

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE

DAVID C. McLEAN, ET AL.,)	
)	
Plaintiffs,)	
)	Case No. 00 CV 228530
v.)	Div. No. 28
)	
FIRST HORIZON HOME LOAN)	
CORPORATION (f/k/a McGUIRE)	
MORTGAGE COMPANY),)	
)	
Defendant.)	

FINAL ORDER AND JUDGMENT

Upon review and consideration of the Settlement Agreement filed February 15, 2007 (the "Agreement"), the Fairness Hearing held on June 7, 2007, Plaintiff's Motion for Final Approval of Class Action Settlement, Plaintiffs' Application for Award of Attorneys' Fees and Litigation Costs and Expenses, Plaintiffs' Application for Incentive Awards to Plaintiffs and Specified Class Members, the memoranda and arguments of counsel, and the entire record in this Action, IT IS HEREBY ORDERED AND ADJUDGED as follows:

1. The Court has been informed that, on May 31, 2007, defendant First Horizon Home Loan Corporation (f/k/a McGuire Mortgage Company) merged with and into First Tennessee Bank National Association, with First Tennessee Bank National Association as the surviving entity. First Horizon now conducts business under the legal name of First Horizon Home Loans, a division of First Tennessee Bank National Association. First Tennessee Bank National Association is therefore substituted as the defendant in this lawsuit. The Parties agree, and the Court orders, that where the Settlement Agreement and the Releases use the term "First Horizon" that term shall include and be read to mean First Tennessee Bank National Association

as well as First Horizon Home Loan Corporation.

2. Plaintiffs' Motion for Final Approval of Class Action Settlement is granted. Pursuant to Mo. R. Civ. P. 52.08, the Settlement of this Action, as embodied in the terms of the Settlement Agreement filed February 15, 2007, is hereby finally approved as a fair, reasonable, and adequate settlement of this case in light of the factual, legal, practical, and procedural considerations raised by this case. The Settlement Agreement is incorporated by reference into this Order and Judgment ("Order") (with capitalized terms as set forth in the Settlement Agreement, unless otherwise defined herein) ^{and} ~~as~~ is hereby adopted as an order of this Court. The terms of the Settlement are hereby given final and complete effect.

3. Solely for the purpose of the Settlement and pursuant to Mo. R. Civ. P. 52.08, the Court hereby finally certifies the following Class:

All persons who --

(a) obtained a second mortgage loan secured by a Deed of Trust on Missouri real property from McGuire Mortgage Company or from First Horizon's McGuire Mortgage Division on or after November 16, 1994, through and including April 13, 2005, whose loan was at an interest rate greater than the rate under R.S. Mo. § 408.030 at the time of the loan and whose loan included one or more of the Subject Fees, or

(b) previously was mailed notice of the class certification in the Action.

For purposes of determining membership in the Class, the "Subject Fees" means a fee that was disclosed by McGuire or First Horizon on the Obligor's HUD-1 or HUD-1A Settlement Statements to be: (i) origination fees in excess of the statutory origination fee cap set forth by § 408.233.1 R.S. Mo. in effect on the date that the Loan closed (which was 2% of the loan amount on and before August 28, 1998, and 5% of the loan amount thereafter), (ii) loan discount fees, (iii) tax service fees, (iv) underwriting fees, (v) processing fees, (vi) document preparation fees payable to McGuire or First Horizon, (vii) direct or indirect mortgage broker fees, (viii) express mail fees, (ix) flood certification fees, (x) payoff/delivery fees, (xi) verification of mortgage fees, and/or (xii) wire fees.

The Class does not include any individual who exercised his or her exclusion rights after receiving the initial notice that a class had been certified in the Action.

A list of Class Members known to the Parties or to the Settlement Administrator is attached as Exhibit A, which also contains a list of those persons who assert that they are Class Members.

4. The Court finds that notice previously given to Class Members in this Action was the best notice practicable under the circumstances and satisfies the requirements of due process and Mo. R. Civ. P. 52.08.

5. The Court appoints Representative Plaintiffs David C. and Holly F. McLean and Roger K. and Eugenia M. Jones as Representative Plaintiffs for the Class and finds that they meet the requirements of Mo. R. Civ. P. 52.08.

6. The Court appoints the following lawyers as counsel to the Class, and finds that these counsel meet the requirements of Mo. R. Civ. P. 52.08:

R. Frederick Walters, Esq.
J. Michael Vaughan, Esq.
Kip D. Richards, Esq.
David M. Skeens, Esq.
Garrett M. Hodes, Esq.
Walters Bender Strohbehn & Vaughan, PC
2500 City Center Square
1100 Main Street
P.O. Box 26188
Kansas City, MO 64196

7. The Court further finds, in light of the current posture of this case, and the certification of this Class as a Settlement Class, that, as to the Class:

(a) The above described Class is so numerous that the joinder of all members is impracticable.

(b) There are questions of law or fact common to the Class.

(c) The claims of the Representative Plaintiffs are typical of the claims of the Class.

