

Probate

Inst # 2000-42818

IN THE CIRCUIT COURT FOR SHELBY COUNTY, ALABAMA

TIA MARIE KENNEDY,

Plaintiff,

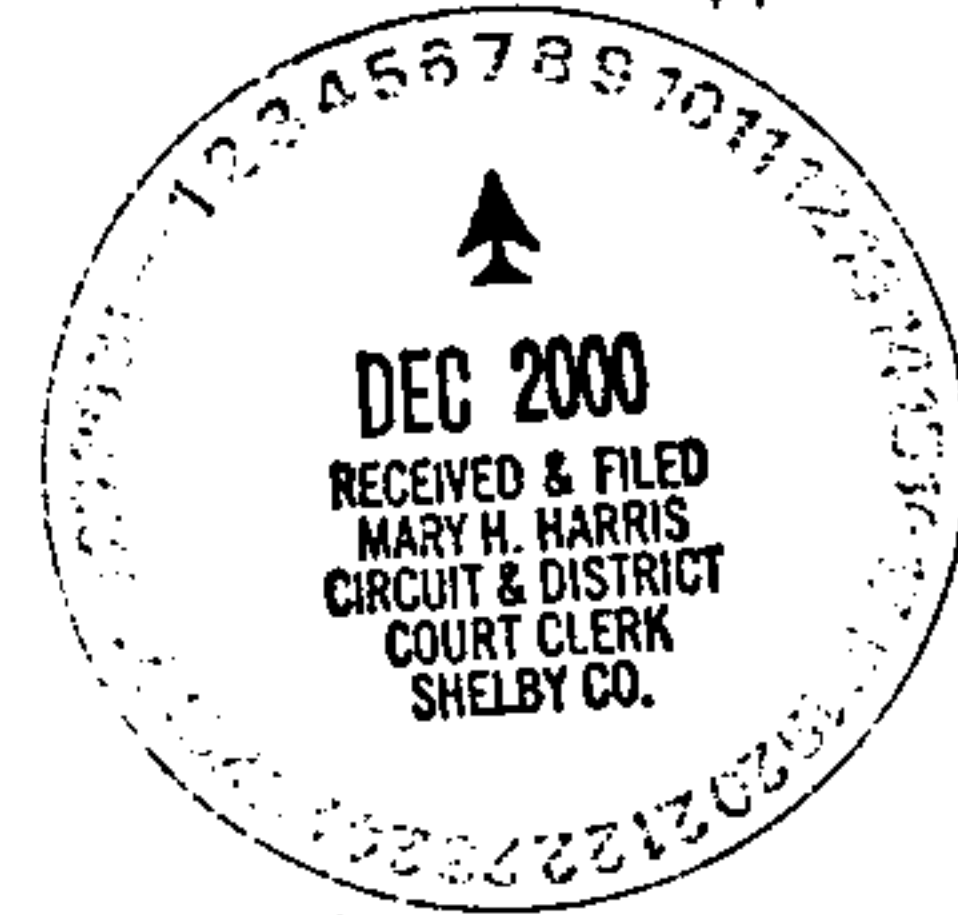
v.

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 November 20, 2000 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 Plaintiff's Petition for Temporary Restraining Order, or alternatively, for Preliminary Injunction;
2. For the Court's consideration of the facts including the alleged liability of the Defendants, the alleged injuries and damages to the Plaintiff, if any, which may be involved in this cause;
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 Petition for Temporary Restraining Order, or alternatively, for Preliminary Injunction. Appearing before the Court were the Plaintiff, Tia Marie Kennedy, and her

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husband, John Kennedy, represented by Tom Burgess; the Defendant, John Stanton, *pro se*, Sandra Stephens, an officer or employee of First Federal Bank, and attorney James Williams representing First Federal Bank, and Linda and Jack Gamel, witnesses.

Prior to taking testimony in the case, the Court discussed with the unrepresented Defendant, John Stanton, his right to have an attorney present and further, that depending upon the evidence presented, a finding or order may be rendered by this Court which may be detrimental to Mr. Stanton's interest. The Court became satisfied that Mr. Stanton understood the nature of the issues and the possibility of an Order which may be detrimental to him, and with this understanding, Mr. Stanton did not object to the proceedings.

The Defendants Howard Grant Dunnam, Jr. and the 133 Heather Ridge Trust did not appear before the Court. Plaintiff counsel represented to the Court that notice of the time of this hearing was mailed to these Defendants and in addition, notice of the time and place of the hearing was served and placed upon the door of the Defendants' physical property residence.

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 were 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 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 was agreed upon by Mr. Stanton, and included in a purported contract executed by Stanton and Dunnam and made an exhibit in these proceedings, 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 this 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.

6. Plaintiff has requested in its Petition before the Court that the Court cause a constructive trust to be created wherein Stanton will pay the \$1,568.00 monthly "rent" payments directly to the Plaintiff, and Plaintiff will maintain her mortgage with First Federal, this to be done until there is a further and final hearing on the issues presented herein. Plaintiff has further requested the Court to cause a notice of this proceeding to be filed with the Probate Court of Shelby County to offer some protection to Plaintiff to avoid any further encumbrances upon the 133 Heather Ridge property.

Based upon the following considerations and factual findings based on the testimony and documentary evidence before the Court, 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 Petition for Temporary Restraining Order, or alternatively, for Preliminary Injunction is GRANTED and,

2. That the Court orders a constructive trust be created for receipt of \$1,568.00 per month to be paid by the Defendant John Stanton to the Plaintiff until such time as otherwise directed by this Court and,

3. That the Defendant(s) is/are hereby ordered to refrain from any exercise or activity that will in any way create an encumbrance upon the 133 Heather Ridge property and,

4. That the Defendant, Dunnam, is ordered to produce to the Plaintiff a complete true and correct copy of the trust document purportedly executed on or about the time of the purported sale of Plaintiff's residence to Dunnam and/or the trust, and,

5. That the Defendants may petition this Court for a further hearing with respect to the matters and things set forth herein, within ten (10) days of the date of this Order and,

6. That this case shall be placed on this Court's trial docket for further proceedings pursuant to the Court's general trial schedule and,

7. That the Clerk of the Court is directed to file a copy of this Order in the Probate Court of this County.

Ordered and done this 7th day of December, 2000.


J. Michael Joiner
Circuit Judge

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