

FILED-2

2016 DEC 29 PM 3:05

CIRCUIT COURT OF COOK
COUNTY, ILLINOIS
LAW DIVISION

CLERK
PROPERTY SECTION

IN THE CIRCUIT COURT OF COOK COUNTY ILLINOIS
LAW DIVISION

ELAINE SHESTOKAS AND
DAVID SHESTOKAS

Plaintiffs,

vs

BANKOF AMERICA, CALIBER
HOME LOANS INC., M & M
MORTGAGE SERVICES INC., and
JOHN DOES 4-10,

Defendants

NO.

2016L012695
CALENDAR/ROOM H
TIME 00:00
Tort - Intentional

Jury Demanded

COMPLAINT AT LAW

COME NOW Plaintiffs, by and through their attorneys, Gold and Associates Ltd. and state and allege against the above-named Defendants as follows:

INTRODUCTION

1. Plaintiffs at all times relevant herein were and are the owners and residents of 12970 McCarthy Rd., Lemont, Ill. 60439 ("Premises").
2. On October 29, 2016 Defendant M&M Mortgage Services Inc. ("M&M") acting on behalf of Defendant Bank of America ("BOA") and Defendant Caliber Home Loans Inc. ("Caliber") was retained by these defendants to lockout and conduct property preservation services on the Premises and commenced this conduct on that day.
3. The Defendants' conduct as to the Premises on and after October 29, 2016 was not authorized by any judicial process, any prior notice to Plaintiffs, or under authority of any mortgage deed on the Premises.

4. Subsequently, on November 25, 2016 Plaintiffs returned to their Premises to find that their home had again been unlawfully entered by the Defendants, the door locks had been changed, and much of their personal property had been stolen by the Defendants.
5. During the time frame mentioned in the three preceding paragraphs, Plaintiffs had been negotiating with defendants for a loan modification or a deed in lieu of foreclosure.
6. Plaintiffs bring claims for 1) trespass; 2) conversion; 3) negligence; 4) invasion of privacy; 5) willful and wanton conduct; 6) violation of the Illinois Foreclosure Statute, and 7) promissory estoppel/detrimental reliance.

PARTIES

7. Elaine Shestokas and David Shestokas (“Plaintiffs”) at all times material herein were and are the lawful owners and residents of 12970 McCarthy Road, Lemont, Illinois.
8. Defendant BOA is in the business of investment and investment management as well as other financial services. BOA held Plaintiffs’ first mortgage on the Premises. Its principal place of business is at 100 N. Tryon St, , Charlotte, NC 2255.
9. Defendant Caliber is in the business of investment and investment management as well as other financial services and, on information and belief, has its principal place of business at 16745 W. Bernard Drive, San Diego, California. On information and belief Caliber has purchased the first mortgage on the Premises from BOA.
10. Defendant M&M is in the business of servicing residential mortgages throughout the country.
11. M&M is in the business of recovering homes for banks and lenders as part of the foreclosure process, commonly referred to as an “asset management company.” BOA, Caliber and M&M all conduct business in Illinois.

12. Defendants, John Does 4-10 are as yet identified individuals or business entities who were retained by BOA, Caliber and/or M&M to perform property preservation services on the Premises.

JURISDICTION AND VENUE

13. Jurisdiction and venue are proper in this Court as all defendants do business in the State of Illinois and more of the acts complained of took place within Cook County than took place anywhere else.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

14. At all times material herein, Plaintiffs resided at and were the legal title holders of the Premises.

15. In 2015 BOA began foreclosure proceedings on the Premises in the Circuit Court of Cook County, case 2015 CH 14303.

16. In the weeks and months preceding October 29, 2016 Plaintiffs had been in constant contact with Caliber Loan trying to work diligently to obtain a modification or a deed in lieu settlement of the Property's 1st Mortgage. It was represented to Plaintiffs by Caliber that they would receive a deed in lieu and would be able to remain in the Premises, peacefully, until 11/30/16. .

17. Given the number of communications that Plaintiffs had with BOA and Caliber there is little doubt that these defendants knew how to contact Plaintiffs and could have done so prior to forcibly changing the locks and entering the Premises.

