

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA

OFFICE OF THE ATTORNEY GENERAL,
DEPARTMENT OF LEGAL AFFAIRS,
STATE OF FLORIDA,

Plaintiff,

vs.

Case No. 12-26987 (12)

EDWARD CHERRY,
LAWRENCE DIODATO,
PAUL GELLENBECK,
SHANE FRANKOVIC,
ANTHONY C. PINTSOPOULOS,
THE FIDELITY LAND TRUST COMPANY, LLC,
THE SUNSHINE STATE LAND TRUST COMPANY, LLC,
FLORIDA LAND TRUST SERVICES, LLC,
GROWTH CAPITAL FUNDING, LLC,
ZION PARTNERS IRREVOCABLE TRUST, LLC,
ZION PARTNERS IRREV TRUST, L.L.C.,
AUGUST BELMONT AND COMPANY, LLC,
ESQUIRE LITIGATION SUPPORT, LLC,
ESQLITIGATIONSUPPORT.COM, LLC,
CLICK MEDIA CONSULTING, LLC doing
business as FLORIDA HOME RESCUE MISSION,
CLICK MEDIA GROUP, LLC doing
business as FLORIDA HRM,
NICOLE PACHECO,
EMMANUELE ZUCCARELLI,
AMERICAN FEDERAL TRUST, LLC,
MATTHEW KRAC and CHERYL IRVIN,

Defendants.

FINAL JUDGMENT
AGAINST DEFENDANT THE FIDELITY LAND TRUST COMPANY, LLC

THIS CAUSE having come before the Court on the Plaintiff's Motion for Entry of Final Judgment against Defendant The Fidelity Land Trust Company, LLC, and the Court after having

considered the pleadings and statements of counsel at hearing on December , 2013, and after having made the following factual findings and conclusions of law,

It is hereby **DECLARED, ADJUDGED and ORDERED** that:

Plaintiff's Motion for Entry of Final Judgment against Defendant The Fidelity Land Trust Company, LLC ("Fidelity") is **GRANTED**. Judgment is entered in favor of Plaintiff Office of the Attorney General, Department of Legal Affairs, State of Florida, The Capitol, Tallahassee, Florida 32399-1050 against Defendant The Fidelity Land Trust Company, LLC, 902 Clint Moore Road, #202, Boca Raton, Florida 33487 and/or 2234 North Federal Highway, Suite 419, Boca Raton, Florida 33431 as follows.

FACTUAL FINDINGS

1. Fidelity was represented in this litigation by Spencer T. Kuvin, Esq., Aaron M. Cohen, Esq. and the law firm of Cohen & Kuvin until September 23, 2013 when the Court allowed Attorneys Kuvin and Cohen and the law firm of Cohen & Kuvin to withdraw. In its Order allowing withdrawal of counsel, the Court ordered that Fidelity have counsel within twenty (20) days or it may be subject to default being entered. On November 7, 2013 after hearing, the Court entered Default against Fidelity for failure to comply with the Order of the Court dated September 23, 2013.

2. Fidelity was organized by Defendant Edward Cherry in December of 2011 using a fictitious name.

3. Until September 5, 2012, Fidelity Land Trust Partners was the managing member of Fidelity according to the public records filed with the Florida Secretary of State. Exhibit A ¶ 2. There is now no manager of Fidelity according to the public records filed with the Florida Secretary of State.

4. Fidelity induced consumers to pay Fidelity to take title to their properties through a “Land Trust.” Fidelity engaged counsel to file “quiet title” actions against consumers’ mortgagees, with the goal of obtaining default judgments declaring that the homeowners’ original mortgages were canceled or otherwise void. Fidelity falsely alleged that the “Land Trust” was a subsequent purchaser for value although Fidelity gave no consideration for the title transfers to the “Land Trust.”

5. Notwithstanding the legal distinction between the title to real estate and the lien interest of a mortgage holder, Fidelity misrepresented to Florida homeowners the legal effect of its services for avoiding the homeowners' mortgages when there are no conflicting claims of title, only claims of title and mortgage lien(s). Fidelity deceptively and/or unfairly solicited, marketed and advertised to homeowners in the State of Florida that Fidelity could obtain clear title as a subsequent purchaser and avoid and/or cancel the original mortgage obligations of the homeowners.

6. In making these deceptive and/or unfair representations, Fidelity represented to consumers that it could cancel or otherwise void distressed homeowners’ then-current mortgages. Fidelity deceptively and/or unfairly represented to homeowners that their previously recorded mortgages were unenforceable and void because the mortgages were assigned but the assignments were not recorded.

7. Fidelity’s representations were false and deceptively and/or unfairly misled consumers and were contrary to the established law of Florida that the provisions of Florida Statutes Chapter 701 do not protect transferees of the homeowner/mortgagor.

8. Fidelity misled numerous consumers within Florida since 2011.

9. Fidelity made false and deceptive or unfair promises and representations to consumers in order to induce consumers to transfer title to their homes to Fidelity for no consideration and to pay Fidelity thousands of dollars in advance fees for services that could not be delivered.

10. Fidelity charged up-front advance fees for foreclosure-related rescue services. Fidelity was a person providing foreclosure-related rescue services. Fidelity did not afford to the homeowners the rights mandated by Florida Statutes Section 501.1377(5). Fidelity was a person engaging in foreclosure-rescue transactions.

CONCLUSIONS OF LAW

11. Fidelity's acts and/or practices violated Florida Statutes Section 501.1377(3), which prohibits any person providing foreclosure-related rescue services from charging an up-front fee prior to the completion of the services. Fidelity's acts and/or practices violated Florida Statutes Section 501.1377(5), which requires any person engaging in foreclosure-rescue transactions to afford certain specific rights to the homeowner.

