

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Kevin McKee and Christine McKee,

Plaintiffs,

v.

Bank of America, N.A.,
BAC Home Servicing, L.P. and
Miken Construction,

Defendants.

INTRODUCTION

1. The Plaintiffs, Kevin and Christine McKee, were the lawful owners of 3733 N. Columbus Avenue, Lake Villa, Illinois 60046. On January 29, 2011, the Plaintiffs discovered that Miken Construction, on behalf of Bank of America, N.A. and BAC Home Servicing, L.P., unlawfully and without authorization entered into their home, changed the locks on the home, winterized the premises, removed their personal possessions from the home, and disposed of their personal possessions. Not only did the Defendants fail to provide the Plaintiffs' notice, but also, they had no authorization to commit these actions. The Plaintiffs bring forth the following grounds for recovery: 1) trespass; 2) conversion; 3) negligence; 4) the intentional infliction of emotional distress; 5) invasion of privacy; 6) willful and wanton conduct; 7) and breach of contract.

PARTIES

2. Kevin and Christine McKee (“Plaintiffs”) are married and previously resided at the home in question, located at 3733 N. Columbus Avenue, Lake Villa, Illinois 60046. They currently live in Florida at 2401 Tamarind Street, Port Charlotte’s Florida. At all times material herein, the Plaintiffs resided in Illinois.

3. The Defendant, Bank of America, N.A. is a corporation headquartered at Bank of America Corporate Center, 100 North Tryon Street, Charlotte, North Carolina 28255. BOA has offices and bank branches throughout the state of Illinois.

4. The Defendant BAC Home Loan Servicing, L.P. is a nationwide loan servicer for and subsidiary of defendant BOA with a principal place of business of 400 Countrywide Way, Simi Valley, California 93065.

5. The Defendant Miken Construction Company, Inc. (“Miken”) is a nationwide property preservation services provider headquartered at 4686 E. Ontario Mills Parkway, Ontario, California 91764.

JURISDICTION AND VENUE

6. This Court has jurisdiction over this controversy pursuant to 28 U.S.C. § 1332 as there exists complete diversity between the parties and the amount in controversy exceeds \$75,000. The Plaintiffs are Florida citizens as they currently reside in Florida. BOA is a North Carolina citizen because its corporate headquarters are located in North Carolina. BAC is a California citizen because its corporate headquarters are located in California. Miken is a California citizen because its corporate headquarters are located in California.

7. This Court has personal jurisdiction over the parties because BOA, BAC, and Miken all

have substantial contacts with the state of Illinois by their deliberate “reaching in” to the state for business purposes.

8. Venue is proper as the acts described took place within this District.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

9. The Plaintiffs purchased the home located at 3733 N. Columbus Avenue, Lake Villa, Illinois 60046 in 2009 through a mortgage dated June 4, 2009. BOA was the holder of the mortgage and note at material times herein. BOA filed its foreclosure complaint against the Plaintiffs on May 27, 2010.

10. In 2008, Mr. McKee suffered a severe physical injury as a result of a head-on car collision and is now physically disabled. As a result of this injury, the Plaintiffs and their fifteen (15) year-old daughter began to move to Florida for medical purposes in August 2010. They listed their home for sale with a Century 21 realtor located out of Lyndonhurts, Illinois on November 15, 2010.

11. The Plaintiffs’ relator contacted BOA regarding negotiating a short sale of the home and the Plaintiffs filled out the required paperwork. One week prior to the illegal lock out and trash out described below, the Plaintiffs received their first offer on the home.

12. On January 29, 2011, the Plaintiffs learned of the illegal lock out and trash out of their home through their neighbor. The Plaintiffs’ neighbor called Mrs. McKee to congratulate the Plaintiffs on selling the home after seeing “U-Haul” moving trucks in front of the home and individuals inside the home. However, the Plaintiffs had not authorized anyone to enter the home and had not yet sold the home. Mrs. McKee, in a panic, called the police. In addition, she booked a last-minute flight to Illinois from Florida for Mr. McKee, who arrived the next day.

13. While the Plaintiffs waited for Mr. McKee's flight the next day, the police arrived at the home and performed a preliminary investigation of the area. The police discovered BAC stickers throughout the home, and called BAC on behalf of the Plaintiffs. BAC informed them that one of their contractors had reported extensive water damage and mold inside the home, but that they did not authorize any removal of items inside the home.