(d) The Representative Plaintiffs and their counsel will fairly and adequately protect the interests of the Class.

The Court further finds:

(a) That the questions of law or fact common to the members of the Class, and which are relevant for settlement purposes, predominate over the questions affecting only individual members; and

(b) That certification of the Class is superior to other available methods for the fair and efficient adjudication of this controversy.

8. The Court also finds that all other requirements of statute, rule and constitutional principles necessary to effectuate the Settlement have been met and satisfied.

9. After due consideration of Representative Plaintiffs' and the Class' likelihood of success at trial; the range of Representative Plaintiffs' possible recovery; the point on or below the range of possible recovery at which a settlement is fair, adequate, and reasonable; the complexity, expense and duration of the litigation; the absence of timely opposition to the Settlement; and the state of proceedings at which the Settlement was achieved; the absence of timely objections; all written submissions, affidavits, and arguments of counsel; and after notice and a hearing, this Court finds that the Settlement is fair, adequate and reasonable. In particular, in accordance with this Court's prior opinions, it is clear that the financial settlement terms fall within the range of settlement terms that would be considered fair, adequate and reasonable. Accordingly, the Settlement Agreement and the Settlement should be and is approved as a full and final settlement of the Action, of all matters within the scope of the Releases, of all matters

relating to or concerning attorneys' fees and attorneys' expenses, incentive awards, and of all other matters settled and resolved in the Settlement Agreement. The Settlement Agreement shall govern all issues regarding the Settlement and the Action and shall govern and compromise all rights of the Parties, including the Class Members, of others addressed in the Agreement, and of all persons and entities who claim or could claim a right to attorneys' fees and/or expenses in connection with the Action and the Settlement, including but not limited to Class Counsel and Plaintiffs' Counsel.

10. No Class Member has attempted to exclude himself or herself from the Class on a timely basis and so there are no Successful Opt-Outs as defined under the Settlement Agreement, and Class Member John Tran's Motion to File "Opt-Out" Notice Out of Time is denied. No one shall be treated as having excluded himself or herself from the Settlement. Each Class Member shall be bound by the Settlement Agreement, including the Releases and covenants not to sue in the Settlement Agreement and this Order. The Releases in the Settlement Agreement are attached as Exhibit B to this Order, and are hereby incorporated by reference and become part of the final judgment in this action. Each and every Class Member, including but not limited to those persons who are Class Members who are listed on Exhibit A, is deemed to release and forever discharge First Tennessee Bank National Association, First Horizon and all Released Persons (as defined in the Settlement Agreement) from all matters within the Releases, and such Releases shall operate as res judicata as to such matters.

11. The Court grants Plaintiffs' Application for Award of Attorneys' Fees and Litigation Costs and Expenses. Class Counsel is awarded the sums of (i) \$ 12 million, for attorneys' fees, and (ii) \$ 300,000 for costs and expenses, all in connection with the Action. From these amounts, and not in addition to these amounts, shall be paid any sums

earned or owed to Plaintiffs' Counsel or agreed by Class Counsel to be paid to Plaintiffs' Counsel. In making these awards, the Court has considered and hereby adopts and incorporates Plaintiffs' Application for Award of Attorneys' Fees and Litigation Costs and Expenses, and the extensive record in this case, and finds as follows:

(a) The time and labor required to obtain this settlement was extensive. More than 23,000 hours of work were required by Class Counsel and persons working for them from January 2001 to the present. This work included, among other things, the substantial efforts of Class Counsel to identify and obtain loan information for each of the Class Members and to obtain and confirm the accuracy of the additional data necessary to prove First Horizon's liability to each Class Member and each Class Member's individual damages, discovery and deposition practice, extensive motion practice on complex legal issues necessitating a Special Master, preparation of damages methodologies and liability compendiums, class management, claims and related assistance to the Class Members, and maintaining this matter as a class action.

(b) The legal issues in this case were complex, novel and difficult. Prior to the inception of this action, the Missouri Second Mortgage Loans Act had not been litigated and there was no precedent on the majority of legal issues that arose in this lawsuit.

(c) The skill required of Class Counsel was unusually high in this case. Both the substantive and procedural aspects of this case were far more complex than usual.

(d) Because of the volume of work required on this matter, Class Counsel was effectively precluded from taking on other matters and was forced to dedicate extensive resources to the matter. In addition, given the volume of work and the risks engendered by this type of litigation, this lawsuit was undesirable to other attorneys. Few law firms would have been willing to proceed against First Horizon on these claims.

(e) A 33⅓% contingency fee comports with the customary fee charged by plaintiffs' lawyers in similar situations and reflects the market rate of Class Counsel at the inception of the litigation. This 33⅓% contingency fee is well within the average recovery from recent class action settlements.

(f) The results obtained for the Class were exceptional in light of the risks posed by the Class Members' damages claims and the Court's rulings on certain of First Horizon's defenses. For those Class members' whose claims were not preempted by federal law, Class Counsel recovered an average of 77-78% of the allegedly unlawful fees and past interest paid, and for those Class members whose claims the Court would have likely determined to be preempted given the Court's prior rulings, an average of 6% of their allegedly unlawful fees and past paid interest was recovered.

