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Predatory Lending issues hypo

Rutherford Taylor v. Mendacious Mortgage Co., et al

Rutherford Taylor is a 66 year old retired gardener whose only income consists of SSI benefits in the amount of \$623.00 per month. Mr. Taylor lives at 1555 Princeton, Memphis, TN in a small, wood frame house that he bought thirty-two years ago. The mortgage on the house was paid off in July, 2005 which enabled Mr. Taylor to go on and retire.

An ice storm hit Memphis in February, 2006 and Mr. Taylor's house sustained some roof damage when a tree limb bearing an accumulation of ice cracked and fell across the roof. Mr. Taylor called Avery Thomas, his insurance agent with Nullstate, who came out and looked at the house the first week in March. Shaking his head, he advised Mr. Taylor that his homeowner's insurance would NOT pay for the damage, because it was not covered under the "wind and hailstorm" clause, which reads as follows:

2. WINDSTORM OR HAIL

This peril does not include loss:

- a. to the property caused by rain, snow, sleet or other precipitation unless the direct force of wind or hail is the source of damage to the structure.

No written claim has been filed nor any written denial received concerning the claim.

Meanwhile, every time it rained, the damaged part of the roof leaked and Mr. Taylor feared that more and more damage was being done to the roof itself and the decking underneath. However, on his limited income, without the insurance coverage, he did not know how in the world he would be able to afford to have the roof repaired.

At the beginning of April, 2006 Mr. Taylor received a visit from Bobby Cartwright, with Louie's Home Repair. Mr. Cartwright said he had happened to be in the neighborhood, doing another job, and could not help noticing the damage to Mr. Taylor's roof. Mr. Cartwright said he could give Mr. Taylor a "free appraisal and estimate" that very day. Feeling that he needed to know the

extent of the damage and the approximate cost of repair, Mr. Taylor authorized Mr. Cartwright to inspect the roof. As a result of his inspection, Mr. Cartwright gave Mr. Taylor the following document (Exhibit A):

Exhibit A

LOUIE'S HOME REPAIR

*Licensed, Bonded & Insured
Improvement Contract and Disclosure Statement*

Proposal Submitted To) Phone) Date
) 558-3309)
)) 4/3/06

R. Taylor

Street Address) Job Location
1555 Princeton) Same
)

We hereby submit specifications and estimates for:

Tear Off Roof - Clear Job Site
Replace Damaged Decking
Replace Damaged Roof with 15 lb. Felt and
Reroof With 20 Yr Bond Fiberglass Shingles

We propose hereby to furnish material and labor - complete in accordance with the above specifications, for the sum of:

Five Thousand & Four Hundred Dollars and Zero Cents \$5,400.00

Payment to be made as follows: Down payment \$-0-, Balance \$5400.00 to be paid on completion of work.

Authorized Signature _____ **Bobby Cartwright** _____

Acceptance of Proposal - The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work specified. Payment will be made as outlined above.

Date of Acceptance April 3, 2006

Signature _____ Rutherford Taylor _____

Mr. Taylor told Mr. Cartwright that he lived on a fixed income and could not afford to pay \$5,000.00 to repair the roof.

Mr. Cartwright said that he understood and that he thought Louie's could offer easy financing terms and possibly even help Mr. Taylor apply for assistance with a program designed to help low-income elderly homeowners with their repair expenses. Mr. Taylor had read about such programs in the newspaper and was very relieved to learn that such assistance might be available. Mr. Cartwright told him that all he needed to do was to sign the above document, right next to the "X" and he would take it back to the office and get to work on applying for assistance for Mr. Taylor.

The very next day, April 4th, a crew from Louie's Home Repair arrived at 1555 Princeon first thing in the morning and proceeded to begin work on the roof. The work was completed before noon on April 6th.

On the afternoon of April 4th, Angel Upton and Claire Sinclair from Mendacious Mortgage came to Mr. Taylor's house. Ms. Upton explained that Mr. Taylor's case had been referred to her by Louie's Home Repair, and that she understood that he needed assistance in financing his roof repair. Ms. Upton helped him to fill out the top part of a credit application, but left the income area completely blank, saying she didn't need it because she could "just tell" that Mr. Taylor was an honest and upright gentleman. Worried, Mr. Taylor asked her, "Now what will this cost me?" Ms. Upton said, "Now, Mr. Taylor, we're just filling out this paperwork and it doesn't cost you a dime to do that, does it?" Mr. Taylor signed the Deed of Trust (Exhibit B), the Affidavit of Completion of Work (Exhibit C), the Federal Truth in Lending Disclosure Statement and the Notice of Right to Cancel (Exhibit D).

A coupon booklet from Mendacious Mortgage arrived about two weeks later, showing the first payment of \$239.00 due on May 1st. Shocked, Mr. Taylor called Mendacious Mortgage to ask what had happened to his application for mortgage assistance. Claire Sinclair advised him that there was no assistance, reminded him that Louie's Home Repair had fixed his roof already and told him that a check for \$5,400.00 had been paid to Louie's Home Repair on his behalf on April 5th. She further advised him that he had better make his payments or else face foreclosure on the house.

Mr. Taylor managed to scrape up his payment for May and June. In late June, MLGW threatened to cut off his utilities and he had to pay \$321.00 on July 1st to avoid that. He was therefore unable to pay the mortgage payment for July. He attempted to pay \$239.00 on August 1st, but Mendacious sent the payment back to him, saying he was in default and that they would

only accept the full amount owed, plus late charges. Mr. Taylor has not been able to get to the point where he can tender the full amount owed and is still behind in his mortgage.