14. The next day, January 30, 2011, Mr. McKee arrived from Florida. While at the home, he called the police when more contractors arrived. Police chased down one of the contractors, who fled on foot upon their arrival due to his status as an undocumented worker.

15. With the police present, Mr. McKee discovered that the contractors working for the Defendants BOA, BAC, and Miken had illegally and without authorization broken into the home, removed all of their personal belongings still located inside the home, and "winterized" the premises.

16. The Defendants, their contractors, employees, and/or agents removed a variety of personal belongings, including but not limited to: 1) five distinct antiques, including her grandmother's shadow box; 2) highly sensitive personal information, such as income tax returns; 3) tools, such as a riding mower and hand tools; and 4) other sentimental, private possessions, such as baby pictures, their daughter's christening gown, college books, and college diplomas. Moreover, the Defendants' agents, employees, and/or contractors also ripped out the Plaintiffs' new kitchen cabinets during this illegal lock out and trash out. The consequence of this action is that the home's value depreciated significantly, as the Plaintiffs had recently installed these fixtures.

17. Mr. McKee and the police also discovered paperwork located inside the winterized home. The paperwork showed that the Defendants' agents, employees, and/or contractors winterized

the home on January 7, 2011 and that they notated extensive water damage on January 20, 2011. Significantly, the paperwork dated January 29, 2011 did not have anything notated, despite the fact that this was the date where the Plaintiffs' neighbor, a Grayslake police officer, witnessed the U-Haul present and people inside the home. The police and Mr. McKee did a complete walk through of the home and saw no water damage or mold.

18. Mrs. McKee called BOA once her husband and the police were in the home on January 31, 2011. BOA repeated that they had a report of extensive water and mold damage, and refused to provide the name of the contractor who performed the work. BOA informed a police officer, who called again for this information at a later time, "if you want contact information for Miken Construction, file a subpoena."

19. At no time did the Plaintiffs receive any notice regarding a foreclosure and did not give any authorization for these individuals to enter the home. Moreover, the Plaintiffs never abandoned the home, as it was properly maintained for the purposes of sale through Century 21.

20. Despite their unauthorized and illegal actions, the Defendants did not return any of the Plaintiffs' possessions. Mrs. McKee, who continued to contact BOA, was assigned to a "Ms. Tidwell" in the Office of the President. Ms. Tidwell told Mrs. McKee that she was not in foreclosure and that BOA did not do these actions. After Mrs. McKee faxed Ms. Tidwell the work order forms left at the home, she informed the Plaintiffs that a "Mr. Johnson" would be calling them in the near future. This individual never called the Plaintiffs and they have not heard from BOA again.

21. The Plaintiffs sold the home on August 7, 2011.

COUNT 1

**Trespass
(As to all Defendants)**

22. The Plaintiffs re-allege the previous paragraphs as if fully set forth in this Count.
23. The Defendants, their agents, contractors, and/or employees entered onto the Plaintiffs' home without permission or authorization.
24. The Defendants, their agents, contractors, and/or employees acted intentionally, willfully, wantonly, maliciously, recklessly, and/or with gross disregard for the Plaintiffs' rights.
25. At all times material herein, the Defendants BOA and BAC exercised control over the actions and conduct of Milken.
26. The Defendants, their agents, contractors, and/or employees directly injured the Plaintiffs.

WHEREFORE, the Plaintiffs request that this Court award them damages against all Defendants in an amount to be proven at trial, along with punitive damages, attorneys' fees, costs, expenses, and any other relief this Court determines just.

COUNT 2
Conversion
(As to all Defendants)

27. The Plaintiffs re-allege the previous paragraphs as if fully set forth in this Count.
28. The Defendants, their agents, contractors, and/or employees entered onto the Plaintiffs' home without permission or authorization during its foreclosure process and proceedings.
29. At all times material herein, the Plaintiffs had personal property within the home and had an absolute and unconditional right to immediate possession of such personal property.
30. The Defendants, their agents, contractors, and/or employees wrongfully and without authorization from the Plaintiffs seized their property from the home and assumed dominion, ownership, and control over their property. The Defendants also unlawfully locked the Plaintiffs out of their home and prevented them from exercising their right to possession of the home and

possessions therein. Despite the Plaintiffs' demands, the Defendants have not returned their property.

