgagee filed a complaint for foreclosure on the mortgage on January 9, 2004. Towns appeared *pro-se* and filed an answer denying she was in default on that loan, but a judgment of foreclosure was

entered on June 16, 2004. Just over a year later, on June 22, 2005, the case was dismissed with leave to reinstate because of a repayment agreement to reinstate the loan. The case was reinstated on August 3, 2005 after a default on the repayment agreement and a judicial sale was scheduled for September 15, 2005.

Towns's testimony by way of her affidavit attached to the amended petition to vacate and testimony at the hearing was that while seeking a home improvement loan to make repairs to the property she discovered that it was scheduled for sheriff's sale around July 5, 2005. At about the same time she was visited at her home by a person named Priscilla Moreno (also referred to as Percilla Morcno) who was a representative of Trust One Mortgage. Moreno told her she would lose the property on July 5, 2005 and that Trust One could help her to save her home by securing a new mortgage loan and creating a trust.<sup>1</sup>

When Towns agreed to have Trust One help her, Priscilla took her to a "real estate" in Homewood where she met a man whose name was David. He told Towns that he would put someone on the house with her, and then it would go back in her name after six months or a year. She told him she found out about the foreclosure when she went to borrow money to fix up her basement, and he told her he could help her do that, too. When she agreed, he photocopied her driver's license and Social Security Number. She understood that the house would not be taken out of her name, but that someone else would be put on the title to help her keep her house.

Priscilla brought her to the office a second time when David had Towns sign a paper. About a week later, Priscilla and her cousin (who was not identified by name)

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<sup>1</sup> There was no explanation in any of the evidence for the July 5 date. The court records are clear that the notice of sale was for September 15, 2005.

took Towns to an office in Oak Brook. Towns believed the purpose of that trip was to put somebody else's name on the house. She was taken to a room where there were a lot of people going in and out. In the room with her were Priscilla and a man with glasses. She did not know what was happening there, and she denied signing papers while she was there. Some time after that, she received a check for \$20,000 which she used to fix up the basement which she now uses as a daycare center.

Towns contacted David to find out to whom she should make payments. She was told to make them to Priscilla, and Priscilla came to her house every month for a while to pick up her checks. At some point, Priscilla did not come back, and Towns attempted to contact David to find out what to do. When he was never in, she went to the office and found it to be locked and empty. At that point Towns started trying to "find out what was going on".

She became aware there was something wrong when people started knocking on her door looking for "Peter Blair". Later, people came to the house looking for "Willie Smith". She told everyone that neither "Peter Blair" nor "Willie Smith" lived at the property, and that she was the owner.

Towns has continued to pay the real estate taxes on the property and the tax bill remains in her name to the present. A copy of the 2007 Second Installment Property Tax Bill payable November 3, 2008 was admitted into evidence and reflects that the property still had Homeowner and Senior Citizen exemptions and that Lessie M. Towns continues to receive the tax bill at the property address. The bill also reflects payment of the first installment, which Towns claims to have made.

On cross-examination, Towns was shown copies of the affidavits in support of the petition to vacate and the amended petition to vacate and copies of various closing documents and a warranty deed dated September 8, 2005 all of which contained a signature that appeared to be of Lessie Towns. The documents were admitted into evidence as Plaintiff's exhibits 1 through 16. Towns admitted that the signatures on some of the documents were hers, but denied that the signatures on other documents were hers, including the signature on the affidavit that was attached to the petition to vacate that she filed pro se.

She was shown a copy of the appraisal done at the request of Trust One for the loan to Willie Smith, and agreed that the descriptions of the various rooms and features of the property were accurate, but denied that anyone had ever been in the house to appraise it in April 2006.

Connie Fabrizio testified in Towns' case that she is an assistant to the Commissioner for the Bureau of Buildings and Collections. She is a liaison with the Department of Water Management and first came into contact with Lessie Towns when Towns went to the water department to find out why there had been a shut-off notice posted at her property. Fabrizio found that the water account had been taken out of Towns name and put in the name of Willie Smith. When Towns told her that was wrong because she owned the property, Fabrizio began investigating the history and found the transfer to Blythe. She then queried Blythe's name in the Water Department records and found he had been involved in other transactions in which he bought and sold property within a short time and then the property went into foreclosure. She identified Towns

Group Exhibit 1 as "Full Payment Certificates" for a property in which she believed that had occurred.

Brian Weaver testified that he is the Appraisal Coordinator for the Illinois Department of Financial and Professional Regulation. He was called to talk to Towns when she went to the office in April, 2008 to complain that her house appeared to have been sold to someone named Willie Smith and she did not know how that had happened. He did "a little poking around" on the internet and on the Cook County Recorder of Deeds web site and concluded there might be evidence of a mortgage rescue fraud scheme. He saw a pattern and one of the names involved was that of Peter Blythe.

