

Supreme Court of Missouri
en banc

SC98432
SD36049

January Session, 2020

Realvest, Inc.,
Respondent,
vs. (TRANSFER)

Alla A. Zorikova,
Appellant.

Now at this day, on consideration of the Appellant's application to transfer the above-entitled cause from the Missouri Court of Appeals, Southern District, it is ordered that the said application be, and the same is hereby denied.

STATE OF MISSOURI-Sct.

I, Betsy AuBuchon, Clerk of the Supreme Court of the State of Missouri, certify that the foregoing is a full, true and complete transcript of the judgment of said Supreme Court, entered of record at the January Session, 2020, and on the 28th day of April, 2020, in the above-entitled cause.

IN TESTIMONY WHEREOF, I have hereunto set my hand and the seal of said Court, at my office in the City of Jefferson, this 28th day of April, 2020.



Betsy AuBuchon, Clerk

Christina Dunn, Deputy Clerk

Appendix #4
AZ

Missouri Court of Appeals
Southern District

No. SD36049

REALVEST, INC.,

)

Respondent,

)

vs.

)

ALLA A. ZORIKOVA,

)

Appellant.

)

FILED

MAR 20 2020

CRAIG A. STREET, CLERK
MISSOURI COURT OF APPEALS
SOUTHERN DISTRICT

ORDER

Now on this day, the Court takes up "Appellants Motion for Relief from Judgment," filed March 19, 2020. Having fully considered the same, the motion is denied.

cc: Alla A. Zorikova – mailed
Attorneys of Record

*Appendix #5
AZ*



Missouri Court of Appeals
Southern District

Division Two

REALVEST, INC.,)
)
 Plaintiff-Respondent,)
)
 v.) No. SD36049
) Filed: February 24, 2020
 ALLA A. ZORIKOVA,)
)
 Defendant-Appellant,)

APPEAL FROM THE CIRCUIT COURT OF CAMDEN COUNTY

Honorable Matthew P. Hamner, Circuit Judge

ORDER

(Before Bates, C.J., Scott, P.J. and Sheffield, J.)

AFFIRMED

PER CURIAM. The decision is unanimous, and all of the judges believe that no jurisprudential purpose would be served by a written opinion. Accordingly, the judgment is therefore affirmed in compliance with Rule 84.16(b), Missouri Court Rules (2019).

The parties have been furnished with a written statement, for their information only, which sets forth the reasons for this Court's decision.

Appendix 3

IN THE CIRCUIT COURT OF CAMDEN COUNTY, MISSOURI

REALVEST, INC.

Plaintiff,

v.

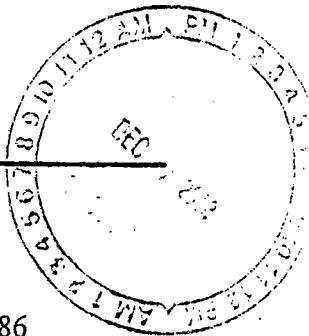
ALLA A. ZORIKOVA,

and

ALEXANDER M. DEMKIN,

Defendants.

Case No. 16CM-CC00086



FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

NOW ON THE 26th day of September, 2018, while the Circuit Court of Camden County, Missouri was in session, this case came before this court for trial. Plaintiff appeared by its corporate representative, Matt Romig, and by its counsel Zane G. Williams and Andrew J. Rehmer. Defendant Alla A. Zorikova appeared in person and pro se. Defendant Alexander M. Demkin appeared not. Parties announced ready for trial. Prior to presenting evidence, Plaintiff and Defendant Ms. Zorikova announced to the Court that the allegations against Defendant Demkin had been dismissed. Plaintiff presented evidence and rested. Defendant Ms. Zorikova presented evidence and rested. Each side made closing statements. The record was left open so that Defendant Zorikova could submit e-mails to the Court which she could not access during the trial. These e-mails were filed with the Court on September 28, 2018. Both parties submitted proposed Findings of Fact and Conclusions of Law, and the Court then took the matter under advisement.

Defendant Zorikova objected to the admission of Plaintiff's Exhibit 14 on the grounds that it contained excerpts from her deposition which was never signed or presented to her. The Court took that objection with the case. Although not signed, a deposition may be used at trial "unless, on a motion to suppress, the court holds that the reasons given for the refusal to sign require

rejection of the deposition in whole or in part." Lay v. St. Louis Helicopters Airways, Inc., 869 S.W.2d 173, 175 (Mo.App. E.D. 1993). Here, Defendant did not file a motion to suppress use of the deposition at trial. Defendant's objection is overruled and Exhibit 14 is admitted.

