[Cite as *Arliss Mtge. Co., L.L.C. v. Woodford*, 2012-Ohio-1320.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Arliss Mortgage Company, LLC,	:	
Plaintiff-Appellee,	:	
v.	:	No. 11AP-883 (C.P.C. No. 09CVE-165)
Carl H. Woodford et al.,	:	(REGULAR CALENDAR)
Defendants-Appellants.	:	

D E C I S I O N

Rendered on March 27, 2012

Fisher, Skrobot & Sheraw, LLC, David A. Skrobot and *Brett R. Sheraw*, for appellee.

Law Office of Joseph C. Lucas, LLC, and *Tyler W. Kahler*, for appellants.

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Carl H. Woodford is appealing from the trial court's overruling of his motion for relief from judgment under Civ.R. 60(B). He assigns a single error for our consideration:

> The Trial Court erred in denying Carl H. Woodford's Motion for Relief from Judgment, which asserted that the amount of damages awarded were not supported by the evidence, where the damages allowed for a double collection of interest at an interest rate of 24 percent, and where the damages failed to account for payments made.

{¶ 2} Woodford and his counsel are not contesting the fact that Woodford was behind in the payment of his mortgages. Nor are they contesting the fact that a

foreclosure should occur. Instead, they are contesting the damage figure contained in the judgment entry.

{¶ 3} The record demonstrates that Woodford borrowed money from Arliss Mortgage Company, LLC on two occasions. On March 2, 1999 Woodford borrowed $25,846.90. He agreed to an interest rate of 24 percent per annum. The mortgage note listed pre-computed interest of $69,913.00 for a total fare amount of the note of $95,760.00. The note also had a provision for a default charge. The final payment was to be due on March 2, 2014.

{¶ 4} The mortgage note followed a previous loan of $10,397.06 made on February 10, 1999. This loan is evidenced by a note which also included pre-computed interest of $28,122.94, resulting in a total fare amount of $38,520.00. The interest rate was again 24 percent per annum. Again, a default charge was listed as possible in the note.

{¶ 5} Woodford was allowed to sign both mortgage notes for his then-wife Deidre Williams-Woodford based on an assertion he was her "Attorney in Fact."

{¶ 6} The Woodfords fell behind on their mortgages, which led to the filing of this foreclosure action. When they did not file an answer, a default judgment was taken. Counsel for Arliss Mortgage prepared the judgment entry. The entry awarded interest at 24 percent for the amount listed in the mortgage note as pre-computed interest. The judgment was journalized April 20, 2009.

{¶ 7} Woodford did not move to set aside the judgment until June 6, 2011, only four days before a scheduled sheriff's sale.

{¶ 8} The trial court overruled the motions, finding "Defendant has offered NO reason justifying Relief from Judgment or that his motion is timely made." (Emphasis sic.)

{¶ 9} The default judgment entry filed in this case clearly contained errors in the amount of damages awarded. Further, the rate of interest awarded presents questions of usury, especially the 24 percent on top of the pre-computed interest of 24 percent. The question thus becomes has Woodford lost the right to contest these issues by waiting for over two years after the entry was journalized until he filed a motion to contest the entry's content.

{¶ 10} The answer to that question is "yes."

{¶ 11} Civ.R. 60(B) reads:

> **(B) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud; etc.**
>
> On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (B) does not affect the finality of a judgment or suspend its operation.
>
> The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules.

{¶ 12} The express time limits in the rule for motions under Civ.R. 60(B)(1), (2) and (3) were clearly violated. Civ.R. 60(B)(5) applies to situations which do not fit under Civ.R. 60(B)(1), (2) or (3). The issues presented on behalf of Woodford are issues under Civ.R. 60(B)(1) or Civ.R. 60(B)(3). Civ.R. 60(B)(5) cannot be used to increase the strict time limitations for Civ.R. 60(B)(1) and (3).

{¶ 13} The trial court was within its discretion to overrule the untimely motions for relief from judgment. The sole assignment of error is overruled.

{¶ 14} The judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

SADLER and CONNOR, JJ., concur.

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