

IN THE CIRCUIT COURT FOR SHELBY COUNTY, ALABAMA

TIA MARIE KENNEDY,

Plaintiff,

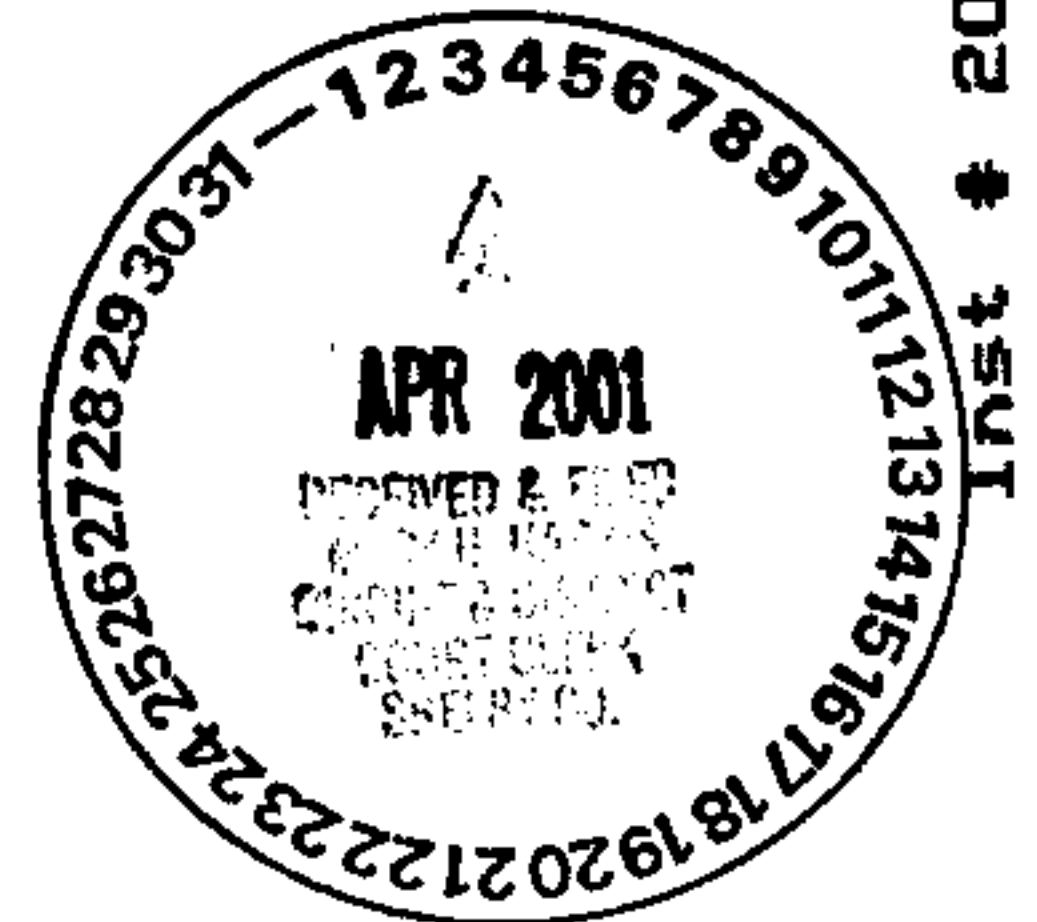
v.

HOWARD GRANT DUNNAM, JR.,  
THE 133 HEATHER RIDGE TRUST;  
JOHN STANTON, et al.;

Defendants.

Civil Action Number:

CV 00-1043



ORDER OF JUDGMENT

This cause came before the Court for hearing on March 6, 2001 for purposes of the following:

1. For the Court to conduct a hearing and make all necessary inquiries relating to the facts of the case, particularly with respect to the liability of the Defendants, and the injuries and damages to the Plaintiff with respect to her claims for negligence, breach of contract, and fraud;
2. For the Court to conduct a hearing and make all necessary inquiries relating to the facts of the case, particularly with respect to Plaintiff's request for permanent injunctive relief;
3. For the Court's entry of an appropriate Order of Judgment.

SUMMARY OF PROCEEDINGS AND HEARING

The Court has conducted a hearing in open Court to become familiar with all

the facts and circumstances relating to the nature of the Plaintiff's claim, and in particular, the Plaintiff's claim for negligence, breach of contract, fraud, and request for permanent injunctive relief.

Appearing before the Court were the Plaintiff, Tia Marie Kennedy, and her husband, John Kennedy, represented by Tom Burgess; the Defendant, John Stanton, *pro se*, and pursuant to adoption of the Court's previous hearing and transcript, Sandra Stephens, an officer or employee of First Federal Bank, and attorney James Williams representing First Federal Bank, and Linda and Jack Gamel, witnesses. The Defendants Howard Grant Dunnam, Jr. and the 133 Heather Ridge Trust did not appear before the Court.

The parties and witnesses before the Court were sworn and a record of the proceedings was made. Testimony was taken from the parties and witnesses, and Exhibits 1-12, which were offered in the previous hearing before this Court concerning the Plaintiff's Request for Preliminary Injunctive Relief, were again offered by the Plaintiff and received. In the course of these proceedings, the Court became familiar with the issues in the case and has made the following findings based on the testimony and the exhibits:

1. The Defendant, Howard Grant Dunnam, Jr. approached the Plaintiff during the month of December, 1999 as a potential purchaser of her homestead at 133 Heather Ridge Drive, Pelham, Alabama, said homestead having been placed on the

market by Plaintiff for sale. The Plaintiff did not previously know Howard Grant Dunnam. Dunnam represented to the Plaintiff that he could purchase her home with the ownership rights to be transferred to a trust to be called the 133 Heather Ridge Drive Trust. It was further represented that Dunnam would give to the Plaintiff an installment note in the amount of \$18,000.00 to be paid monthly at the rate of \$196.14 until paid in full, and further, the Defendant would offer \$3,000.00 additional cash, of which the cash and the total amount of the installment note to equal an agreed upon value of the equity in Plaintiff's home.