NOW THEREFORE, the Court takes up this matter and being duly advised in the premises, based upon the creditable testimony and other evidence presented, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Plaintiff, Realvest, Inc. ("Realvest") is a Nevada Corporation that is in good standing and has been registered to do business in Missouri with the Missouri Secretary of State.
2. On or about December 7, 2001, Realvest became the owner, via Warranty Deed, of the real property subject to this lawsuit more particularly described as lots, tracts or parcels of land, lying, being and situate in the County of Camden, State of Missouri, to-wit:

All that part of that certain tract of land in Section 30, Township 37 North, Range 15 West, Camden County, Missouri described in Warranty Deed filed at Book 525, Page 620 more particularly described as follows:

Commencing at a stone monumenting the southwest corner of Said Section 30; thence along the West line of said Section 30 N 01° 19' 12" E - 2617.46 ft. to an aluminum monument marking the position of the northeast corner of the southeast quarter of Section 25, Township 37 North, Range 16 West; thence continue along the West line of said Section 30, N 01° 31' 59" E - 1364.0 ft. to an iron pin monumenting the northwest corner of the South one half of Lot 2 of the northwest quarter of said Section 30; thence S 88° 46' 42" E - 3007.07 ft. to an iron pin monumenting the northeast corner of the South one half of Lot 1 of the northwest quarter of said Section 30; thence along the East line of the northwest quarter of said Section 30, S 0° 54' 42" W - 720.55 ft. to an iron pin; thence departing said quarter section line, S 63° 39' 31" W - 800.78 ft. to an iron pin monumenting the POINT OF BEGINNING for the herein described tract of land; thence continue S 63° 39' 31" W - 934.69 ft. to a point on the right of way line of a 50 ft. radius cul-de-sac for a Roadway and utility Easement; thence departing the right of way for said Easement, N 65° 17' 25" W - 678.38 ft. to a point on the southeast right of way line of another 50 ft.

wide Roadway and Utility Easement; thence N 60° 54' 21" W – 25.0 ft. to a point on the centerline of said Easement; thence along the centerline of said Easement N 29° 05' 39" E – 375.06 ft.; thence departing the centerline of the Roadway/Utility Easement, S 80° 49' 57" E – 1310.12 ft. to the point of beginning.

Containing in area 11.18 acres.

Subject to all rights of way, easements, restrictions, reservations and conditions of record and to all utilities as the same may now be located.

TOGETHER WITH: 50 FT. ROAD & UTILITY ESM'T. NO. 1 FOR: REALVEST, INC.

A 50 ft. wide Roadway and utility easement for purposes of ingress and egress and the installation and maintenance of utilities in Section 30, Township 37 North, Range 15 West, Camden County, Missouri lying 25 feet both sides of the following described centerline:

Commencing at a stone monumenting the southwest corner of said Section 30; thence along the West line of said Section 30, N 01° 29' 12" E – 982.54 ft. to its intersection with the centerline of County Road BB-35; thence departing the Section line along and with the centerline of the County Road, S 62° 43' 55" E – 30.63 ft. to the POINT OF BEGINNING for the Easement centerline; thence departing the centerline of County Road BB-35 along and with the Easement centerline on the following courses: N 01° 29' 12" E – 846.53 ft. to the point of intersection for a 28° 35' 44" degree curve to the right, the tangent length – 103.175 ft., the radius – 200.37 ft.; thence N 55° 58' 39" E – 587.94 ft. to the point of intersection for a 19° 50' 01" degree curve to the left, the tangent length – 80.012 ft., the radius – 288.88 ft.; thence N 25° 00' 54" E – 393.46 ft. to the point of intersection for a 19° 51' 09" degree curve to the right, the tangent length – 40.006 ft., the radius – 288.61 ft.; thence N 40° 47' 56" E – 234.57 ft. to the point of intersection for a 11° 42' 17" degree curve to the left, the tangent length – 50.007 ft., the radius – 487.88 ft.; thence N 29° 05' 39" E – 635.76 ft. to the point of intersection for a 09° 47' 47" degree curve to the right, the tangent length – 170.027 ft., the radius – 584.86 ft.; thence N 61° 30' 50" E – 534.62 ft. to the point of termination at the radius point of a cul-de-sac with a radius of 50 ft.; the rights of way for which extend 50 ft. all around said radius point and point of termination.

which is commonly known as 279 Quantrill Hollow, Montreal, Missouri ("the Property").