(g) The fee in this case was contingent. Class Counsel would have received no fee had they not been successful. In addition, Class Counsel risked large amounts of expenses and advances on the successful outcome of this matter. There were substantial risks to Class Counsel in the prosecution of this matter.

(h) Class Counsel's experience, reputation and ability played a large factor in obtaining the class settlement. Less experienced or able counsel would have likely achieved a lesser result or perhaps no result at all. In addition, First Horizon was at all times represented by very skilled and experienced defense attorneys of national reputation.

(i) No member of the Class has objected to any aspect of the settlement and no members of the Class have timely opted out or excluded themselves from the Class. The reaction of the Class to the Settlement has been favorable to say the least.

(k) The attorneys' fees sought are also reasonable by a lodestar cross check as

is apparent from the Motion and Suggestions in Support in that the multiplier accounts for the significant risk of non-recovery and the various considerations set forth above.

(1) The litigation costs and expenses are reasonable and equitable for a matter of this complexity and duration. In fact the Court notes the actual expenses and advances incurred substantially exceed the amount sought.

12. The Court grants Plaintiffs' Application for Incentive Awards to Plaintiffs and Specified Class Members and awards the following: (a) incentive awards in the amount of \$12,000.00 to be paid jointly to David and Holly McLean and \$12,000.00 to be paid jointly to Roger K. and Eugenia M. Jones; and (b) incentive awards in the amount of \$1,000.00 each to be paid by separate check to each of the following individuals, who were deposed in the action as members of the Class: William Doll, Jr., Daniel Gallaher, Brian Hydar, Edward Perry, James Russell, Michael L. Reynolds, Jr., James W. Russell, and Dale Taddiken. In making these awards the Court adopts and incorporates the reasoning set forth in Plaintiffs' Application for Incentive Awards to Plaintiffs and Specified Class Members.

13. In accordance with the Settlement Agreement, and to effectuate the Settlement, the Parties, including the Class Members, and the Settlement Administrator are directed to take such actions and perform such duties as are required by the Settlement Agreement. Without limiting the foregoing, within the time period provided by the Settlement Agreement, and as further directed and conditioned in the Settlement Agreement:

(a) First Horizon and/or First Tennessee Bank National Association shall cause the Settlement Benefit to be disbursed to qualified Class Members who submitted a Valid Claim Form in the amounts determined in accordance with and as otherwise conditioned or limited by the Settlement Agreement or the result of any challenge;

(b) First Horizon and/or First Tennessee Bank National Association shall pay the amounts awarded by this Order for attorneys' fees, costs, expenses, and incentive awards in accordance with and as otherwise conditioned or limited by the Settlement Agreement. The maximum liability of First Horizon and/or First Tennessee Bank National Association for attorneys' fees in connection with the Action shall be fixed at the amount in this Order and the maximum liability of First Horizon and/or First Tennessee Bank National Association for reimbursement of attorneys' costs and expenses in connection with the Action shall be fixed at the amount in this Order.

(c) The Settlement Administrator, consistent with the terms and deadlines established in the Settlement Agreement, shall prepare the reports and calculations, make any payments, adjustments, or remittances required, and otherwise comply with its respective obligations under the Settlement Agreement.

14. This lawsuit, and all claims and causes of action in this Action and all claims or rights within the scope of the Releases, are hereby dismissed on the merits and with prejudice, and judgment is hereby entered in favor of defendant. Each party shall bear their own costs and attorneys' fees, except as provided in the Settlement Agreement.

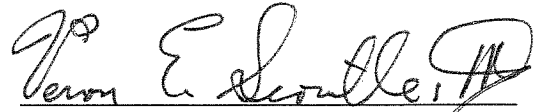
15. Representatives Plaintiffs, Class Counsel, Plaintiffs' Counsel, and each and every Class Member are hereby permanently enjoined from bringing, joining, assisting in, or continuing to prosecute against First Tennessee Bank National Association, First Horizon or against any Released Person (as defined in the Settlement Agreement) any claim that was brought in or right that was encompassed within this Action, any claim or right within the scope of the Settlement or Releases, and any claim or right for which a release or covenant not to sue is given under the Settlement Agreement. There shall be no bond required for this injunctive

remedy.

16. This Court hereby retains exclusive jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of the Settlement and of the Settlement Agreement, including any matters concerning the enforcement of the injunction set forth in paragraph 15.

17. The Court further retains jurisdiction to enforce this Order.

Dated: 7 June 07


Vernon E. Scoville, III
Associate Circuit Court Judge

CERTIFIED COPY
I certify that the foregoing is a full, true, and complete copy of the original on file in my office and of which I am legal custodian.
Teresa L. York
Court Administrator
Circuit Court of Jackson County, Missouri
6/7/07 Date By Char Malver Clerk