

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT
AT NASHVILLE, BUSINESS COURT

FAMILY TRUST SERVICES, LLC,)
STEVEN REIGLE, REGAL HOMES CO.,)
BILLY GREGORY, JOHN SHERROD,)
CARL CHAMBERS, and DEBRA IRVIN, on)
behalf of themselves and those similarly)
situated,)

Plaintiffs,)

v.)

GREEN WISE HOMES LLC,)
CHARLES E. WALKER, JON PAUL)
JOHNSON, JULIE COONE,)
NATIONWIDE INVESTMENTS, LLC,)
MERDAN IBRAHIM, and JAMES BRETT,)

Defendants.)

NO. 15-780-BC
JURY DEMAND

MEMORANDUM AND ORDER

The Court has pending before it four summary judgment motions filed by Defendants Charles E. Walker, Jon Paul Johnson's and Green Wise Homes, LLC's (collectively the "REO Defendants") to dismiss the claims of Plaintiffs Carl Chambers, Debra Irvin, Dorothy Booher, and Glenna Davis Ponce (collectively the "Taxpayer Plaintiffs"). The following causes of action are asserted by each of the Taxpayer Plaintiffs, and are the subject of the pending motions:

Chambers:

-Defamation of title
-Fraud
-Trespass to Real Property
-Theft of Real Property
-Violation of Tenn. Code Ann. § 66-22-113
-Fraudulent transfer pursuant to Tenn. Code Ann. § 66-3-301 *et seq.*
-Civil conspiracy

Irvin:

-Fraud
-Violation of Tenn. Code Ann. § 66-22-113
-Trespass to Land

- Theft of Property
- Fraudulent transfer pursuant to Tenn. Code Ann. § 66-3-301 *et seq.*
- Civil conspiracy

- Booher & Ponce:
- Defamation of title
 - Fraud
 - Violation of Tenn. Code Ann. § 66-22-113
 - Fraudulent transfer pursuant to Tenn. Code Ann. § 66-3-301 *et seq.*
 - Civil conspiracy

The August 1, 2019 Fourth Amended and Restated Class Action Complaint, which was the operative complaint at the time, included a Count VIII for Theft of the Right of Redemption and Count IX for Theft and Trespass on Real Property. The Court found Count VIII to be a claim of theft of intangible property not recognized by Tennessee law. The Court considered these two counts “companions” and dismissed the theft allegations generally. (*Memorandum and Order* April 22, 2020, pg. 13-14). In their July 10, 2020 Amended and Consolidated Complaint, Taxpayer Plaintiffs Chambers and Irvin included a Count VII for Theft and Trespass on Real Property, a mirror of Count IX in the prior complaint. Based on its prior ruling, the theft claims of Chambers and Irvin were previously dismissed and may not proceed. The Court will otherwise address each claim and its application to each Taxpayer Plaintiff herein.

FACTUAL FINDINGS

Carl Chambers

The property at issue in relation to Chambers’ claim is located at 2131 11th Avenue N., Nashville, Tennessee (the “Chambers Property”). The Chambers Property was originally owned by Chambers’ grandmother, Maggie Chambers, who obtained it via a quitclaim deed on February 21, 1942. The Chambers Property was sold to satisfy delinquent taxes, and a final decree was entered on January 9, 2014; thus, a one year right of redemption was created in the heirs of Maggie Chambers for one year pursuant to Tenn. Code Ann. § 67-5-2701.

On August 22, 2014, acting as attorney for the Estate and Heirs of Maggie Chambers, Defendant Walker paid \$2,219.99 to redeem the Chambers Property. A final decree was entered vesting title of the Chambers Property in the Estate and Heirs of Maggie Chambers on October 7, 2014. Three days later, on October 10, 2014, Defendant Walker recorded a quitclaim deed purporting to convey the Chambers' Property to his company, REO Holdings, LLC. The quitclaim deed was executed by Dorothy M. Fyke, who has not been shown to have an interest in the Chambers Property, and notarized by Alice Marie Smith, who was deposed and denied notarizing said document. Defendant Walker authenticated the quitclaim deed.

On January 9, 2015, upon expiration of the one-year redemption period, Defendant Walker filed a quiet title action in the name of REO Holdings, LLC, in Davidson County Chancery Court. A final order quieting title was entered on April 22, 2015, and the Chambers Property was subsequently sold to an uninterested third party on June 8, 2015 for \$28,000.