3. Prior to August 12, 2010, Realvest used an auction website, Billyland.com, to list the Property for sale with a purchase price of Thirty-Three Thousand Dollars (\$33,000.00).

4. On or about August 12, 2010, Defendant Alla A. Zorikova ("Ms. Zorikova") paid Four Hundred Dollars (\$400.00) to Realvest for the down payment on the Property.
5. Realvest contacted Ms. Zorikova to negotiate the payment of the remaining Thirty-Two Thousand Six Hundred Dollars (\$32,600.00) of the purchase price of the Property.
6. Realvest offered Ms. Zorikova four (4) options for the terms of a Deed of Trust and Promissory Note, to-wit: (1) four years with an interest rate of eight percent (8%); (2) eight years with an interest rate of eight percent (8%); (3) twelve years with an interest rate of twelve percent (12%); or (4) twenty years with an interest rate of twelve percent (12%).
7. Ms. Zorikova accepted Realvest's offer for the terms of the Deed of Trust and Promissory Note to be for a term of twelve (12) years and an interest rate of twelve percent (12%).
8. On or about November 24, 2010, Ms. Zorikova executed a Deed of Trust (Ex. 3A) and Promissory Note (Ex. 8A).
9. The Court finds the testimony of Debra Schleper that she witnessed and notarized Ms. Zorikova's signature on the Deed of Trust (Ex. 3A) and the Promissory Note (Ex. 8A) to be credible.
10. The Court finds that Ms. Zorikova is the person that executed the Deed of Trust (Ex. 3A) and the Promissory Note (Ex. 8A), as reflected in each document.
11. The Court finds that the Deed of Trust (Ex. 3A) was properly recorded with the Camden County Recorder of Deeds, and a certified copy of the recorded Deed of Trust was admitted into evidence as Exhibit 3.
12. Ms. Zorikova negotiated the terms of the Deed of Trust and Promissory Note and accepted said terms as written by signing said Deed of Trust and Promissory Note.

13. The Deed of Trust, (Ex. 3A), between Ms. Zorikova, as Grantor, and Realvest, as Grantee, provided in pertinent part as follows:

IN TRUST, however, to secure the faithful performance of the covenants and agreements herein contained and the payment to the said Party of the Third Part, its successors or assigns, of a note dated this date, of the sum of THIRTY-TWO THOUSAND SIX HUNDRED 00/100 DOLLARS (\$32,600.00), with interest thereon from Date at the rate of 12% per annum, said note being payable as follows: Payments of \$434.17 per month beginning on October 1, 2010, and continuing thereafter on the same day of each month until September 1, 2022, when the entire balance, both principal and interest, shall be due and payable at once. Both principal and interest shall be payable to the order of said Party of the Third Part at Payee's address listed above.

AND the said Party of the First Part does further covenant that she is lawfully seized of said premises, free and clear of all encumbrances; except as herein mentioned and will warrant and defend the same against the lawful claims of all persons whomsoever. AND the said Party of the First Part does further covenant to pay all taxes and assessments levied on said premises, before the same become delinquent, and if not so paid, the legal holder of said note may pay the same, and may redeem said premises from any tax sale, and may pay and discharge any other liens which may affect the title to said premises; and all moneys paid therefor, with interest thereon from the date of such payment at the maximum rate then allowed by law, shall be a lien on said premises and be secured by this Deed. AND the said Party of the First Part does further covenant to keep all buildings, fences, and other improvements on said premises in as good repair and condition as the same are in at this date, and abstain from the commission of waste on said premises. AND the said Party of the First Part does further covenant to maintain a policy of fire and casualty insurance, for the full insurable value of the above described property, with a company duly licensed to do business in the State of Missouri, showing the interest of Third Party and providing for 10 days notice of cancellation of the policy.