18. On October 29, 2016 Defendant, M&M, acting on behalf of Defendant BOA or Defendant Caliber and/or the Defendants John Does 4-10 entered onto and into the Premises to unlawfully change the locks to perform a winterization on the home and in so doing removed and stole and

damaged many of Plaintiffs' personal possessions. They did not provide any prior notice of the entry, nor did they obtain any judicial process to enter onto the Premises.

19. Approximately one month later, on November 25, 2016, Defendants again wrongfully entered into the Premises and additional property was taken by Defendants and Defendants damaged other property belonging to Plaintiffs.
20. On these discoveries, the Plaintiffs were in extreme shock to not be able to get into their own home and then in even more shock when they later discovered that their personal belongings had been gone through.
21. When the Plaintiffs finally gained entry into the Premises, their shock and emotional anguish was further intensified as they discovered items of high sentimental value wrongfully removed from the Premises. These items included personal gifts given to them by family members both living and dead.
22. The emotional shock from the conduct of the Defendants was so severe that the Plaintiffs experienced feelings of having their entire lives turned upside down with feelings of rage, anger and depression. The Defendants' conduct also caused the Plaintiffs to lose sleep and a sense of trust because they remained in fear of their home being broken into in the middle of the night by the Defendants or their agents.

COUNT 1
Trespass
(As to All Defendants)

23. The Plaintiffs re-allege the previous paragraphs as if fully set forth in this Count.
24. The Defendants, their agents, contractors and/or employees entered onto the Plaintiffs' Premises without permission or authorization during their foreclosure process and proceedings.

25. The actions of the Defendants and their agents, contractors and/or employees were done intentionally, willfully, wantonly, maliciously, recklessly and/or with gross disregard for the Plaintiffs' rights.

26. At all times material herein, the Defendants, BOA, Caliber, and M&M exercised control over the actions and conduct of M&M and/or the John Doe Defendants 4-10.

27. The Plaintiffs was injured as a direct result of the actions of all Defendants, their agents, contractors and/or employees.

WHEREFORE the Plaintiffs request that they be awarded damages against all Defendants in an amount to be proven at trial along with punitive damages, attorneys fees, costs, expenses and any other just relief to be determined by the Court.

COUNT 2
Conversion
(As to all Defendants)

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

29. The Defendants, their agents, contractors and/or employees entered onto the Plaintiffs' Premises without permission or authorization during their foreclosure process and proceedings.

30. At all times material herein, the Plaintiffs had personal property within the Premises and that they had an absolute and unconditional right to the immediate possession of such personal property.

31. The Defendants, their agents, contractors, and/or employees wrongfully and without authorization from the Plaintiffs seized the Plaintiffs' property from the Premises and assumed dominion, ownership and control over their property. The Defendants also unlawfully locked the Plaintiffs out of the Premises and prevented the Plaintiffs from their

right to possession of the home or the possessions therein. Despite the Plaintiffs' demands, their property was not returned.

32. At all times material herein, the Defendants, BOA, Collateral and M&M exercised control over the actions and conduct of their own agents and employees as well as the John Doe Defendants 4-10.

33. The actions of the Defendants and their agents, contractors and/or employees were done intentionally, willfully, wantonly, maliciously, recklessly and/or with gross disregard for the Plaintiffs' rights.

34. The Plaintiffs were damaged as a direct result of the actions of the Defendants, their agents, contractors, and/or employees.

WHEREFORE the Plaintiffs request that they be awarded damages against all Defendants in an amount to be proven at trial along with punitive damages, attorneys fees, costs, expenses and any other just relief to be determined by the Court

COUNT 3
Negligence

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

36. The Defendants owed a duty to the Plaintiffs to act reasonably and prudently during any mortgage servicing activities, foreclosure process and proceedings, and property preservation activities. The duty owed to the Plaintiffs included the obligation to obtain lawful authority to enter the premises, to give notice to the Plaintiffs prior to entering the premises, to reasonably determine whether the Premises had been abandoned by the Plaintiffs, and to conduct their property preservation activities in a reasonable and prudent manner and without wrongfully and unlawfully depriving Plaintiffs with the right to their possessions.