Chambers was unaware of any of these actions, including his redemption rights, until 2019 when he was contacted by his current counsel.

Debra Irvin

Irvin inherited property at 1125 Sunnymeade Drive, Nashville, Tennessee, upon the death of her mother, Mary Overstreet, in 2001 (the "Irvin Property"). Irvin lived in the Irvin Property until three months after it was sold at a tax sale on September 18, 2013 for \$71,000. The final decree for the tax sale was entered on November 8, 2013; thus, Irvin obtained a one year right of redemption pursuant to Tenn. Code Ann. § 67-5-2701.

In August of 2014, Defendant Julie Coone visited Irvin in her home, which was not the Irvin Property. Defendant Coone advised Irvin of her right to redeem and offered her \$5,000 because "it's better to get something rather than nothing." Irvin signed an agreement foregoing

her redemption rights in exchange for \$5,000. Irvin also signed a quitclaim deed conveying her interest in the Irvin Property to REO Holdings, LLC. The quitclaim deed that was actually filed was not signed by Irvin; rather, her signature was lifted from the one she did sign. The REO Defendants claim this to be an error; Irvin claims it to have been intentional. Regardless, a quitclaim deed was filed on November 5, 2014, vesting title in the Irvin Property in REO Holdings, LLC, the day after a Decree for Redemption was filed vesting ownership in Irvin. REO Holdings, LLC then transferred the property to defendant Nationwide Investments, LLC (“Nationwide”). Nationwide commenced an action to quiet title, and a final decree quieting title was entered on November 15, 2015. The Irvin Property was subsequently sold to an uninterested third party on November 10, 2017 for \$315,000.

Dorothy Booher

The property at issue in relation to Booher’s claim is located at 544 Las Lomas Drive in Chattanooga, Tennessee (the “Booher Property”). The Booher Property was originally owned by Booher’s mother-in law, Betty Burns, who bought it on February 14, 1968. Betty Burns died on December 12, 2010, and Booher’s then-husband Allen Booher inherited the Booher Property along with his siblings. The Booher Property was sold to satisfy delinquent taxes, and a final decree was entered on June 16, 2014; thus, a one year right of redemption was created in the heirs of Betty Burns for one year pursuant to Tenn. Code Ann. § 67-5-2701.

On June 12, 2015, Defendant Walker, on behalf of REO Holdings, LLC, filed a statement to redeem the property claiming an interest in the Booher Property. His filing was based upon an affidavit of heirship purportedly signed by “Allen Booker” of New Jersey and notarized by Mary J. Sims. Notary Sims was deposed and denied notarizing said document. Defendant Walker also attached a certification to the affidavit. Defendant Walker and REO Holdings, LLC also filed a

quitclaim deed purportedly signed by “Allen Booker” and notarized by Sims. Sims also denies notarizing this document.

After this lawsuit was filed on June 30, 2015, the REO Defendants withdrew their redemption efforts related to the Booher Property.

Allen Booher died on March 26, 2019.

Glenna Davis Ponce

The property at issue in relation to Ponce’s claim is located at 16 N. Parkdale in Chattanooga, Tennessee (the “Ponce Property”). The Ponce Property was originally owned by Ponce’s grandparents, William and Glenna P. Davis, who bought it on January 21, 1946. Ponce’s grandfather died in 2001; thus, title was vested solely in her grandmother. Ponce’s grandmother died on April 18, 2004, at which time Ponce obtained an interest in the Ponce Property. The Ponce Property was sold to satisfy delinquent taxes, and a final decree was entered on June 16, 2014; thus, a one year right of redemption was created in the heirs of Glenna P. Davis for one year pursuant to Tenn. Code Ann. § 67-5-2701.

On June 5, 2015, Defendant Walker, on behalf of REO Holdings, LLC, filed a statement to redeem the property claiming an interest in the Ponce Property. His filing was based upon an affidavit of heirship purportedly signed by James Hixson of California and notarized by Jesse Berber. Notary Berber was deposed and denied notarizing said document. Defendant Walker also attached a certification to the affidavit. Defendant Walker and REO Holdings, LLC also filed a quitclaim deed purportedly signed by James Hixson and notarized by Berber. Berber also denies notarizing this document.