NOW, THEREFORE, if the said Party of the First Part shall pay said promissory note and the interest thereon, when due, and shall perform all and singular the covenants herein contained, then this Deed to be void and to be released at the expense of said Party of the First Part; but if default made in the payment of said promissory note when due, or of any installment of principal or interest or both principal and interest, or in the case of failure to perform any of the covenants herein contained, including, but not limited to the prompt payment of taxes, the whole sum of money hereby secured, shall, at the option of the legal holder of said note, become at once due and payable, and the said Party of the Second Part, or her successor in trust, shall be entitled to the immediate possession of said premises, and of the rents, issues, and profits thereof; and the said Party of the Second Part, or her successor in trust, may, at the request of the legal holder of said note, proceed

to sell said premises, or any part thereof, at the front door of the County Court House, in the County of Douglas, State of Missouri, at public venue, to the highest bidder, for cash, first giving not less than twenty (20) days' notice of such sale to such parties and in such manner as is then required by law, and upon such sale and the receipt of the purchase money, shall execute and deliver to the purchaser or purchasers thereof, a deed or deeds of conveyance in fee simple of the property so sold, which shall forever foreclose all the right and equity of redemption of said Party of the First Part in and to the said property, and any statement of fact or recital in such deed, shall be taken and accepted as *prima facie* evidence of the truth thereof; and out of the proceeds of such sale, the said Trustee shall pay, FIRST, the lawful costs and expenses of executing this trust, including a reasonable attorney's fee; SECOND, all money expended by the legal hold of said note by virtue of any covenant contained in this Deed, with interest thereon from the date of such payment at the maximum rate allowed by law; THIRD, the interest accrued on said note; FOURTH, the principal sum of said note; and FIFTH, rendering the surplus, if any, to the said Party of the First Part, their heirs or assigns, and for these purposes the term assigns shall be deemed to refer to the holders of any obligations secured by subordinate mortgages or deeds of trust against the premises herein described....

AND IT IS FURTHER COVENANTED AND AGREED, that in case of foreclosure of this Deed by either judicial or non-judicial proceedings in any court, a reasonable attorney's fee for the Plaintiff shall be included in the judgment on such foreclosure.

AND IT IS FURTHER COVENANTED AND AGREED, that in the event Party of the First Part shall sell, agree to sell, or convey the premises herein described, or any part thereof, the whole sum due under the terms of the promissory note secured by this Deed of Trust shall, at the option of the holder thereof, become due and payable at once.

14. Plaintiff Realvest, Inc. is the legal holder of the Promissory Note (Ex. 8A), which was admitted into evidence.

15. The Promissory Note, (Ex. 8A), between Ms. Zorikova and Realvest provided in pertinent part as follows:

FOR VALUE RECEIVED, I, we, or either of us promise to pay to the order of REALVEST, INC., the sum of THIRTY-TWO THOUSAND SIX HUNDRED (\$32,600.00) with interest from the date at the rate of TWELVE per cent (12%) per annum, both principal and interest payable as follows: Payments of \$437.17 per month beginning October 1, 2010, and continuing thereafter on the same day of each month until September 1, 2022, when the entire balance, both principal and interest, shall be due and payable at once. Principal and interest shall be payable at

Payee's address as set forth on the deed of trust securing this note or at such other address as the holders hereof may, from time to time, designate in writing.

Each installment shall be first applied in the payment of the interest, and then on the unpaid balance of the principal sum.

The principal sum of this note and any unpaid interest shall bear interest after the same becomes due and payable at the rate of TWELVE per cent (12%) per annum until paid, and it is expressly understood that if default be made in payment of any installment or in case of failure to perform any of the covenants contained in the Deed of Trust securing this note, then at the option of the legal holder hereof, the said principal sum, with any interest due and accrued thereon shall become at once due and payable, without notice, and may be collected immediately; anything herein contained to the contrary notwithstanding. This note is given for an actual loan of the above amount, and is secured by a Deed of Trust of even date herewith, which is a first lien upon the property therein described.

In the event the makers of this note shall sell, contract to sell, or in any way transfer title of the property described in the deed of trust, the holders of this note, may, at their option, declare all unpaid principal and interest, due any payable at once....

Protests, notice of non-payment, and demand is hereby waived by each of the makers and endorsers of this note. I, we, or either of us further agree to pay all expenses of collection, including a reasonable attorney's fee, if this note is placed in the hands of an attorney for collection.

