

STATE OF NORTH CAROLINA
WAKE COUNTY

FILED IN THE GENERAL COURT OF JUSTICE
2013 JUN -4 PM 2: 22 SUPERIOR COURT DIVISION
NO.
WAKE COUNTY, C.S.C.

STATE OF NORTH CAROLINA ex rel.)
ROY COOPER, Attorney General,)
)
Plaintiff,)
)
vs.)
)
JAMES A. NICHOLS, SAMUEL J. NICHOLS,)
ROGER L. NICHOLS, TINA NICHOLS,)
NICHOLS LAND COMPANY HOLDINGS, LLC,)
and NICHOLS LAND COMPANY, LLC,)
)
Defendants.)

CONSENT JUDGMENT

This cause coming on to be heard and being heard before the undersigned Superior Court Judge in Wake County for entry of a Consent Judgment at the joint request of plaintiff State of North Carolina, by and through Attorney General Roy Cooper, and defendants, the Court, with the consent of plaintiff and defendants makes the following:

FINDINGS OF FACT

1. Plaintiff is the State of North Carolina acting through its Attorney General Roy Cooper pursuant to authority granted by Chapters 75 and 114 of the General Statutes.
2. Defendant James A. Nichols is a resident of North Carolina. Along with other individual defendants, he managed and controlled the operations of the corporate defendants Nichols Land Company Holdings, LLC ("Nichols Holdings") and Nichols Land Company, LLC ("Nichols Land") when these corporate entities were engaged in the leasing, sale, management, and financing of residential real property in North Carolina, including what the contracts referred

to as land installment sales contracts.

3. Defendant Samuel J. Nichols is a resident of North Carolina. Along with other individual defendants, he managed and controlled the operations of the corporate defendants Nichols Holdings and Nichols Land when these corporate entities were engaged in the leasing, sale, management, and financing of residential real property in North Carolina, including land installment sales contracts.

4. Defendant Roger L. Nichols is a resident of North Carolina. Along with other individual defendants, he managed and controlled the operations of the corporate defendants Nichols Holdings and Nichols Land when these corporate entities were engaged in the leasing, sale, management, and financing of residential real property in North Carolina, including land installment sales contracts.

5. Defendant Tina S. Nichols is a resident of North Carolina. Along with other individual defendants, she managed and controlled the operations of the corporate defendants Nichols Holdings and Nichols Land when these corporate entities were engaged in the leasing, sale, management, and financing of residential real property in North Carolina, including land installment sales contracts.

6. Defendant Nichols Holdings is a North Carolina limited liability corporation. Nichols Holdings held title to residential property that the individual defendants marketed and sold to consumers through land installment sales contracts.

7. Defendant Nichols Land is a North Carolina limited liability corporation. Nichols Land held title to residential property that the individual defendants marketed and sold to consumers through land installment sales contracts.

8. The State alleges the following:

(a) Since at least September 2000, defendants have offered parcels of real property owned by defendants Nichols Land or Nichols Holdings to consumers through land installment sales contracts. The individual defendants or their employees, agents, or representatives convinced consumers that after a period of years the consumers would own the property if the consumers (i) entered into land installment sales contracts to purchase vacant parcels of land; (ii) put down non-refundable deposits; (iii) paid the monthly installments; (iv) paid the annual taxes to the seller rather than the local taxing authority; and (v) did not default on any of the required payments;

(b) Between December 2000 and November 2007, the defendants or their employees, agents, or representatives sold parcels of real property to more than twenty consumers in Surry County under land installment sales contracts with the assurance that the parcels were not encumbered in any way and that the corporate defendants could give clear title to the consumers through warranty deeds upon payment of the full purchase price. Defendants entered into similar land installment sales contracts with consumers in other counties in North Carolina. They further represented to consumers that the land installment sales contracts would be recorded in the office of the Register of Deeds in the county where the parcels of land were located. However, defendants did not record any of the land installment sales contracts with the appropriate Registers of Deeds' Offices;

(c) After entering into the land installment sales contracts with defendants Nichols Land or Nichols Holdings, consumers used their own money to make improvements to the land, including but not limited to installing wells and septic systems, building foundations on

which to place manufactured homes, building driveways, and installing outbuildings;

(d) In 2007, after entering into a number of land installment sales contracts, defendants Nichols Holdings borrowed approximately \$400,000 from Bank of North Carolina and secured the mortgages with deeds of trust encumbering the land previously sold under land installment sales contracts. Defendants encumbered these parcels of real property without the knowledge or permission of the consumers who were buying pursuant to the land installment sales contracts;

(e) Likewise, defendant Nichols Land borrowed \$200,050 from Southern Community Bank and Trust and secured the loan with a deed of trust encumbering property that the individual defendants or their employees, agents, or representatives marketed to consumers as owned free and clear by the corporate defendant. The individual defendants or their employees, agents, or representatives continued to tell consumers that Nichols Land owned the properties free and clear of any liens and would be able to deliver clear title through warranty deeds to consumers upon payment of the full purchase price;

(f) Even after encumbering these parcels of real property with mortgages and deeds of trust, the individual defendants continued to market these parcels as owned free and clear by the corporate defendants, entering into more land installment sales contracts with consumers and continuing to represent that defendants Nichols Land and Nichols Holdings owned the properties free and clear of any liens and would be able to deliver clear title to consumers upon payment of the full purchase price;

(g) Defendants Nichols Holding and Nichols Land defaulted on the loans to the banks which were secured by the parcels of real property subject to land installment sales

contracts, and the banks began foreclosure actions;