31. The Defendants, their agents, contractors, and/or employees acted intentionally, willfully, wantonly, maliciously, recklessly, and/or with gross disregard for the Plaintiffs' rights.

32. The Defendants, their agents, contractors, and/or employees directly injured the Plaintiffs.

WHEREFORE, the Plaintiffs request that this Court award them damages against all Defendants in an amount to be proven at trial, along with punitive damages, attorneys' fees, costs, expenses, and any other relief this Court determines just.

COUNT 3
Negligence
(As to all Defendants)

33. The Plaintiffs re-allege the previous paragraphs as if fully set forth in this Count.

34. The Defendant BOA owed a duty to the Plaintiffs to act as a reasonable and prudent lender during any foreclosure-related process and proceedings. This duty includes, but is not limited to: 1) obligating that BOA obtain a foreclosure judgment before initiating foreclosure proceedings; 2) notifying the Plaintiffs of any reason it may have to enter the property; and 3) investigating and correcting any potential wrongful actions or wrongful foreclosure committed by its agents, servants, employees, and/or contractors.

35. The Defendant BAC owed a duty to the Plaintiffs to act as a reasonable and prudent servicing agent during any mortgage servicing activities and foreclosure-related process and proceedings. This duty includes, but is not limited to: 1) obligating that BAC obtain a foreclosure judgment before initiating foreclosure proceedings; 2) notifying the Plaintiffs of any reason it may have to enter the property; and 3) investigating and correcting any potential

wrongful actions or wrongful foreclosure committed by its agents, servants, employees, and/or contractors.

36. The Defendant Milken owed a duty to the Plaintiffs to act as a reasonable and prudent property preservation services company during any mortgage servicing activities and foreclosure-related process and proceedings. This duty includes, but is not limited to: 1) obligating that Milken obtain a foreclosure judgment before initiating foreclosure proceedings; 2) notifying the Plaintiffs of any reason it may have to enter the property; and 3) investigating and correcting any potential wrongful actions or wrongful foreclosure committed by its agents, servants, employees, and/or contractors.

37. The Defendants breached their duties to the Plaintiffs by wrongfully entering onto the Plaintiffs' property without prior notice and without lawful judicial process, and by unlawfully dispossessing the Plaintiffs of their personal property in violation of their rights. The Defendants also failed to remedy upon the Plaintiffs notifying them of the wrongful conduct.

38. At all times material herein, the Defendants, BOA and BAC, their agents, contractors, and/or employees exercised control over the actions and conduct of Milken.

39. The Defendants, their agents, contractors, and/or employees acted intentionally, willfully, wantonly, maliciously, recklessly, and/or with gross disregard for the Plaintiffs' rights.

40. The Defendants, their agents, contractors, and/or employees directly and proximately damaged the Plaintiffs.

WHEREFORE, the Plaintiffs request that this Court award them damages against all Defendants in an amount to be proven at trial, along with punitive damages, attorneys' fees, costs, expenses, and any other relief this Court determines just.

COUNT 4
Intentional Infliction of Emotional Distress

(As to all Defendants)

41. The Plaintiffs re-allege the previous paragraphs as if fully set forth in this Court.
42. The Defendants' conduct as alleged was extreme and outrageous. The Defendants, their agents, contractors, and/or employees entered onto the Plaintiffs' home without permission, authorization, or prior notice during its foreclosure-related process and proceedings. Moreover, the Defendants, their agents, contractors, and/or employees wrongfully and without authorization seized the Plaintiffs' property from the home, and assumed dominion and control over their property. The Defendants, their agents, contractors, and/or employees also unlawfully locked the Plaintiff out of their home and prevented the Plaintiffs from exercising their possessory rights to their property.
43. At all times material herein, the Defendants, BOA and BAC exercised control over the actions and conduct of Milken.
44. The Defendants, their agents, contractors, and/or employees acted intentionally, willfully, wantonly, maliciously, recklessly, and/or with gross disregard for the Plaintiffs' rights. The Defendants either intended that their conduct would cause severe emotional distress to the Plaintiffs or knew, or reasonably should have known, that there was a high probability that their conduct would causes the Plaintiffs severe emotional distress.
45. The Defendants, their agents, contractors, and/or employees directly and proximately caused the Plaintiffs' severe emotional distress. The Plaintiffs' severe emotional distress included *fill in symptoms*.