16. No credible evidence was presented that the Deed of Trust and Promissory Note, entered into on or about November 24, 2010, exceeded the maximum lawful interest rate in effect on said date.
17. No credible evidence was presented to establish the "market rate" in effect on or about November 24, 2010.
18. On or about December 8, 2010, Realvest, as Grantor, recorded a Warranty Deed (Ex. 2) conveying the Property to Ms. Zorikova, as Grantee.
19. On or before August 24, 2015, Ms. Zorikova failed to pay the Camden County real estate taxes for the Property, and those taxes were due and owing and in arrears.

20. On or about August 24, 2015, the Property was sold at the Camden County Tax Sale by the Camden County Collector.
21. On or about September 16, 2015, the Camden County Collector recorded a Certificate of Purchase (Ex. 5) with the Camden County Recorder of Deeds' Office conveying the Property to Matthew Paul Lehmann.
22. Realvest paid to redeem the Property from the tax sale.
23. The Court finds that Ms. Zorikova failed to make the installment payment of principal and interest due under the Deed of Trust (Ex. 3A) and the Promissory Note (Ex. 8A) in each of the following months: August 2013; December 2014; January 2015; February 2015; March 2015; and December 2015.
24. The Court finds the testimony of Matthew Romig credible as to Ms. Zorikova's payment history as shown in Exhibit 4.
25. On or about January 5, 2016, Realvest notified Ms. Zorikova that Realvest was accelerating the Deed of Trust and Promissory Note for non-payment of the monthly installments and failure to pay the taxes prior to said taxes becoming delinquent.
26. On or about March 4, 2016, Realvest notified Ms. Zorikova that she had missed four (4) payments and requested Ms. Zorikova pay off the full amounts owed under the Deed of Trust and Promissory Note.
27. On or about March 21, 2016, Realvest notified Ms. Zorikova that she had violated the covenants of the Deed of Trust and that Realvest was exercising its option under the Deed of Trust and demanding that Ms. Zorikova pay the entire amount due under the Promissory Note and Deed of Trust within seven (7) days.

28. On or about February 8, 2016, Ms. Zorikova executed a Deed in Trust – Warranty (Ex. 7) as Grantor and in favor of Vera A. Dmitrieva as Trustee under the provisions of a certain Trust Agreement dated December 17, 2015 and known as Chicago Title Hold Land Security Trust One Seven.
29. The Deed of Trust – Warranty (Ex. 7) conveyed the Property to Vera A. Dmitrieva, as Trustee.
30. Ms. Zorikova personally prepared the Deed of Trust – Warranty (Ex. 7) and the Trust Agreement (Ex. C).
31. The Trust Agreement (Ex. C) was not recorded with the Camden County Recorder of Deeds' Office.
32. Ms. Zorikova admitted that she did not maintain fire and casualty insurance on the Property for the entirety of her ownership.
33. The Court finds Mr. Romig's testimony to be credible as to the emails exchanged between the parties.
34. The Court finds Ms. Schleper's testimony to be credible as to the execution of the Promissory Note and Deed of Trust.
35. The Court finds Ms. Zorikova's testimony that she did not or may not have signed the Promissory Note and Deed of Trust to not be credible.
36. The Court finds that the last installment payment Ms. Zorikova made pursuant to the Deed of Trust (Ex. 3A) and the Promissory Note (Ex. 8A) was on or about November 6, 2015.
37. The Court finds that Ms. Zorikova breached the covenants of the Deed of Trust (Ex. 3A) and the Promissory Note (Ex. 8A).

38. The Court finds that Ms. Zorikova had breached the terms of the Deed of Trust and Promissory Note prior to her submission of partial payments in 2016.
39. The Court finds that Realvest exercised its option under the Deed of Trust (Ex. 3A) and the Promissory Note (Ex. 8A) and demanded Ms. Zorikova pay the entire balance of said note at once.
40. No credible evidence was presented that Realvest exercised its discretion to accelerate the entire balance of the Promissory Note and Deed of Trust in a manner contrary to good faith and fair dealing.
41. Realvest did not deny Ms. Zorikova the expected benefit of the Deed of Trust and Promissory Note.
42. Realvest's actions were authorized by Section 443.190, R.S.Mo., in that Realvest pursued its petition for judicial foreclosure to its authorized conclusion.
43. The Deed of Trust (Ex. 3A) contained a typographical error, to-wit: "Douglas" County.
44. The Court finds that Realvest filed its Petition for Judicial Foreclosure on or about April 21, 2016 seeking judgment against Ms. Zorikova for the debt owed on the Promissory Note; for the equity of redemption to be foreclosed; and for the mortgaged property to be sold to satisfy the amount due.
45. On or about August 11, 2016, Realvest filed its First Amended Petition for Judicial Foreclosure seeking judgment against Ms. Zorikova and Alexander M. Demkin for the debt owed on the Promissory Note; for the equity of redemption to be foreclosed; and for the mortgaged property to be sold to satisfy the amount due.