(h) At no time did the individual defendants advise the consumers of the pending foreclosures affecting the parcels of real property that the consumers thought they were purchasing subject to their land installment sales contracts. Some consumers found out about the foreclosure proceedings and thus the loans taken out by defendants affecting their properties when the banks' counsel sent letters advising "tenants" to vacate the premises due to the pending foreclosure. Other consumers found out about the foreclosure proceedings only from their neighbors who received letters advising of the pending foreclosure;

(i) Defendants continued to accept monthly payments and property tax payments from consumers long after defendants were aware that their property was actively being or had already been foreclosed on by the banks. After some of the foreclosure proceedings had been initiated, defendants sent letters to consumers indicating that they should send future payments to a post office box rather than bringing them in person to their physical location. Defendants represented that the tax payments would be tendered to the appropriate taxing authority, but defendants failed to do so;

(j) As a result of defendants' actions in this matter of taking out loans on property subject to land installment sales agreements and then failing to make payments on the loans subjecting the property to foreclosure, dozens of consumers were at risk of losing their homes, their land, their non-refundable deposits, and the improvements made to their land; and

(k) Defendants' alleged unfair or deceptive business practices were in or affecting commerce in North Carolina.

9. Defendants deny plaintiff's allegations in Paragraph 8 but do not object to the

entry of this Consent Judgment in order to avoid incurring further litigation cost.

CONCLUSIONS OF LAW

1. The court has jurisdiction over the parties and the subject matter.
2. Entry of this Judgment is just and proper.
3. The complaint properly alleges the elements of a cause of action against defendants pursuant to N.C.G.S. § 75-1.1 concerning the deceptive sales of parcels of real property sold through land installment sales contracts while failing to disclose the encumbrances on the property and to make payments on the mortgages to protect the consumers' interests in the parcels, and the Court finds good and sufficient cause to adopt the agreement of the parties and these findings of fact and conclusions of law as its determination of their respective rights and obligations and for the entry of this Consent Judgment.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT

1. Defendants are permanently enjoined from selling parcels of real property pursuant to agreements denominated as a land installment sales contract, a contract for deed, a land contract, a bond for title, or any other title or description in which defendants agree to sell an interest in property to a consumer and the consumer agrees to pay the purchase price in five or more payments where defendants retain title to the property as security for the consumer's obligation under the agreement.

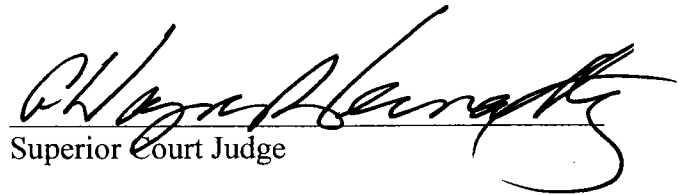
2. Defendants shall pay the North Carolina Department of Justice \$100,000 in civil penalties. Payment of this civil penalty is suspended as long as defendants are in full compliance with the terms of this Consent Judgment. If at any time any of the defendants violate the terms of this Consent Judgment, this penalty shall be immediately due to the State without further action

of this Court.

3. This Consent Judgment shall not affect the rights of any private party to pursue any remedy or remedies allowed pursuant to the laws of the State of North Carolina.

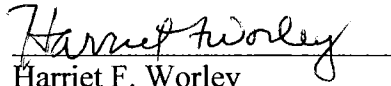
4. This Consent Judgment Agreement shall not bind any other offices, boards, commissions, or agencies of the State of North Carolina.

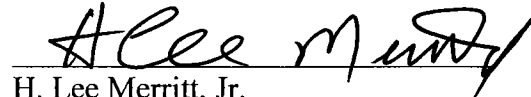
This the 4 day of June, 2013.



Superior Court Judge


WE CONSENT:


STATE OF NORTH CAROLINA
ex rel. ROY COOPER,
Attorney General

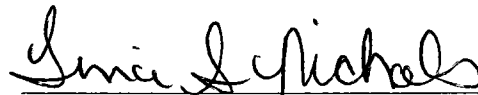

Harriet F. Worley
Special Deputy Attorney General


H. Lee Merritt, Jr.
Counsel for Defendants


James A. Nichols



Samuel J. Nichols

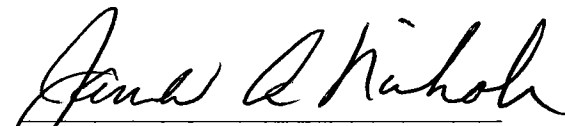

Roger L. Nichols


Tina S. Nichols

Nichols Land Company Holdings, LLC

Nichols Land Company, LLC


by: Samuel J. Nichols
Manager


by:
Manager

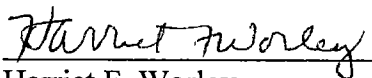
CERTIFICATE OF SERVICE

I do hereby certify that I have this day served the foregoing CONSENT JUDGMENT by depositing a copy in the U.S. Mail, first class postage prepaid, and addressed to:

H. Lee Merritt, Jr.
Attorney At Law
129 Moore Avenue
P.O. Box 1425
Mount Airy, NC 27030

Counsel for defendants Nichols Land Company Holdings, LLC, Nichols Land Company, LLC, James A. Nichols, Samuel J. Nichols, Roger L. Nichols, and Tina Nichols

This the 4th day of June, 2013.



Harriet F. Worley
Special Deputy Attorney General
North Carolina Department of Justice
Consumer Protection Division