12. A violation of Florida Statutes Section 501.1377 is a *per se* violation of the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA"). § 501.1377(7), Fla. Stat.

13. Fidelity's representations to homeowners were false and deceptively and/or unfairly misled consumers and were contrary to the established law of Florida that the provisions of Florida Statutes Chapter 701 do not protect transferees of the homeowner/mortgagor. *JP Morgan Chase v. New Millennial, LC*, 6 So. 3d 681, 685 (2d DCA 2009), review dismissed, 10 So. 3d 632 (Fla. 2009); *Rhodes v. JPMorgan Chase Bank, N.A.*, 2012 WL 2504043, *3 (S.D. Fla. June 28, 2012).

14. Litigation filed by Fidelity to cancel, annul, or otherwise void a homeowner's real estate mortgage by use of a land trust and/or the application of the provisions of Chapter 48, Chapter 65, Chapter 695 and/or Chapter 701, Florida Statutes is frivolous. See *Fidelity Land Trust Company, LLC v. Centex Home Equity Company, LLC*, 903 F. Supp.2d 1317, 2012 WL 5383092 (M.D. Fla. Nov. 2, 2012); *Fidelity Land Trust Company, LLC v. Mortgage Electronic Registration Systems, Inc.*, 2012 WL 6720992 (M.D. Fla. Dec. 27, 2012) adopting the Report and Recommendation in *Fidelity Land Trust Company, LLC v. Mortgage Electronic Registration Systems, Inc.*, 2012 WL 6720994 (M.D. Fla. Dec. 4, 2012); *Fidelity Land Trust Company, LLC v. Mortgage Electronic Registration Systems, Inc.*, 2013 WL 499507 (M.D. Fla. Feb. 11, 2013); and *Fidelity Land Trust as Trustee Under Land Trust No. 000004, dated December 12, 2011 v. Mortgage Electronic Registration Systems, Inc and America's Wholesale Lender*, Palm Beach County Circuit Case No. 502012CA005543XXXXMBAI (January 31, 2013).

15. Fidelity engaged in conduct that constitutes deceptive and/or unfair trade practices under FDUPTA, which provides that "unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of trade of commerce are hereby declared unlawful." § 501.204, Fla. Stat.

FINAL JUDGMENT

Based upon the evidence submitted and the foregoing factual findings and conclusions of law, the Court makes the following rulings:

It Is DECLARED, ADJUDGED and ORDERED against Defendant The Fidelity Land Trust Company, LLC that:

A. The land trust and quiet title scheme perpetrated by The Fidelity Land Trust Company, LLC, which Fidelity marketed and sold to consumers and filed in Florida state and

federal courts, is not valid and is erroneous as a matter of law; The Fidelity Land Trust Company, LLC misrepresented to Florida homeowners the effect of complaints to quiet title under Chapter 65, Fla. Stat. as a mechanism for avoiding foreclosure and/or canceling homeowners' mortgages; The Fidelity Land Trust Company, LLC misrepresented to consumers that Fidelity could cancel or otherwise void a distressed homeowner's previously recorded mortgage; The Fidelity Land Trust Company, LLC misrepresented that a previously recorded mortgage is not enforceable and is void because the mortgage was assigned but the assignment was not recorded; and the foregoing constitute acts and practices that are unfair and/or deceptive in violation of the Florida Deceptive and Unfair Trade Practices Act.

B. All quitclaim deeds or warranty deeds executed and/or recorded subsequent to January 1, 2010 in the State of Florida transferring title to The Fidelity Land Trust Company, LLC as grantee in fee simple or as trustee or in other fiduciary capacity are rescinded and deemed null and void *ab initio*.

C. All financial institutions which hold funds for and/or in the name of The Fidelity Land Trust Company, LLC in accordance with the Court's Order Granting Temporary Injunction And Asset Freeze Without Notice issued September 25, 2012 to disburse said funds forthwith to Office of the Attorney General, Department of Legal Affairs, State of Florida which funds shall be allocated by the Attorney General in its sole discretion in accordance with § 501.207(6), Florida Statutes.

D. The Fidelity Land Trust Company, LLC, its officers, affiliates, agents, servants, employees, attorneys and those persons in active concert or participation with it who receive actual notice of this injunction are permanently ENJOINED from engaging in, rendering, or

otherwise providing services to Florida homeowners directly or indirectly by which The Fidelity Land Trust Company, LLC claims to cancel or otherwise void previously recorded mortgages.

E. The Fidelity Land Trust Company, LLC, its officers, affiliates, agents, servants, employees, attorneys and those persons in active concert or participation with it who receive actual notice of this injunction are permanently ENJOINED from soliciting, advertising, representing or otherwise offering directly or indirectly to Florida homeowners services by which The Fidelity claims to cancel or otherwise void previously recorded.

F. The Fidelity Land Trust Company, LLC, its officers, affiliates, agents, servants, employees, attorneys and those persons in active concert or participation with it who receive actual notice of this injunction are permanently ENJOINED from lecturing or otherwise disseminating information to the public, for the purpose of trade or commerce, on the mechanism, procedure and/or theory by which The Fidelity Land Trust Company, LLC claims to cancel or otherwise void previously recorded mortgages.

G. Ruling on further relief against The Fidelity Land Trust Company, LLC for consumer restitution, civil penalty and/or attorney's fees and costs as appropriate pursuant to Sections 501.207, 501.2075 and 501.2105 Florida Statutes is hereby RESERVED.

DONE and ORDERED in Chambers in Broward County, Florida this _____ day of
December, 2013.

DEC 17 2013
A TRUE COPY

Judge Michael Gates
Circuit Court Judge

cc: All counsel of record and pro se defendants