To add to the misery, Mr. Taylor has noticed that every time there is a heavy rain, water is leaking through the ceiling in the back bedroom, right in the place where the roof was supposedly repaired. When he first noticed it around the end of May, he called Louie's Home Repair to see what could be done. Mr. Cartwright told him that Louie's NEVER warranted their roof repair jobs because "everyone knows how tricky roof repair is - you just never know where these leaks will pop up next."

Mr. Cartwright said that he could send a crew out to inspect and give Mr. Taylor an estimate on what it would take to repair this "new" leak, but that it would cost \$100.00. Mr. Taylor declined to have the roof inspected.

A few weeks later, Mr. Taylor read in the paper that Louie's was being sued by someone for defective work and that it had come out in the course of that lawsuit that Louie's was neither licensed nor bonded nor insured.

On December 31st, Mr. Taylor received the attached the correspondence from an attorney representing Mendacious Mortgage. Exhibit E).

It is now January 23rd and an extremely distraught Mr. Taylor is in your office. There is no way that he can raise the money necessary to avoid foreclosure. Is there anything he can do?

DEED OF TRUST

For and in consideration of One and No/100ths dollars (\$1.00), cash in hand paid to the undersigned, the receipt of which is hereby acknowledged, and other consideration hereinafter mentioned, **RUTHERFORD TAYLOR** has this day bargained and sold, and does hereby transfer and convey, to **DAN DAVIS, Trustee**, whose residence address is in Shelby County, Tennessee and his successors in trust, certain real property in Shelby County, Tennessee, described as follows:

Part of Lot 4, C.M. Freely Subdivision, Shelby County Tennessee, west of Pasternack Property; beginning at an iron stake in the north line of Princeton Road 576.3 feet westwardly from the east line of Rundleton Road at the west line of Pasternack Property as per book 667, page 1190, Register's Office, Shelby County, Tennessee; thence westwardly with the north line of Princeton Road 207 feet to a P.K. Nail; thence northwardly parallel to the west line of L.Pivnick lot 245 feet to a P. K. Nail; thence eastwardly parallel to Princeton Road 207 feet to an iron stake in the west line of the Pasternack Property; thence southwardly with said west line 245 feet to the point of beginning.

Being the same property conveyed by Warranty Deed of Record at instrument #J9-8487, in the aforesaid Register's Office.

Parcel #077-326-012

Property also known as 1555 Princeton, Memphis, TN.

Maximum principal indebtedness for Tennessee tax purposes is \$9377.17.

TO HAVE AND TO HOLD said property to the said Don Davis, Trustee, and his successors in trust, forever. I covenant that I am lawfully seized of the property, have a good right to convey it, and that the same is unencumbered.

THIS conveyance is made IN TRUST for the following uses and trusts, and for no other purpose:

**FEDERAL DISCLOSURE STATEMENT
REQUIRED BY
THE FEDERAL TRUTH IN LENDING ACT**

DATE April 5, 2006

LOAN NO. 06-1154

Lender's Name & Address:

Borrower's Name & Address:

MENDACIOUS MORTGAGE COMPANY
1818 Biteapple
Memphis, TN 38111

RUTHERFORD TAYLOR
1555 Princeton
Memphis, TN 38106

SCHEDULE OF PAYMENTS

This note is payable in 84 consecutive monthly payments. The first payment of \$239.00 is due May 1, 2006. The final payment of \$239.00 is due April 1, 2013.

LATE CHARGE: If payment is five (5) days late, you will be Charged 5 cents for each dollar, or part thereof, of the unpaid amount.

PREPAYMENT: If you pay off early, you will be entitled to a refund of part of the finance charge. You are not entitled to a refund of any part of loan processing fees.

PROPERTY

INSURANCE: You may obtain property insurance from anyone you want who is acceptable to Mendacious Mortgage Co.

SECURITY: You are giving a security interest in the real estate known as 1555 Princeton.

ASSUMPTION: Someone buying your property cannot assume the remainder of the mortgage on the original terms.

Exhibit D (cont.)

**FEDERAL DISCLOSURE STATEMENT
REQUIRED BY
THE FEDERAL TRUTH IN LENDING ACT**

Loan No. 06-1154

ITEMIZATION OF AMOUNT FINANCED:

Recording Fees	\$ 20.13
Title Insurance	150.00
Appraisal Fee	125.00
Louie's Home Repair	5,490.00
Broker Fee - Halo Realty	2,500.00
Legal Fee/Dan Davis, Atty	625.00
Loan Processing Fee	<u>467.04</u>
Total Amount Financed	\$ 9,377.17

ITEMIZATION OF FINANCE CHARGE:

Interest	\$10,698.81
Total Finance Charge	10,698.81

TOTAL OF PAYMENTS \$20,075.98

By executing this agreement, you acknowledge that you have read the front and back of this disclosure statement and acknowledge receipt of a completed copy prior to signing any loan documents. You further acknowledge the above disbursements are made in accordance with your instructions.

_____ Rutherford Taylor _____

Exhibit E

DAN DAVIS
ATTORNEY AT LAW

December 31, 2006

Mr. Rutherford Taylor
1555 Princeton
Memphis, TN 38103

RE: 1555 Princeton
Mortgagee: Mendacious Mortgage

Dear Mr. Taylor:

You are seriously delinquent on your mortgage! To avoid commencement of proceedings for foreclosure, you must tender the following by certified funds by no later than January 31, 2007 to avoid foreclosure sale of your property on February 1, 2007:

\$ 9250.04.	Accelerated principal balance
71.70	Late Fees
500.00	Legal Fees
100.00	Advertising
35.00	Appraisal and Inspection
<u>\$9,956.74</u>	Total

Yours truly,

Dan Davis

Dan Davis
Attorney at Law

xc: A. Upton
Mendacious Mortgage