

COPY

**IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA**

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FILED

CLERK OF SUPERIOR COURT
DEKALB COUNTY, GEORGIA

SOUTHSTAR FUNDING, LLC,)
)
 Plaintiff,)
)
 v.)
)
 OYEDELE S. OYEWOLE,)
)
 Defendant.)
 _____)

Civil Action File No. *07W9714-4*

Jury Trial Demand

COMPLAINT FOR BREACH OF CONTRACT, FRAUD, AND NEGLIGENCE

COMES NOW Plaintiff in the above styled matter and hereby sets forth its complaint against Defendant Oyedele S. Oyewole and shows this court the following matters:

1.

Defendant Oyedele S. Oyewole (hereinafter referred to as "Defendant" or "Oyewole") is a resident of the state of Georgia and is therefore subject to the jurisdiction of this court. Said Defendant may be served with a copy of Summons and Complaint at his place of residence to wit: 2338 Wellborn Hills Place, Lithonia, DeKalb County, Georgia 30058.

2.

Venue is correct as to this court.

3.

Plaintiff is a lender which originates and sells residential mortgage loans.

4.

In its business, the Plaintiff solicits applications for residential mortgage loans.

5.

Before funding such loans, each application must pass the Plaintiff's underwriting criteria.

6.

One requirement of the Plaintiff's underwriting is that each loan application must be supported by a current appraisal which shows the fair market value of the property. If the appraisal does not demonstrate that the value of the property exceeds the amount of the loan, the application will be declined.

7.

In July 2003, the Plaintiff approved a loan application submitted by Olanrewaj Tejuoso concerning his purchase of real property at a 27 Joseph E. Lowery Boulevard, SW (hereinafter referred to as the "Tejuoso Loan"). In July 2003, the Plaintiff also approved a residential mortgage loan application in favor of Gertrude Longwan for her purchase of 568 Muse Street, Atlanta, Georgia 30331 (hereinafter the "Longwan Loan").

8.

For each of the Tejuoso and Longwan loan applications, Plaintiff relied upon the appraisals of Defendant Oyewole.

9.

Defendant Oyewole held himself out as an appraiser with the training and experience capable of determining fair market value of properties.

10.

For each of these appraisals, Oyewole performed his evaluation for the benefit of Plaintiff SouthStar and he knew or should have known that Plaintiff would rely upon his appraisals in deciding whether to approve the loan applications of Tejuoso and/or Longwan.

11.

In July 2003, Oyewole appraised each of the properties for the Tejuoso loan and the Longwan loan at values which exceeded the amount of loan funds sought by each borrower. Based on these appraisals, Plaintiff extended mortgage loan financing to both Tejuoso and Longwan on their respective loan applications.

12.

If the appraisals had reflected that the value of the property was less than the value of the loan, Plaintiff would never have approved these loan applications.

13.

As part of its routine business, Plaintiff sold the Tejuoso loan and the Longwan loan on the secondary market to the Federal National Mortgage Association (hereinafter "FNMA").

14.

Subsequent to these sales, both the Tejuoso loan and the Longwan loan fell into default for nonpayment.

15.

Ultimately, FNMA foreclosed on the real estate which secured each of these loans.

16.

At the time of foreclosure, FNMA ultimately discovered that each of the properties

securing the loans had a fair market value much lower than was appraised by Defendant Oyewole.

17.

FNMA undertook a review appraisal which revealed several false statements, misrepresentations, or reckless errors on the Oyewole appraisals of each property securing the Tejuoso loan and the Longwan loan.

18.

As a result of these false statements, misrepresentations, and/or reckless errors, the Oyewole appraisals overstated the value of the Tejuoso property by more than \$140,000.00 and it overstated the value of the Longwan property by more than \$100,000.00.

19.

As a result of the gross overstatement of value on each appraisal, FNMA exercised its right to compel Plaintiff to indemnify it for losses on these loans and Plaintiff has therefore suffered actual damages in the principal amount of at least \$100,000 on these two combined losses.

20.

Among the misstatements, misrepresentations, and reckless errors of the Tejuoso appraisal, Oyewole failed and refused to use true comparable sales data; he ignored and failed to disclose other relevant sales in the neighborhood at much lower prices; he relied upon two (2) other questionable sales as comparables without disclosing that the same person bought both properties within two weeks of each other; he utilized a cost-approach analysis with inflated values; he failed and refused to make proper adjustments to these comparables to reflect the

differences in size and /or amenities; he failed to provide support for the cost and sales comparison approaches; he failed to mention any of the several foreclosures in the area; although the subject property was eight-two (82) years old at the time of appraisal, he falsely listed it as having an effective age of ten (10) years at appraisal date; he indicated falsely that the exterior of the home was brick and frame when in reality the exterior is wood siding.

21.