37. The Defendants breached their duties to the Plaintiffs by wrongfully entering onto the Premises without prior notice to the Plaintiffs 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 this breach after the gross misconduct was brought to their attention.
38. At all times material herein, the Defendants exercised control over the actions and conduct of their agents and employees and John Doe Defendants 4-10.
39. The actions of the Defendants and their agents, contractors and/or employees were done intentionally, willfully, wantonly, maliciously, recklessly and/or with gross disregard for the Plaintiffs' rights.
40. The conduct of the Defendants named in this Count directly caused the Plaintiffs to be damaged.

WHEREFORE the Plaintiffs request that they be awarded damages against all Defendants named in an amount to be proven at trial along with punitive damages, attorneys fees, costs, expenses and any other just relief to be determined by the Court

COUNT 4
Invasion of Privacy

41. The Plaintiffs re-allege the preceding paragraphs as if fully set forth in this Count.
42. The Defendants, their agents, contractors, and/or employees, seized the Plaintiffs' property and possessions without permission or authorization during their foreclosure process and proceedings. The Defendants, their agents, contractors and/or employees deprived the Plaintiffs access to their own home by locking them 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.

43. The actions of the Defendants and their agents, contractors and/or employees were done intentionally, willfully, wantonly, maliciously, recklessly and/or with gross disregard for the Plaintiffs' rights.

44. At all times material herein, the Defendants, BOA, Caliber and M&M exercised control over the actions and conduct of their own agents and employees and and/or the John Doe Defendants 4-10.

45. The acts of the Defendants, their agents, contractors, and/or employees were such that a reasonable person would find them to be a substantial and serious interference in the Plaintiffs' privacy.

46. At all times material herein, the Plaintiffs were the lawful occupants of the Premises. The Plaintiffs had a right to privacy in the Premises. The Plaintiffs had the right to be free from unlawful intrusion onto the Premises and into their home and a right to be free from the unauthorized seizure and destruction of their property.

WHEREFORE the Plaintiffs request that they be awarded damages against all Defendants in an amount to be proven at trial along with punitive damages, attorneys fees, costs, expenses and any other just relief to be determined by the Court.

COUNT 5
Willful and Wanton Conduct

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

48. The Defendants entered onto the Plaintiff's Premises without permission or authorization during the foreclosure process and proceedings.

49. The Defendants all owed a duty to the Plaintiffs to act as a reasonable and prudent property preservation companies and banks during any mortgage servicing activities, foreclosure process and proceedings, and property preservation activities. The duty owed to the Plaintiffs included the obligation to obtain lawful authority to enter the premises, to give notice to the Plaintiffs prior to entering the premises, to reasonably determine whether the Premises had been abandoned by the Plaintiffs, and to conduct their property preservation activities in a reasonable and prudent manner and without wrongfully and unlawfully depriving Plaintiffs with the right to their possessions.
50. At all times material herein, the Plaintiffs had personal property within the Premises over which they had an absolute and unconditional right to the immediate possession of such personal property.
51. The Defendants, their agents, contractors, and/or employees wrongfully and without authorization from the Plaintiffs seized the Plaintiffs' property from the Premises and assumed dominion, ownership and control over their property. Said Defendants also unlawfully locked the Plaintiffs out of the Premises and prevented the Plaintiffs from their right to possession of their home or the possessions therein. Despite the Plaintiffs' demands, their property was not returned.
52. At all times material herein, the Defendants over the actions and conduct of their agents and employees or the John Doe Defendants 4-10.
53. The actions of the Defendants and their agents, contractors and/or employees were done intentionally, willfully, wantonly, maliciously, recklessly and/or with gross disregard for the Plaintiffs' rights.

54. The Plaintiffs were damaged as a direct result of the actions of the Defendants , their agents, contractors, and/or employees.

WHEREFORE the Plaintiffs request that they be awarded damages against all Defendants in an amount to be proven at trial along with punitive damages, attorneys fees, costs, expenses and any other just relief to be determined by the Court

COUNT 6

Violation of the Illinois Foreclosure Statute, 735 ILCS 5/15
(As to BOA ,Caliber, and M&M)

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

56. At all times material herein, the Plaintiffs held sole equitable possession of the Premises. The Plaintiffs were lawful occupants of the Premises.