WHEREFORE, the Plaintiffs request that this Court award them damages against all Defendants in an amount to be proven at trial, along with punitive damages, attorneys' fees, costs, expenses, and any other relief this Court determines just.

COUNT 5
Invasion of Privacy
(As to all Defendants)

46. The Plaintiffs re-allege the previous paragraphs as if fully set forth in this Count.
47. The Defendants, their agents, contractors, and/or employees seized the Plaintiffs' property and possessions without permission or authorization during its foreclosure-related process and proceedings. The Defendants, their agents, contractors, and/or employees deprived the Plaintiffs access to their home by locking him out and rekeying the doors. The Defendants, their agents, contractors, and/or employees had no right or authority to break into the Plaintiffs' premises, seize their property, and remove or dispose of their personal property and possessions. Moreover, the Defendants, their agents, contractors, and/or employees handled the Plaintiffs' sensitive confidential information, such as income tax returns.
48. The Defendants, their agents, contractors, and/or employees acted intentionally, willfully, wantonly, maliciously, recklessly, and/or with gross disregard for the Plaintiffs' rights.
49. At all times material herein, the Defendants, BOA and BAC exercised control over the actions and conduct of Milken.
50. The actions of the Defendants, their agents, contractors, and/or employees were such that a reasonable person would find them to be a substantial and serious interferences in the Plaintiffs' privacy.
51. At all times material herein, the Plaintiffs were the lawful owners of the premises and had not abandoned the property. The Plaintiffs had a right to privacy in the home, a right to be free from unlawful intrusion, and a right to be free from unauthorized seizure and destruction of their property.

WHEREFORE, the Plaintiffs request that this Court award them damages against all Defendants in an amount to be proven at trial, along with punitive damages, attorneys' fees, costs, expenses, and any other relief this Court determines just.

COUNT 6
Willful and Wanton Conduct
(As to All Defendants)

52. The Plaintiffs re-allege the previous paragraphs as if fully set forth in this Count.
53. The Defendants, their agents, contractors, and/or employees entered onto the Plaintiffs' home without permission or authorization during its foreclosure-related process and proceedings.
54. At all times material herein, the Plaintiffs had personal property within the home and had an absolute and unconditional right to the immediate possession of such personal property.
55. The Defendants, their agents, contractors, and/or employees wrongfully and without authorization from the Plaintiffs seized their property and assumed dominion and control over the property. The Defendants also unlawfully locked out the Plaintiffs and prevented them from exercising their right to possession of the home and the possessions therein. Despite the Plaintiffs' demands, the Defendants have not returned their property.
56. The Defendants, their agents, contractors, and/or employees acted intentionally, willfully, wantonly, maliciously, recklessly, and/or with gross disregard for the Plaintiffs' rights.
57. At all times material herein, the Defendants, BOA and BAC exercised control over the actions and conduct of Milken.
58. The Defendants, their agents, contractors, and/or employees directly and proximately damaged the Plaintiffs.

WHEREFORE, the Plaintiffs request that this Court award them damages against all Defendants in an amount to be proven at trial, along with punitive damages, attorneys' fees, costs, expenses, and any other relief this Court determines just.

COUNT 7
Breach of Contract
(As to BOA)

59. The Plaintiffs re-allege the previous paragraphs as if fully set forth in this Count.

60. The Plaintiffs had entered into a loan and mortgage on their property with BOA. The note and mortgage terms do not permit the holder to break into and enter the Plaintiffs' home. Moreover, the mortgage requires notice prior to an internal inspection.

61. BOA breached the terms and conditions of the note and mortgage by ordering BAC and Milken to enter the home without authorization or notice, ordering the lock out and trash out, and disposing of the Plaintiffs' possessions.

62. BOA's material breach of the contract between the parties directly and proximately damaged the Plaintiffs.

WHEREFORE, the Plaintiffs request that this Court award them damages against all Defendants in an amount to be proven at trial, along with punitive damages, attorneys' fees, costs, expenses, and any other relief this Court determines just.

THE PLAINTIFFS REQUEST A TRIAL BY JURY ON ALL COUNTS

Respectfully submitted on
behalf of the Plaintiffs

____s/Arthur S. Gold_____

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