On the Longwan appraisal, Oyewole deliberately ignored sales data on the subject property which revealed suspicious activity in the three years prior to closing. Specifically, the subject property sold for \$115,000.00 in April 2000; it sold for \$214,900.00 in May 2001; it sold for \$107,500.00 in May 2003 and it sold again for \$250,000.00 in July 2003. This prior sale history was not disclosed by Oyewole and instead, he reported that there had been no sales of the subject property during the past three years. This failure to fully report and analyze the suspicious sales history of the subject property was an unacceptable appraisal practice and a violation of the Uniform Professional Appraisal act. Oyewole also listed the property as having an effective age of 10 years when in reality it was 73 years old when appraised.

COUNT ONE: FRAUD

22.

Comes now Plaintiff and hereby restates and incorporates by reference Paragraphs 1 through 21 as if fully set forth herein.

23.

By virtue of the misrepresentations, omissions, and reckless errors shown in Paragraphs 17 - 21 above, Defendant Oyewole materially misrepresented the value of the Tejuoso property

and the Longwan property.

24.

Defendant Oyewole's actions in this regard were intentional, deliberate, or done with reckless disregard for the truth or falsity of his representations.

25.

Defendant Oyewole knew that the Plaintiff would rely upon his appraisal in determining whether to grant the Tejuoso loan and the Longwan loan. By submitting appraisal reports in exchange for compensation, Defendant Oyewole intended for Plaintiff to rely on those reports.

26.

Plaintiff reasonably relied upon the appraisal reports of Defendant Oyewole and ultimately granted loans to Tejuoso and Longwan based upon these false real estate values.

27.

As a result of granting these loans, based upon the false appraisals, Plaintiff has suffered actual damages in the principal amount of at least \$100,000 for which it is entitled to a judgment against Defendant Oyewole.

COUNT TWO: NEGLIGENCE

28.

Comes now Plaintiff and hereby restates and incorporates by reference Paragraphs 1 through 21 as if fully set for herein.

29.

By undertaking the appraisal on the Tejuoso loan and the Longwan loan, Defendant Oyewole held himself out as having the requisite skill, training, education, knowledge, and

experience in order to assess the fair market values of those properties.

30.

By undertaking to perform those appraisals, Defendant Oyewole owed a duty to perform those appraisals in accordance with the accepted customs, practices and standards of the appraisal industry.

31.

By virtue of the facts set forth within Paragraph 17 - 21 above, Defendant Oyewole significantly departed from those industry customs, standards, and practices and rendered opinions which grossly overstated the fair market value of the property.

32.

Because of these errors and omissions, Defendant Oyewole has been negligent and caused Plaintiff to suffer actual damages in the amount of at least \$100,000 for which it is entitled to judgment against Oyewole on a theory of negligence.

COUNT THREE: PUNITIVE DAMAGES

33.

Comes now Plaintiff and hereby restates and incorporates by reference Paragraphs 1 through 21 as if fully set for herein.

34.

Defendants representations under Count One have been intentionally false, fraudulent, and/or done with such reckless disregard as to the truth or falsity of the representations so as to evidence an indifference to the consequences.

35.

In order to punish this deliberately wrongful conduct and to deter the Defendant from repeating such misconduct, Plaintiff is entitled to an award of punitive damages in amount to be determined by the enlightened conscience of a fair and impartial jury.

COUNT FOUR: ATTORNEYS' FEES

36.

Comes now Plaintiff and hereby restates and incorporates by reference Paragraphs 1 through 21 as if fully set for herein.

37.

Defendant has acted in bad faith in the underlying transaction or has been stubbornly litigious, or has put this Plaintiff to the unnecessary trouble and expense of filing suit to recover on matters which cannot reasonably be disputed. Accordingly, Plaintiff is entitled to an award of reasonable attorneys' fees against Defendant under O.C.G.A. § 13-6-11.

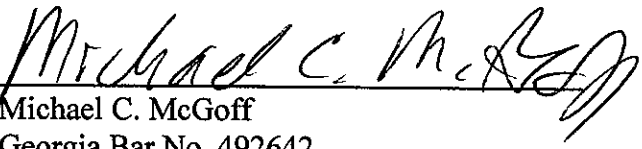
WHEREFORE, Plaintiff respectfully requests this court grant the following relief:

- (A) That process and summons be issued and served on the Defendant in accordance with law;
- (B) That Plaintiff recover judgment against the Defendant under a theory of fraud and recover actual damages of at least \$100,000 or such additional sums as proved to a jury, plus punitive damages;
- (C) That Plaintiff recover against Defendant under a theory of negligence and recover its actual damages of at least \$100,000 or such additional sums as proved to a jury;

- (D) That Plaintiff recover its attorneys' fees in accordance with O.C.G.A. § 13-6-11;
- (E) That Plaintiff recover such other and further relief as this court deems just and proper.

This the 16 day of August, 2004.

MILES, MCGOFF & MOORE, L.L.C.

By: 
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