Sandra Thomas knows Lessie Towns because Towns "used to keep" her kids when they were younger. She came into contact with Trust One when her home was going into foreclosure and Lessie Towns suggested that Thomas contact Trust One to see if they could help her. She met Priscilla when Priscilla went to Thomas's home and Thomas went to Homewood where she met David. When David told her they could "get someone to try and rebuild (her) mortgage" Thomas told him she had someone she wanted to put on it. She then did not hear from Priscilla or David again.

Leigh Curry testified in Deutsche Bank's case that he procured and produced the title company's closing file for the closing on the property on September 8, 2005. He did not have any personal knowledge but had no reason to doubt the authenticity of the documents or that a closing had occurred. The documents were admitted as Plaintiff's exhibit 34.

Paul Shelton was called as a witness in Deutsche Bank's case. He is an attorney and a present owner of Trust One Mortgage Company. In 2008 he became a part owner,

but now is the sole owner. In 2005 he did not have an interest in the company, but had office space next to them.

Shelton represented Peter Blythe at the closing and prepared all of the documents, including the deed. Towns was not represented by counsel. He never spoke to her before the date of the closing. He saw Lessie Towns sign all of the documents at the closing. He notarized Lessie Towns' signature on page two of exhibit 18. Shelton signed the closing documents for Peter Blythe. Shelton also represented Peter Blythe at the closing of the sale of the property to Willie Smith on April 13, 2006.

He produced a contract signed by Leslie M. Towns as seller but not signed by Peter Blythe. Shelton did not know if he saw Lessie Towns sign the real estate contract. He had never met her before the date of the closing.

The closing funds were all in the form of checks on which Paul Shelton was identified as the remitter or purchaser. He claimed that Blythe did not have access to certified checks, so he gave the money to Paul Shelton who put it in his account and drew the checks for the closing with Lessie Towns.

#### DISCUSSION

Section 2 -- 1401 of the Code of Civil Procedure provides a comprehensive statutory procedure by which final orders, judgments, and decrees may be vacated "after 30 days from the entry thereof." 735 ILCS 5/2-1401(a) (2009). To be entitled to relief under section 2 -- 1401, the petitioner must affirmatively set forth specific factual allegations supporting each of the following elements: (1) the existence of a meritorious defense or claim; (2) due diligence in presenting this defense or claim to the circuit court in the original action; and (3) due diligence in filing the section 2 -- 1401 petition for

relief. Smith v. Airoom, Inc., 114 Ill.2d 209, 220-221 (1986). As in any other civil case, relief is appropriate only where the petition's allegations are proved by a preponderance of the evidence. (Citation omitted). Klein v. La Salle National Bank, et. al., 155 Ill.2d 201, 204-205 (1993).

The Plaintiff did not dispute that Towns exercised diligence in presenting her claim and diligence in filing this section 2-1401 petition. The only issue before the court, therefore, is whether Lessie Towns has shown by a preponderance of the evidence the existence of a meritorious defense or claim in this lawsuit—that Towns did not intend to convey title to her property to Blythe, but only to obtain a loan secured by her property, and that Long Beach, and therefore its assignee, Deutsche Bank is not a bona fide purchaser or mortgagee for value because it had constructive notice of the fraud.

A deed absolute in its terms will be considered as a mortgage if it appears to have been intended only as a security in the nature of a mortgage. 765 ILCS 905/5. In determining whether a deed is a mortgage, many circumstances have been recognized or considered by Illinois courts, including the existence of an indebtedness, the close relationship of the parties, prior unsuccessful attempts for loans, the circumstances surrounding the transaction, the disparity of the situations of the parties, the lack of legal assistance, the unusual type of sale, the inadequacy of consideration, the way the consideration was paid, the retention of the written evidence of the debt, the belief that the debt remains unpaid, an agreement to repurchase, and the continued exercise of ownership privileges and responsibilities by the seller. McGill v. Biggs, 105 Ill. App. 3d 706, 708 (3rd Dist. 1982). (Citations omitted.) Flack v. McClure, 206 Ill.App.3d 976, 985 (1st Dist. 1990).

Considering the factors set forth in McGill and in Flack, it is clear that Towns has shown by a preponderance of the evidence the existence of a meritorious claim of fraud and equitable mortgage. Towns tried unsuccessfully to borrow money on her home and found out about the foreclosure. She was then trying to save her home from foreclosure and to borrow money to do work on it so she could establish the daycare center.

Towns claims that she thought she had been given a loan. She made payments on the loan and, when the person to whom she made the payments stopped picking them up, she tried to find out how to continue making the payments. She believed that the agreement she entered into would result in the house being put back solely in her name within six months to a year.