2. Harold Grant Dunnam, Jr. represented to the Plaintiff that in the event she agreed to sell the residence pursuant to the terms set out immediately above, Dunnam would process all paperwork and any other details which would completely and totally absolve the Plaintiff from any further mortgage payment obligations to First Federal Bank, which held the mortgage to Plaintiff's property, with all future and remaining payments to be made by the Defendant, Dunnam. Dunnam represented that he had done this many times before without any problems whatsoever.

3. Plaintiff agreed to the terms of the offer of the sale of her residence, and executed a warranty deed purportedly transferring ownership to the 133 Heather Ridge Trust. These documents were offered and accepted as exhibits and comport with the testimony offered by the Plaintiff and witnesses.

4. Shortly after the purported sale of the residence by Plaintiff to Dunnam

a/k/a the Trust, Dunnam approached the Defendant John Stanton with an offer of a lease/sell of the Plaintiff's residence. The terms of the Lease/Sell, which were agreed upon by Mr. Stanton, and included in a purported contract executed by Stanton and Dunnam and made an exhibit in the prior hearing, required Stanton to pay to Dunnam \$1,568.00 per month after an initial down payment of \$7,000.00, which was, in fact, paid to Dunnam. The evidence presented before the Court was that Stanton has made regular payments to Dunnam since December, 1999, up to the time of the first hearing. Stanton did not know Dunnam prior to the sale arrangements, and did not learn until a short time before the filing of Plaintiff's Complaint that there were any alleged unlawful or illegal issues with respect to the Lease/Sell Agreement, or otherwise, with respect to Stanton's occupancy of the Heather Ridge Drive property.

5. Dunnam made the first five or six payments on the installment note to the Plaintiff and mortgage payments to First Federal in the amount of approximately \$1,250.00 per month. Thereafter, and up to the time of this proceeding, Dunnam has paid four months on the mortgage payment to First Federal and four months on the installment loan. First Federal notified Plaintiff when payments became overdue, and after repeated requests by the Plaintiff to Dunnam by telephone and by letter, Dunnam failed and refused to make any further payments. The failure of the regular payments to First Federal prompted calls and correspondence between Plaintiff and First Federal, after which Plaintiff became aware that First Federal had not and would not



accept the purported Trust, nor the warranty deed or any other document which Dunnam had represented would absolve Plaintiff from any further mortgage liabilities. Without making said payments over the past four months, First Federal could have exercised a right of foreclosure. Plaintiff has made all overdue payments to First Federal and is otherwise current on said mortgage, having paid over \$5,000 to keep it current.

6. In dealing with First Federal, Plaintiff learned of the alleged fraudulent scheme perpetrated by Dunnam. Plaintiff made efforts in communicating with Dunnam to rescind all documents previously executed, and notified him that she would willingly consider all executed documents void, take the house back and resume all payments on the house.

Meanwhile, Plaintiff made contact with the present occupant, John Stanton, who then became aware of the alleged fraudulent scheme perpetrated by Dunnam. Dunnam continued to collect monthly lease/sell payments from Stanton through October, 2000.

Based upon the following considerations and factual findings and the testimony and documentary evidence before the Court, including the exhibits and testimony introduced and admitted in the prior hearing concerning the Plaintiff's Request for Preliminary Injunctive Relief, it is the opinion of the Court that the proposed relief requested by the Plaintiff is due to be granted.

**THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND  
DECREED AS FOLLOWS:**

1. That Plaintiff's Request for Injunctive Relief is hereby declared permanent and,
2. Plaintiff is awarded \$12,155.43 in compensatory damages. Plaintiff's compensatory damages consist of the following: a) \$1,176.84, representing monthly installment payments on Defendant Dunnam's \$18,000 promissory note to Plaintiff; b) \$4,063.59, representing mortgage payments on Plaintiff's homestead for July, August, and September 2000; c) \$6,800 in attorneys' fees; and d) check payment of \$115.00.
3. As a result of the above mentioned acts of Defendant Dunnam, Plaintiff suffered physical sickness when she discovered that her monthly payments had not been made to First Federal and foreclosure proceedings could soon result. Plaintiff took medication for her upset stomach and was personally injured and damaged as a result of Defendant's actions.
4. Considering all the evidence before the Court, the Court finds the Defendant guilty of negligence, recklessness, and intentional misconduct, including actual and legal fraud, as contemplated by Ala. Code §§ 6-5-100, 6-5-101, 6-5-102, 6-5-103, and 6-5-104.
5. The Court, having considered the wrongful nature of Defendant

Dunnam's conduct specifically finds that Dunnam's conduct was of a degree and type warranting punitive damages under Alabama law. Therefore, this Court makes a finding for punitive damages, pursuant to and consistent with Alabama Code §6-11-21, in the amount of \$36,465, which is based on a multiplier of three times the proven compensatory damages.

6. This Court finds that the lease agreement between Robert Stanton and Plaintiff is hereby declared void *ab initio*.

Ordered and done this 3<sup>rd</sup> day of April, 2001.



J. Michael Joiner  
Circuit Judge

Inst # 2001-16277

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