46. On or about December 28, 2016, Alexander M. Demkin executed a Quit Claim Deed (Ex. 13) as Grantor and Realvest, Inc., Grantee, conveying any interest Mr. Demkin may have in the Property to Realvest.

47. Realvest and Ms. Zorikova dismissed Mr. Demkin from the lawsuit, prior to trial.

48. There is no credible evidence that that Realvest had any evil motive or malice in pursuing its petition for judicial foreclosure against Ms. Zorikova.

49. There is no credible evidence that Ms. Zorikova suffered any injury as a result of Realvest's actions.

50. There is no credible evidence that the sole motivating factor for any of the behavior of Realvest was the infliction of emotional distress on Ms. Zorikova.

51. There is no credible evidence that Realvest intentionally or recklessly acted in an extreme or outrageous way which could be regarded as atrocious and utterly intolerable in civilized society. See *Thornburg v. Federal Express Corp.*, 62 S.W.3d 421, 428 (Mo. App. W.D. 2001).

52. There is no credible evidence that Realvest's conduct was so extreme as to be beyond all possible bounds of decency.

53. No evidence was presented at trial from any counselors, therapists, licensed social workers, or physicians as to Ms. Zorikova's emotional distress being medically diagnosable and of sufficient severity to be medically significant.

54. There is no credible evidence that Realvest caused Ms. Zorikova to suffer any medically significant or diagnosable emotional distress.

55. Ms. Zorikova's claim for emotional distress lacks any medical substantiation.

56. There is no credible evidence that Realvest published any false and defamatory statement regarding Ms. Zorikova.

57. The Court finds that the principal and interest due and payable under the Deed of Trust (Ex. 3A) and the Promissory Note (Ex. 8A) is Twenty-Two Thousand Thirty and 48/100 Dollars (\$22,030.48).

58. The Court finds that Realvest has incurred Thirty-One Thousand and 00/100 Dollars (\$31,000.00) in attorney's fees as a result of Zorikova's breach of the covenants of the Deed of Trust and Promissory Note.

59. The Court finds that based on the extensive litigation history in this case, Realvest's attorney's fees are reasonable. The Court notes Defendant Zorikova herself sought \$150,000.00 in legal fees for this action.

60. Plaintiff proved at trial by a preponderance of the evidence that Defendant Alla A. Zorikova breached the covenants contained in the Deed of Trust and Promissory Note.

61. Plaintiff Realvest, Inc. proved at trial by a preponderance of the evidence that Defendant Ms. Zorikova failed to pay the entire balance due and payable under the Deed of Trust and Promissory Note, in the amount of \$22,030.48.

62. Plaintiff Realvest, Inc. proved at trial by a preponderance of the evidence that it has incurred reasonable attorney's fees in connection with this suit in the amount of \$31,000.00.

63. Plaintiff Realvest, Inc. proved at trial by a preponderance of the evidence that it is entitled to a Judicial Foreclosure of the Deed of Trust (Ex. 3A).

64. Plaintiff Realvest, Inc. proved at trial by a preponderance of the evidence that Defendant Alla A. Zorikova's equitable right of redemption should be foreclosed and that the Property should be sold to satisfy the amount due and for Realvest, Inc.'s attorney's fees incurred.

65. Defendant Alla A. Zorikova failed to prove at trial by a preponderance of the evidence that Plaintiff Realvest, Inc. made an improper, illegal, or perverted use of process, which use was neither warranted nor authorized by the process.

66. Defendant Alla A. Zorikova failed to prove at trial by a preponderance of the evidence that Plaintiff Realvest, Inc. had an illegal purpose in filing the Petition for Judicial Foreclosure.

67. Defendant Alla A. Zorikova failed to prove at trial by a preponderance of the evidence that Plaintiff Realvest, Inc. acted willfully in an improper use of process.

68. Defendant Alla A. Zorikova failed to prove at trial by a preponderance of the evidence that Plaintiff Realvest, Inc. intentionally or negligently inflicted emotional distress to Defendant Alla A. Zorikova.

