

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS, FLORIDA
CIVIL DIVISION**

ENCORE BANK, NATIONAL
ASSOCIATION

Plaintiff/Counterdefendant,

v.

REZA YAZDANI,

Defendant/Counterclaimant.

Case No.: 12-CI-1711

Division: 13

**FINAL JUDGMENT IN FAVOR OF COUNTERCLAIM DEFENDANTS
ENTERED AFTER TRIAL ON COUNTERCLAIM COUNTS IV & V ONLY**

THIS CAUSE came on to be heard on August 7, 2014, September 30, 2014, and October 2, 2014, at a Bench Trial on Counterclaim Counts IV & V. The Court severed the Trial of those two Counterclaim Counts at the request of, or with the consent of, all of the parties. This Court now makes the following findings:

1. The Counterclaimants have shown no factual or legal basis to reform the September 22, 2010 Release (the "Release"), as may apply to either or both Counterclaimants' claims against Stewart Title Guaranty Company ("STGC") or any of the other Hillsborough County Lawsuit Defendants. The Counterclaimants failed to establish that:

a) any prior agreement was reached to "carve out" from the scope of the Release the Counterclaimants' claims against any of the four Hillsborough County Lawsuit Defendants,

b) the existence of any drafting or scrivener's error in the Release involving any "carve out" language, and

c) when the Counterclaimants signed the Release, they were unaware that the Release included the language releasing claims against Encore Bank's "agents" and "counsel," which the Counterclaimants now seek to have stricken from the Release.

Instead, the proofs presented at Trial established that there was no mutual mistake as to the Release. The testimony proved that the attorney for Encore Bank drafted the release and purposely included the broad general release language. The Counterclaimants' own evidence revealed the fact that before executing the release the Counterclaimants considered the possibility that the broad release language might be interpreted to include certain named defendants in the Hillsborough litigation but the Counterclaimants specifically decided not to request any changes to the release language.

2. As to the Declaratory Relief Claim in Counterclaim Count V, there is no factual or legal basis that would provide the Counterclaimants with any right to obtain a declaration in this court as to whether or not the September 22, 2010 Release was intended, as drafted, to release a "narrow class of actors and not STEWART TITLE, TITLE ONE, LEROY ALLEN, and SCOTT BARONE, as to closing and insurance coverage issues. . ." Swan's claims against those individuals and entities, and the meaning and effect of the Release on such claims, are already being addressed, or should have been raised, in the earlier-filed, still-pending Hillsborough County Lawsuit. (Quoted language taken from Counterclaim Count V). Although it is abundantly clear that the Counterclaimants did not intend to release those defendants in the pending Hillsborough litigation the appropriate adjudication of the scope and effect of the release on those parties and claims can only be adjudicated by the Circuit Court in and for the Thirteenth Judicial Circuit where the cause is pending.

The Court has been advised in the premises and, accordingly, it is,

ORDERED, ADJUDGED, and DECREED that:

1. Counterclaimants Reza Yazdani and Swan Landing Development, LLC shall take nothing by or thorough those Counts IV & V of their Counterclaim, and as to those two Counterclaim Counts, Counterclaim Defendants Encore Bank and Stewart Title Guaranty Company shall go hence without day.

2. This Order shall not constitute an adjudication as to any claims bought through Encore Bank's Complaint or as to any other Counts in the Counterclaim.

3. This Court shall reserve jurisdiction over Counterclaim Counts IV and V, so that Stewart Title Guaranty Company or Encore Bank (n/k/a Cadence Bank) may bring Motions for Costs as to those two Counts.

17th DONE AND ORDERED in Chambers, in St. Petersburg, Pinellas County, Florida on this day of November, 2014.


Anthony Rondolino, Circuit Judge

Copies to:

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