After this lawsuit was filed on June 30, 2015, the REO Defendants withdrew their redemption efforts related to the Ponce Property.

LEGAL CONCLUSIONS

Summary Judgment Standard

Tenn. R. Civ. P. 56.04 sets forth the summary judgment standard, requiring that summary judgment be granted “if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Tennessee law interpreting Rule 56 provides that the moving party shall prevail if the non-moving party’s evidence is insufficient to establish an essential element of her claim. Tenn. Code Ann. § 20-16-101; *Rye v. Women’s Care Center of Memphis, M PLLC*, 477 S.W.3d 235, 261-62 (Tenn. 2015). In response, the non-moving party “may not rest upon the mere allegations or denials of the adverse party’s pleading, but his or her response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” *Tolliver v. Tellico Village Property Owners Ass’n, Inc.*, 579 S.W.3d 8, 21 (Tenn. Ct. App. 2019) (quoting Tenn. R. Civ. P. 56.06).

Defamation of title

This particular claim is asserted by Chambers, Ponce and Booher. Defamation of title, also known as slander or libel of title, is a cause of action recognized in Tennessee by a plaintiff showing “(1) that it has an interest in the property, (2) that the defendant published false statements about the title to the property, (3) that the defendant was acting maliciously, and (4) that the false statements proximately caused the plaintiff a pecuniary loss.” *Brooks v. Lambert*, 15 S.W.3d 482, 484 (Tenn. Ct. App. 2000). The REO Defendants contend that these Taxpayer Plaintiffs either had no interest in the properties at issue, or no standing to bring this claim, and that these plaintiffs could not prove proximate cause. However, their redemption interests, though intangible, are actual interests in property and, in the case of Chambers, the fee title was vested in the Estate and

Heirs of Maggie Chambers. Thus, the Court finds that these Taxpayer Plaintiffs did have an interest in the Chambers Property, the Ponce Property and the Booher Property. Further, the Court finds that a jury could determine that the REO Defendants acted maliciously and proximately caused these Taxpayer Plaintiffs' losses. The Court declines to dismiss these claims.

Fraud

All the Taxpayer Plaintiffs assert a claim for fraud. For Chambers, Booher, and Ponce, they allege fraud based upon misrepresentation by concealment due to Defendant Walker's actions. As for Irvin, she alleges fraud based upon both misrepresentation by concealment and intentional misrepresentation due to Defendant Walker's actions as well as her alleged communications with Defendant Coone.

Under Tennessee law, fraud and fraudulent misrepresentation are the same cause of action. *Fulmer v. Follis*, No. W2017-02469-COA-R3-CV, 2018 WL 6721248, at *4 (Tenn. Ct. App. Dec. 20, 2018) (citing *Concrete Spaces, Inc. v. Sender*, 2 S.W.3d 901, 904 n.1 (Tenn. 1999) and *Huddleston v. Harper*, No. E2014-01174-COA0R3-CV, 2015 WL 3964791, at *4 (Tenn. Ct. App. June 30, 2015)). The elements of a claim for fraudulent misrepresentation are:

(1) the defendant misrepresented an existing or past fact; (2) the representation was false when it was made; (3) the representation concerned a material fact; (4) the false representation was made knowingly or without belief in its truth or recklessly; (5) the plaintiff reasonably relied on the misrepresented fact; (6) the plaintiff suffered damage caused by the misrepresentation. *Id.*, at *4 (citations omitted).

Concealment of a material fact, as contrasted with an affirmative misrepresentation of fact, can also lead to liability. *See Patel v. Bayliff*, 121 S.W.3d 347, 352-53 (Tenn. Ct. App. 2003) (citation omitted). To establish a claim for fraudulent concealment, a plaintiff must prove:

(1) a defendant took affirmative action to conceal the cause of action or remained silent and failed to disclose material facts despite a duty to do so; and (2) the plaintiff could not have discovered the cause of action despite exercising reasonable care and diligence. *Shadrick v. Coker*, 963 S.W.2d 726, 735 (Tenn. 1998) (citation omitted).