69. Defendant Alla A. Zorikova failed to prove at trial by a preponderance of the evidence that Plaintiff Realvest, Inc. breached the implied covenant of good faith and fair dealing.

70. There was credible evidence that Plaintiff Realvest, Inc. exercised the contractual provisions provided by the Deed of Trust and Promissory Note.

71. Defendant Alla A. Zorikova failed to prove at trial by a preponderance of the evidence that Plaintiff Realvest, Inc. exacted a greater rate of interest than the legal rate of interest. Usury is never presumed, and the burden of proof for the claim is on the party asserting it. Bahl v. Miles, 6 S.W.2d 661 (Mo. Ct. App. 1928).

72. Defendant Alla A. Zorikova failed to prove at trial by a preponderance of the evidence that she is entitled to her attorney's fees.

Conclusions of Law

73. Plaintiff is a mortgagee of real estate holding a security interest the Property, and the debt thereon exceeds \$50.00, and so Plaintiff is entitled to bring this action pursuant to § 443.190 RSMo.
74. As a mortgagee, Plaintiff is entitled to seek that the equity of redemption be foreclosed and the Property be sold to satisfy the amount due. § 443.190 RSMo.
75. The Property is located in Camden County, Missouri, and so this action is properly filed in this Court. § 443.200 RSMo.
76. Plaintiff is entitled to have the execution of this Judgment on the Property be a special fieri facias. § 443.270 RSMo.
77. Defendant shall have the right to redeem the Property at any time before the conclusion of the sale by paying the full amount owed under the Note, plus Plaintiff's reasonable attorneys fees, pursuant to § 443.400 RSMo.
78. For all of the foregoing reasons, the Court finds in favor of Plaintiff Realvest, Inc. on its Petition for Judicial Foreclosure and against Defendant Alla A. Zorikova and concludes Plaintiff Realvest, Inc. is entitled to judgment on that claim.
79. On the facts as this court has determined them to be, the court finds that Plaintiff Realvest, Inc. is entitled to judgment in its favor on all of Defendant Zorikova's Amended Counterclaims.

JUDGMENT

1. The Court does hereby enter Judgment in favor of Plaintiff and against Defendant Alla A. Zorikova in the amount of \$22,030.48 due and payable under the Deed of Trust and Promissory Note, plus reasonable attorney's fees in the amount of \$31,000.00.

2. The Court does hereby Order that the mortgaged Property be sold to satisfy that amount with any balance being paid to Defendant Alla A. Zorikova.
3. The Court does hereby Order that execution on said Judgment be special fieri facias pursuant to Section 443.270, R.S.Mo.
4. The Court does hereby Order that the Property be sold at the Camden County Courthouse by the Camden County Sheriff with not less than twenty days' notice.
5. The Court does hereby Order that the Sheriff of Camden County, Missouri publish notice as required by Section 443.320, R.S.Mo.
6. The Court does hereby Order that the Sheriff of Camden County, Missouri proceed to sell and convey the property and to pay off the debts and liabilities according to the directions of the Deed of Trust (Ex. 3A), and shall do all other acts as provided in the Deed of Trust (Ex. 3A).
7. Until the date and time of the sheriff's sale, Defendant Alla A. Zorikova may exercise her equitable right of redemption by paying to Plaintiff the full amount due and owing under the promissory note and deed of trust, plus Plaintiff's reasonable attorneys fees, for a total amount of \$53,030.48, in full satisfaction of this Judgment.
8. The Court orders and adjudges that the sheriff's sale of the Property shall terminate Defendant Alla A. Zorikova's equitable right of redemption to the Property.
9. For all of the foregoing reasons, the Court finds in favor of Plaintiff Realvest, Inc. on Defendant Alla A. Zorikova's Amended Counterclaims and concludes that Defendant Alla A. Zorikova is not entitled to the relief prayed for in her Counterclaims as to Plaintiff Realvest, Inc.

10. The Court therefore enters Judgment in favor of Plaintiff Realvest, Inc. and against Defendant Alla A. Zorikova on all claims raised in Defendant Alla A. Zorikova's Amended Counterclaims.

IN DEFAULT THEREOF, LET EXECUTION LIE.

12/07/18
Date

Hon. Matthew P. Hamner
Circuit Judge