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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Martha A. McNair, an individual, Plaintiff, vs. Maxwell & Morgan, P.C., an Arizona professional corporation; Charles E. Maxwell and Jane Doe Maxwell, husband and wife; W. William Nikolaus and Jane Doe Nikolaus, husband and wife, Defendants.	No. **COMPLAINT**

Plaintiff Matha A. McNair ("McNair") make the following allegations for her Complaint against Defendants in this matter:

PARTIES AND JURISDICTION

1. McNair is a resident of Arizona.

2. Defendant Maxwell & Morgan, P.C., is an Arizona law firm regularly engaged as a "debt collector" as that term is defined in the Fair Debt Collection Practices Act.

3. Defendant Charles E. Maxwell is a resident of Arizona. Defendant Charles E. Maxwell is an Arizona lawyer regularly engaged as a "debt collector" as that term is defined in the Fair Debt Collection Practices Act. At all relevant times, Defendant Charles E. Maxwell

acted on behalf of his marital community and his spouse, Defendant Jane Doe Maxwell, is named herein on that basis. McNair will amend the Complaint when the true name of Jane Doe Maxwell is ascertained.

4. Defendant W. William Nikolaus is a resident of Arizona. Defendant W. William Nikolaus is an Arizona lawyer regularly engaged as a "debt collector" as that term is defined in the Fair Debt Collection Practices Act. At all relevant times, Defendant W. William Nikolaus acted on behalf of his marital community and his spouse, Defendant Jane Doe Nikolaus, is named herein on that basis. McNair will amend the Complaint when the true name of Jane Doe Nikolaus is ascertained.

5. This is an action brought pursuant to the Fair Debt Collection Practices Act (the "Act"), 15 U.S.C. § 1692, *et seq.* At all relevant times, McNair was a "consumer" within the meaning of the Act and Defendants were "debt collectors" within the meaning of the Act.

6. Defendants are present in Arizona and/or caused events to occur and committed actions in Maricopa County, Arizona, which are the subject of this Complaint.

7. Jurisdiction exists pursuant to 28 U.S.C. § 1331.

8. Jurisdiction and venue are proper in this Court.

GENERAL ALLEGATIONS

9. On or about August 3, 2004, McNair acquired the real property located at 1144 East Temple Court, Gilbert Arizona 85296 (the "Property").

10. The Property is part of the Neely Commons Phase 1 subdivision and is subject to a declaration of covenants, conditions, and restrictions (the "Declaration"), which includes an obligation on the Property owner to pay assessments to the Neely Commons Community Association (the "Neely Commons HOA"), which total approximately $450.00 annually.

11. At all relevant times, Defendants represented the Neely Commons HOA with respect to the collection of assessments that McNair allegedly owed to the Neely Commons HOA.

12. On December 21, 2009, Defendants filed suit in the Maricopa County Highland Justice Court, at case no. CC2009-723602, on behalf of the Neely Commons HOA against McNair seeking to recover $697.00 of alleged unpaid assessments (the "First Lawsuit").

13. McNair was not represented by counsel in the First Lawsuit.

14. On or about November 22, 2010, Defendants obtained a judgment in the First Lawsuit for a total amount of $1,466.80, which was made up of $170.00 in costs, $300.00 in attorneys' fees, and $996.80 in principal (the "First Judgment").

15. On or about April 30, 2012, Defendants filed suit again on behalf of the Neely Commons HOA and against McNair, this time in the Superior Court of Arizona in and for Maricopa County, at case no. CV2012-093147, seeking to foreclose McNair's interest in the Property and recover $4,027.24 of alleged unpaid assessments (the "Second Lawsuit").

16. Upon information and belief, the $4,027.24 amount sought in the Second Lawsuit included the amounts that made up the First Judgment.

17. In an effort to resolve the Second Lawsuit, on or about June 27, 2012, McNair and Defendants signed a document entitled "Stipulation for Judgment on Foreclosure as to Defendant McNair" (the "Stipulation") and lodged a proposed order approving the Stipulation.

18. Defendants exclusively drafted the Stipulation.

19. On or about July 12, 2012, the Judge of the Superior Court signed the "Order Regarding Stipulation for Judgment."

20. The Stipulation provided, among other things, that Neely Commons HOA would not execute on any judgment if McNair made certain payments "commencing with and [sic] initial payment of $2,500.00 payment [sic] on or before July 5, 2012, and continuing in the minimum amount of $250.00 per month, to be received no later than the 15th of each month, and until the Judgment is paid in full, or within a period of twelve (12) months, whichever comes earlier."

21. Accordingly, the Stipulation contemplated twelve (12) payments, the first being due on or before July 15, 2013, and in the amount of $2,500.00,then eleven (11) more payments on or before the 15th of each month thereafter until the end of the twelve (12) month period, with the last payment being due on or before June 15, 2013.

22. McNair timely made the first eleven (11) payments totaling $5,000 under the pursuant to the Stipulation.

23. With the mailing of her eleventh payments in May 2013, McNair enclosed a letter requesting a written statement of the balance owed under the Stipulation.