Fraudulent concealment is demonstrated through a showing that there was not only a failure to disclose a known fact but there is also “a trick or contrivance” or there exists a duty to disclose. *Continental Land Co., Inc. v. Investment Properties Co.*, No. M1998-00431-COA-R3-CV, 1999 WL 1129025, *5 (Tenn. Ct. App. Dec. 10, 1999). Reasonable reliance is an essential element of claims for intentional misrepresentation or fraudulent concealment. *Fulmer*, 2018 WL 6721248, at *6 (citations omitted); *Staggs*, 86 S.W.3d at 224.

The Taxpayer Plaintiffs contend that Defendant Walker concealed that he used forged instruments to exercise a right of redemption that properly belonged to Taxpayer Plaintiffs. Thus, the primary representations at issue in relation to the Taxpayer Plaintiffs are the allegedly fraudulent filings with the Register of Deeds Offices and Courts that falsely assert an interest in the titles to facilitate the redemptions. The REO Defendants argue that there was no representation to the Taxpayer Plaintiffs, and no reliance; thus, REO Defendants contend that this claim must fail.

The Court finds that the representations included in the forged property title documents filed with the Register of Deeds Office and Courts, if the allegations are shown as true – and a reasonable fact finder could find such -- could be false representations upon which it was expected the public, including the Taxpayer Plaintiffs, relied. *Davis v. McGuigan*, 325 S.W.3d 149, 159 (Tenn. 2010) (“The maker of a fraudulent misrepresentation is subject to liability for pecuniary loss to another who acts in justifiable reliance upon it if the misrepresentation, although not made directly to the other, is made to a third person and the maker intends or has reason to expect that its terms will be repeated or its substance communicated to the other, and that it will influence his

conduct in the transaction or type of transaction involved.”)¹. Irvin also asserts that statements regarding her interests made to her by Defendant Coone, on behalf of the REO Defendants, constituted intentional misrepresentation of what she could recover if she exercised her redemption rights. Irvin alleges that the subject misrepresentations “were made in the course of a scheme or artifice to defraud.” Thus, the Court declines to dismiss these claims by the Taxpayer Plaintiffs.

Trespass on Real Property

Only Chambers and Irvin bring claims of trespass against the REO Defendants. Trespass in Tennessee “requires the intentional entry onto the land of another.” *Twenty Holdings, LLC v. Land South TN, LLC*, No. M2018-01903-COA-R3-CV, 2019 WL 4200970, at *8 (Tenn. Ct. App. Sept. 5, 2019).

The Court is unaware of any evidence to support the trespass claims of Chambers. The Court also notes that in his briefing, Chambers fails to raise any evidence to support this claim. Thus, Chambers claim of trespass is dismissed.

Regarding Irvin, she asserts that entry by any of the REO Defendants or Defendant Coone, on their behalf, was unauthorized and thus constitutes trespass. *Morrison v. Smith*, 757 S.W.2d 678, 681 (Tenn. Ct. App. 1988). To be clear, when Defendant Coone met with Irvin it was **not** at the Irvin Property, but at the property to where she had moved after the delinquent tax sale. Irvin was unaware of Defendant Coone ever going to the Irvin Property, or of Defendants Walker and Johnson doing so. Defendants Walker and Johnson did acknowledge going to the Irvin Property after the redemption and quitclaim. A finder of fact could determine that their entry was

¹ This finding relies on the generally accepted legal premise that filing with the Register of Deeds Office is “notice to the world” of the subject document. *See, generally, Haiser v. McClung*, No. E2017-00741-COA-R3-CV, 2018 WL 4150877, *6 (Tenn. Aug. 29, 2018).

unauthorized in that the action taken to obtain ownership was fraudulent, and thus the Court declines to dismiss this claim as to Irvin.

Violation of Tenn. Code Ann. § 66-22-113

All the Taxpayer Plaintiffs assert a claim pursuant to Tenn. Code Ann. § 66-22-113. This statute provides:

If the **clerk or other officer who takes the probate or acknowledgment** of a deed or other instrument fails or refuses to comply with and discharge the duties required of the clerk or officer, the clerk or officer shall forfeit and pay the sum of one hundred dollars (\$100) for the use of the county in which the clerk or officer resides, which may be recovered by action of debt, in the name of the trustee of the county, in the circuit or chancery court; and the clerk or officer shall, moreover, be liable to the party injured for all damages the clerk or officer may sustain by such failure or refusal, together with costs, to be recovered by action on the case in the circuit or chancery court.