There was a significant disparity in the situations of Towns and others involved in this transaction. She is 72 years old; it is obvious from her testimony and demeanor that she is unsophisticated in financial matters and is confused about what happened. She was taken to the suburbs on three occasions by person who claimed to be a representative of Trust One, and did not know what the purpose of any of the trips was other than that they were going to help her keep her home. She was never represented by an attorney and did not have advice from anyone other than the representatives of Trust One. The closing documents were prepared by the attorney representing the alleged buyer.

The circumstances surrounding the alleged sale and the way the purchase price was paid are unusual. It is not disputed that Trust One, a mortgage broker, contacted Towns, yet Blythe did not obtain financing. The funds allegedly came from Blythe, yet all of the checks were purchased or remitted by his attorney, Paul Shelton. Although this was not explored on cross-examination, Shelton's explanation that his client, Blythe, did



not have access to certified checks makes no sense on its face since there is evidence that Blythe was sophisticated enough to have been involved as buyer and as seller in at least a few other real estate transactions around the time of this one.<sup>2</sup>

Towns had never met Blythe, yet there was no real estate broker involved. The copy of the contract for purchase was not signed by Blythe. The HUD-1 Settlement Statement includes a "Relocation Consulting Fee" charged against the sale price to Lessie Towns in the amount of \$9,000.00 payable to AAB Investments, LLC despite the fact that no mortgage broker or real estate broker was involved in the transaction.

The sale to Willie Smith by Peter Blythe just over six months later was financed by Trust One. Trust One obtained an appraisal of the property reflecting a value of \$175,000 although the purported sale to Blythe was only for \$120,000.

Finally, Lessie Towns never moved from the property and was never asked to move from the property. Towns spent the money she received from the proceeds to remodel and repair the house. She continued to pay real estate taxes and the tax bills have continued to reflect the homeowner and senior citizen exemptions.

These last factors lead to support for the allegation that Long Beach and its assignee had constructive notice of the claimed fraud.

The general rule is that a bona fide purchaser or mortgagee of real property from the record owner acquires good title thereto free and clear of any interest therein except such interest of which he has notice. Such notice may be actual or constructive and contemplates the existence of circumstances or facts either known to a prospective purchaser or of which he is chargeable with knowledge which imposes upon such purchaser the duty of inquiry. Where real estate is in the possession of someone other

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<sup>2</sup> This explanation simply raises a question as to the real source of the funds for this transaction.

than the record owner, such possession is generally regarded as notice to the world of the interest represented thereby and is legally equivalent to the recording of such interest. A purchaser is bound to inquire of the person in possession by what tenure he holds and what interest he claims in the premises. Burnex Oil Co. v. Floyd, 106 Ill. App. 2d 16, 21 (1st Dist. 1969). (Citations omitted.) Possession having the same effect as recording, charges a prospective purchaser with notice of all legal and equitable claims of the occupant. Id.

One having notice of facts which would put a prudent man on inquiry is chargeable with knowledge of other facts which he might have discovered by diligent inquiry. Whatever is notice enough to excite attention and put the party on his guard is notice of everything to which such inquiry might have led and every unusual circumstance is a ground of suspicion and demands investigation. Miller v. Bullington, 381 Ill. 238, 243 (1942). (Citations omitted.) Without such inquiry no one can claim to be an innocent purchaser as against the party claiming an interest in the property supported by such notice. LaSalle Bank v. Ferone, 384 Ill.App.3d 239, 246 (2nd Dist. 2008), citing Burnex Oil at 24.

Lessie Towns has continuously occupied the property since May, 1970. Trust One sent an appraiser to the property in April, 2006, when she was still living there. She has continuously paid the tax bills. The tax bills reflect her Homeowner's and Senior Citizen exemptions. Although Towns denies the appraiser came to the house, the details of the appraisal seem to indicate that the appraiser hired by Trust One was there and would have known that Lessie Towns still lived in the property. No other adult lived in the property, and Towns must have let her in. Towns has repeatedly asserted her

ownership of the property to everyone who claimed otherwise. She has shown by a preponderance of the evidence that she can claim the plaintiff had constructive notice of her interest in the property.

### CONCLUSION

Despite some confused testimony, Lessie Towns did not waiver in her claim that she had been offered help to save her home, that someone else was going to go on the house with her for six months to a year after which it would go back to her alone, and that she did not intend to sell her home even in the face of vigorous cross-examination intended to show that she knew she was selling her home.

Towns has put forth sufficient facts to show by a preponderance of the evidence that she has a meritorious claim in this matter. The petition to vacate the order approving sale and the judgment of foreclosure is granted and Towns is granted leave to file responsive pleadings and her claims in this case on or before August 11, 2009..

July 28, 2009

