

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re:

CONNIE S. WEIRICH, : Case No. 04-21667T
Debtor(s) :

CONNIE S. WEIRICH, :
Plaintiff(s) :

v. : Adv. No. 04-2436

FIRST BANK NATIONAL ASSOCIATION
TRUST, U/A Dated March 1, 1997 (EQCC :
Home Equity Loan Trust 1997-1), and
FREDERICK L. REIGLE, Chapter 13 Trustee, :
Defendant(s) :

ORDER

AND NOW, this 31st day of January, 2006, it is ORDERED that JUDGMENT ON THE COMPLAINT¹ IS ENTERED IN FAVOR OF DEFENDANT, First Bank National Association Trust U/A Dated March 1, 1997 (EQCC Home Equity Loan Trust 1997-1) (“Defendant”) AND AGAINST PLAINTIFF as the Court finds that: (1) the mortgage foreclosure judgment entered by the Lancaster County Court of Common Pleas against Plaintiff and her non-debtor husband, Ronald S. Weirich, on November 17, 2003 (Docket No. CI-03-06521) is entitled to full faith and credit and is protected the doctrine of claim preclusion (also known as res judicata), and as a result, Plaintiff is prohibited from attacking the validity of the mortgage and judgment, Morris v. Jones (In re Jones), 329 U.S. 545. 550-51 (1947)(“a judgment of a court having jurisdiction of the parties and of the

1. This “Speaking Order” constitutes the Findings of Fact and Conclusions of Law mandated by Fed. R. Bankr. P. 7052, which makes Fed. R. Civ. P. 52 applicable in adversary proceedings in bankruptcy cases.

subject matter operates as res judicata, in the absence of fraud or collusion, even if obtained upon a default”); Garafano v. Trustees of Amalgamated Ins. Fund (In re Garafano), 99 B.R. 624, 629 (Bankr. E.D. Pa. 1989)(“where a valid judgment is rendered by a court of competent jurisdiction, res judicata, also known as claims preclusion, prevents a party from asserting a claim or defense which could have been asserted in the first action in any subsequent proceeding. ... Absent some showing of fraud, res judicata applies to a judgment obtained by default as well as to one entered after trial. ... Thus, res judicata will bar relitigation of a claim or defense regardless of whether such claim or defense was raised previously, so long as the debtor was afforded a fair opportunity to do so.”)²; and (2) in the alternative, Plaintiff is barred from attacking the validity of the mortgage by the doctrines of laches and equitable estoppel, Tudor Development Group, Inc. v. United States Fidelity & Guaranty Co., Inc., 768 F. Supp. 493, 495-96 (M.D. Pa. 1991); Sprague v. Casey, 520 Pa. 38, 550 A.2d 184 (1988);³ and (3) in the alternative, were we to reach the merits of the issues

2. Plaintiff has neither alleged nor established that the underlying state court default foreclosure judgment entered on November 17, 2003 by the Court of Common Pleas of Lancaster County in favor of Defendant and against Plaintiff and her husband, Ronald S. Weirich, (Docket No. CI-03-06521) was obtained through fraud or collusion and therefore, the judgment is entitled to full faith and credit and we must accord the judgment res judicata effect. Jones, 329 U.S. at 550-51; Garafano, 99 B.R. at 629.

3. Laches is an equitable doctrine which provides that if a plaintiff has failed to exercise due diligence in prosecuting his claim, to the detriment of the other party, the claim is barred. Tudor Development Group, Inc. v. United States Fidelity & Guaranty Co., Inc., 768 F. Supp. 93, 495 (M.D. Pa. 1991). To establish the defense of laches,

[t]he party asserting laches must show, first, a delay arising from the other party's failure to exercise due diligence, and second, prejudice from the delay.... It is not enough to show delay arising from failure to exercise due diligence; for ‘laches will not be imputed where no injury has resulted to the other party by reason of the delay.’ (citations omitted.).... Laches requires not only a passage of time, but also a resultant prejudice to the party asserting the doctrine.... (citations omitted.).... [and] is based on ‘some change in the condition or relations of the parties which occurs during the period the complainant unreasonably failed to act.’ (citations omitted.).... ‘[T]he burden of proof with respect to the doctrine [of laches] is upon the party asserting the defense; in order to meet this burden, the party alleging the delay must demonstrate prejudice.’ ... (citations omitted.).... ‘[D]elay

raised in this adversary proceeding, we would enter judgment on the Complaint in favor of Defendant and find that Plaintiff failed to meet her burden of proving the invalidity of the mortgage, In re Jones, 308 B.R. 223, 228 (E.D. Pa. 2003).⁴

Reading, PA

THOMAS M. TWARDOWSKI
United States Bankruptcy Judge

alone, no matter how long, does not itself establish laches.’.... (citation omitted).

...

Prejudice may, for example, be shown if relevant records have disappeared, if a key witness is now deceased, or cannot be located, or if the defendant changed his position based on the expectation that plaintiff did not intend to pursue the claim. (citations omitted).

Id. at 495-96.

Here, it is undisputed that the mortgage which Plaintiff seeks to invalidate was executed seventeen years ago. Plaintiff admits that she received a copy of the mortgage shortly after settlement and we note that, on its face, the mortgage appears to be properly executed by Plaintiff and her husband, Ronald S. Weirich, and properly witnessed, notarized and recorded. It was established on the record before us that Plaintiff and her non-debtor husband were delinquent in paying mortgage payments owed to Defendant on numerous occasions, which resulted in at least two mortgage foreclosure actions having been filed, the last of which ended with a default judgment being entered against Plaintiff and her non-debtor husband. The trial testimony also established that Plaintiff had many discussions with the holders of the mortgage over the past seventeen years, however, she never informed them that she believed that the signature of Ronald S. Weirich affixed thereto was not that of her husband, Mr. Weirich, or someone acting on his behalf. Moreover, as we noted earlier, the mortgage on its face appears to have been properly executed, witnessed, notarized and recorded. While Defendant did not produce at trial the individuals who signed the mortgage as witnesses to Mr. Weirich’s signature or the Notary who placed her official seal on the mortgage, it failed to do so because the mortgage was executed seventeen years ago and none of these individuals could be located. As a result, we conclude that Defendant has established that Plaintiff unreasonably delayed raising the issue concerning the authenticity of Mr. Weirich’s signature on the mortgage and that it has been severely prejudiced in defending against this adversary proceeding as a result of the delay. Accordingly, we find Plaintiff’s complaint barred by the doctrine of laches.

4. Plaintiff bears the burden of proving the invalidity of the mortgage. In re Jones, 308 B.R. 223, 228 (E.D. Pa. 2003). We find the testimony of Plaintiff, Connie S. Weirich, and the testimony of Plaintiff’s husband, Ronald S. Weirich, to be incredible. In addition, we note that Plaintiff’s expert witness, Carolyn Kurtz, conceded on cross examination that her opinion (based upon her review of copies of documents provided to her by Plaintiff) that the signature of Ronald S. Weirich that appears on the mortgage instrument is not authentic, was a qualified one.