Tenn. Code Ann. § 66-22-113. (Emphasis added). As such, this statute establishes liability for any *notary public* who fails to comply with and discharge the duties associated with that position. Since none of the REO Defendants acknowledged the documents in this capacity, the Court finds that this statute does not apply. The Court therefore dismisses these claims.

Civil Conspiracy

All the Taxpayer Plaintiffs assert a claim of civil conspiracy against REO Defendants. “A civil conspiracy is an agreement between two or more persons to do an unlawful act or to do a lawful act in an unlawful way.” *Trau-Med of Am., Inc.*, 71 S.W.3d at 703; *Chenault v. Walker*, 36 S.W.3d 45, 52 (Tenn. 2001). “[I]t is a derivative claim that requires the existence of an underlying tort or wrongful act committed by one or more of the conspirators in furtherance of the conspiracy.” *Forrester v. Stockstill*, 869 S.W.2d 328, 330 (Tenn. 1994); *Tenn. Publ’g Co. v. Fitzhugh*, 165 Tenn. 1, 5-6, 52 SW.2d 157, 158 (1932); *Levy v. Franks*, 159 S.W.3d 66, 82 (Tenn. Ct. App. 2004). “The elements of a civil conspiracy claim are: (1) an agreement between two or

more persons, (2) to engage in some concerted action either for an unlawful purpose or for a lawful purpose by unlawful means, (3) the commission of a tortious or wrongful act by one or more of the conspirators, and (4) resulting injury or damage to person or property.” *Kincaid v. Southtrust Bank*, 221 S.W.3d 32, 38 (Tenn. Ct. app. 2006); *Kirksey v. Overton Pub., Inc.*, 739 S.W.2d 230, 236-37 (Tenn. Ct. App. 1987).²

The REO Defendants contend that none of the Taxpayer Plaintiffs can establish this claim because they cannot establish a predicate tort. However, the Court has detailed the claims the Taxpayer Plaintiffs brought in this action against the REO Defendants, as well as the facts proffered to support them. At least one predicate tort claim is going forward as to each Taxpayer Plaintiff. Therefore, the Court declines to dismiss these causes of action brought by the Taxpayer Plaintiffs.

Fraudulent Transfer of Assets

All the Taxpayer Plaintiffs assert a claim of fraudulent transfer against REO Defendants. Specifically, the Taxpayer Plaintiffs allege that Defendants Walker and Johnson fraudulently conveyed the properties at issue to Defendant Green Wise, LLC, a company owned by Defendant Walker and Defendant Johnson. The Uniform Fraudulent Transfer Act is codified in Tennessee at Tenn. Code Ann. § 66-3-301, *et seq.* (“the UFTA”). Section 305 of the UFTA creates a cause of action by a creditor against a debtor who transfers property with the intent to hinder, delay or defraud the creditor. REO Defendants contend that Taxpayer Plaintiffs cannot recover on this claim unless they establish that Defendants Walker or Johnson are liable to them on one of their direct claims. As detailed above, the Court finds that Taxpayer Plaintiffs have presented sufficient proof on their direct claims against REO Defendants, and, therefore, the Taxpayer Plaintiffs have

² This is largely a reiteration of citations included in the July 6, 2018 Order in this matter, citing as the primary source *Stanfill v. Hardney*, No. M2004-027868-COA-R3-CV, 2007 WL 2827498, **7-8 (Tenn. Ct. App. Sept. 27, 2007).

presented sufficient proof to meet their burden at summary judgment and thus declines to dismiss these claims.

CONCLUSION

The Court DENIES the REO Defendants' summary judgment as to the remaining claims brought by the Taxpayer Plaintiffs against them other than the trespass claim brought by Taxpayer Plaintiff Chambers and the claims brought by all Taxpayer Plaintiffs pursuant to Tenn. Code Ann. § 66-22-113. Those claims are DISMISSED. Additionally, Chambers' and Irvin's theft of property claims were previously DISMISSED and remain as such. All other claims will proceed to trial on September 13, 2021.

It is so ORDERED.



ANNE C. MARTIN
CHANCELLOR
BUSINESS COURT DOCKET
PILOT PROJECT

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