24. This payment, as all others, and its letter requesting a statement of the balance owed, was addressed to Defendants.

25. Defendants never responded to this written request for the balance owed.

26. It was not until August 2013, after multiple follow-ups by McNair, that Defendants communicated with her. Even then, Defendants' communications with McNair failed to advise McNair of the balance owed and merely included a copy of the Stipulation and a request that McNair let them know what she intended to do.

27. In September 2013, McNair followed up again with Defendants making another written request for a statement of her account.

28. Defendants again refused to provide this statement, so McNair tendered payment of $275.74, which she believed was more than what was required under the Stipulation.

29. Despite receiving all amounts owed under the Stipulation, Defendants treated the Stipulation as if it were breached, and as if it were a valid, final judgment, and sought to execute on such.

30. On or about November 6, 2013, Defendants, on an *ex parte* basis, filed a *praecipe* and obtained a writ of special execution relating to the Stipulation to have the Property sold at a sheriff's sale.

31. Defendants knew or should have known that the Stipulation and its associated order was not a valid, final judgment and that they were not entitled to execute on the same.

32. The Stipulation also included numerous provisions that are contrary to the law, including, but not limited to, the following:

a. Reducing McNair's statutory redemption period after foreclosure from six (6) months to 30 days;
b. Giving the Neely Commons HOA the right to sell off all of McNair's personal property located inside the Property and waiving her personal property exemptions under A.R.S. § 33-1121 *et seq.*, which is statutorily prohibited by A.R.S. § 33-1132;
c. Authorizing McNair's eviction from the Property without any adherence to Arizona law regarding evictions and/or Due Process; and
d. Awarding unadjudicated future assessments, attorneys' fees, and costs.

33. Defendants knew or should have known that these various provisions were contrary to the law, but chose to include them in the Stipulation that they exclusively drafted, filed with the Superior Court, and executed on.

34. On or about November 6, 2013, a writ of special execution that was exclusively drafted by Defendants was issued by the Superior Court ordering, among other things, the Property to be sold at a sheriff's sale.

35. The writ of special execution that Defendants had issued also included additional amounts that were not owed under the Stipulation or ever approved or awarded by the Superior Court, including, but not limited to, costs, attorneys' fees, assessments, interest, and late fees.

36. The writ of special execution that Defendants had issued was further overstated by Defendants' failure to properly credit all payments that Plaintiff made under the Stipulation.

37. On or about January 9, 2014, the Maricopa County Sheriff conducted a sheriff's sale and sold the Property to Hoff Houses, LLC, who made the highest bid, which was $75,000.00.

38. The Sheriff has not recorded a Sheriff's Deed conveying the Property to the purchaser at the Sheriff's sale.

39. McNair had approximately $100,000 in equity in the Property that she has lost due to Defendants' actions.

40. Defendants actions, as alleged above, violate the Fair Debt Collection Practices Act. Specifically, but without limitation, Defendants falsely represented on at least one occasion the character, amount, and legal status of an alleged debt in violation of 15 U.S.C. § 1692e and otherwise used false, deceptive and/or misleading representations in connection with collection of an alleged debt in violation of 15 U.S.C. § 1692e as alleged above.

41. Defendants have used unfair and unconscionable means to attempt to collect an alleged debt in violation of 15 U.S.C. § 1692f for the conduct alleged above.

42. Specifically, but without limitation, Defendants have violated the Fair Debt Collection Practices Act, including, but not limited to, subsections (e), (f), and (g), by, among other things, (i) commencing a lawsuit to recover a debt that included amounts previously reduced to judgment; (ii) treating the Stipulation as a valid, final judgment and executing on the same; (iii) including multiple provisions in the Stipulation that were contrary to law; (iv) including amounts in the baseless writ of execution that Defendants had no right to collect; and (v) ignoring and/or otherwise refusing to the respond to McNair's written requests for the balance owed under the Stipulation.

43. McNair is entitled to statutory damages under the Act as well as her actual damages, which include but are not limited to (a) the attorneys' fees and costs she incurred; (b) the equity she had in the Property prior to losing it in Defendants' fraudulent foreclosure; (c) her actual damages for the mental and emotional distress, stress, aggravation and anxiety, and the

physical manifestations of such mental and emotional distress; (d) damage to her reputation; and (e) other damages to which she is entitled to by law.

44. McNair is entitled to an award of attorneys' fees pursuant to 15 U.S.C. § 1692k.

WHEREFORE, McNair prays for judgment against Defendants as follows:

(A) For her actual damages in an amount proven at trial, including but not limited to lost equity in the Property; damages for emotional distress, aggravation, and anxiety; damages to her reputation; attorneys' fees incurred in the underlying actions; compensatory damages and punitive damages; and all other damages as permitted by applicable law.

(B) For the maximum amount of statutory damages available under the Fair Debt Collection Practices Act.

(C) For an award of attorneys' fees and costs of this action.

(D) For all other damages available at law as discovery may reveal.

(E) Such other and further relief as the Court deems just and proper.

DATED this 24th day of April 2014.

DESSAULES LAW GROUP

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