57. The Illinois Foreclosure Statute states in relevant part: “Any party may join as a party any other person, although such person is not a necessary party, including, without limitation, the following:

(1) All persons having a possessory interest in the mortgaged real estate;...(8) Any assignee of leases or rents relating to the mortgaged real estate;...and (10) Any other mortgagee or claimant.

58. The Defendants’ acts of ordering the seizure of the Plaintiff’s Premises, changing the locks, winterizing the property, and trashing-out their possessions constitutes Plaintiffs’ being “ejected” or “put out” of their property by “forcible” or “unlawful” means.

59. The Defendants named in this Count did not serve notice on the Plaintiffs of any petition, nor notice of any hearing on a petition for termination of their possessory interest in the Premises.

60. The Defendants named in this Count had no legal justification for seizing the Plaintiffs' personal property and failed to comply with any of the Illinois statutes governing foreclosure actions including 735 ILCS 5/15-1701, et seq., and 735 ILCS 5/15-1508.5, et seq. Said Defendants also failed to conduct any due diligence before seizing the Plaintiffs' property: such due diligence could include, but is not limited to, determining whether a home to be foreclosed on is actually abandoned. The Defendants named in this Count failed to act in good faith when conducting their foreclosure action on the Premises.

61. The Plaintiffs were injured as a direct and proximate result of the acts and omissions of the Defendants named in this Count.

WHEREFORE the Plaintiffs request that they be awarded damages against all Defendants named in this Count in an amount to be proven at trial along with punitive damages, attorneys fees, costs, expenses and any other just relief to be determined by the Court.

COUNT 7
Promissory Estoppel
(As to BOA and Caliber)

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

63. As previously alleged, BOA and Caliber made representations to the Plaintiffs that they would receive a deed in lieu and that they could remain in the premises until 11/30/16.

64. The terms of Defendants' representations were clear and unambiguous to the Plaintiffs.

65. At all times material herein, the Plaintiffs relied on the representations made to them by BOA and M&M. In reliance, the Plaintiffs remained as occupants of the Premises and kept their personal belongings in the home.

66. The Plaintiffs' reliance on these representations was expected and foreseeable to the Defendants named in this Count.
67. The Plaintiffs' reliance on these Defendants' representations' was to their detriment because they remained as occupants and in full possession of the Premises, continued living in the Premises, and kept all of their personal belongings in the Premises.
68. As previously alleged, the Defendants did wrongfully break in to the Premises without warning or notice to the Plaintiffs, changed the locks to the Premises, and denied Plaintiffs access to the Premises.
69. As a direct and proximate result of the conduct of the Defendants named in this Count, the Plaintiffs have been damaged.

WHEREFORE the Plaintiffs request that they be awarded damages against all Defendants named in this Count in an amount to be proven at trial along with punitive damages, attorneys' fees, costs, expenses and any other just relief to be determined by the Court.

THE PLAINTIFF REQUESTS A TRIAL BY JURY ON ALL COUNTS

Respectfully submitted on behalf of the Plaintiffs

_____s/Arthur S. Gold_____

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1910 - No Fee Paid
1919 - Fee Paid
JURY DEMAND

(2-81) CCG-67

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

ELAINE SHESTOKAS AND DAVID SHESTOKAS

Plaintiffs

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BANK OF AMERICA, CALIBER HOME LOANS
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Defendants.

DOROTHY BROWN
CLERK

CIRCUIT COURT OF COOK
COUNTY, ILLINOIS
LAW DIVISION

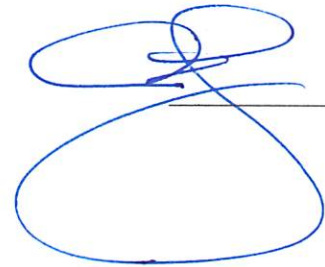
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2016L012695
CALENDAR/ROOM H
TIME 00:00
Tort - Intentional

JURY DEMAND

The undersigned demands a jury trial.



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