

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.)	

GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT

NOW, upon the application of the Plaintiffs, and good cause appearing, THIS COURT FINDS and ORDERS as follows:

I. Preliminary Class Certification

1. Pursuant to the terms of a Settlement Agreement (the "Agreement") dated 15 Feb 2007,¹ Plaintiffs request the Court to certify, pursuant to Missouri Rule of Civil Procedure 52.08, the following class (the "Class") for purposes of settlement only:

"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

¹ The definitions and defined terms set forth in the Settlement Agreement, which is attached as Exhibit 1 to Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, are hereby incorporated by reference into this Order (with capitalized terms as set forth in the Agreement).

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

For purposes of determining membership in the Class, "Subject Fees" means a fee that was disclosed by McGuire or First Horizon on the Obligors' 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(5) 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.

2. The Court finds, after rigorous analysis of each the requirements of Rule 52.08(a) and (b)(3) and after a thorough review of the record, and, after consideration of the Court's prior orders certifying the class for litigation purposes (December 17, 2002), amending the order certifying the class (March 31, 2003), further amending the order certifying the class (November 7, 2005), further amending the order certifying the class (March 25, 2006), and denying Defendant's motion to decertify the class (June 8, 2006), the following:

- a. the Class contains over 4,000 members and is so numerous that joinder of all members is impracticable;
- b. there are questions of law and fact common to the Class, including, but not limited to, those related to the interpretation and operation of Missouri's Second Mortgage Loans Act ("MSMLA"), §§ 408.231, *et seq.*, the measure of damages there under, the lending practices and operations of Defendant, and the legal and factual defenses to liability and the Class members' MSMLA claims asserted by Defendant;
- c. the claims of the Representative Plaintiffs are brought pursuant to the

MSMLA, arise from the same conduct and course of conduct as the Class members' claims, and are typical of the claims of the Class that Representative Plaintiffs seek to certify; and

- d. there are no apparent conflicts of interest between the representatives and the class or among the class, and the Representative Plaintiffs and their counsel will fairly and adequately protect the interests of the Class.

The Court further finds that:

- e. The questions of law or fact which are common to the members of the Class, set forth above, wholly predominate over the questions affecting only individual members; and
- f. Certification of the Class, for settlement purposes, is superior to other available methods for the fair and efficient adjudication or resolution of this controversy. Here, Plaintiffs and the Class members' claims seek to remedy common legal grievances and certification of the Class for settlement purposes promises important advantages of economy of effort and uniformity of result without undue dilution of procedural safeguards for the members of the Class or Defendant

3. Accordingly, the Class defined above is formally certified, for settlement purposes only. The Court's prior orders certifying a litigation class are hereby superseded and held for naught.

4. Plaintiffs David and Holly McLean and Roger and Eugenia Jones shall be appointed as the Representatives of the Class and R. Frederick Walters, David M. Skeens, and Kip D. Richards and their law firm, Walters, Bender, Strohbehn &

Vaughan, P.C., shall be appointed as Class Counsel.

II. Preliminary Settlement Approval

5. The Court has closely reviewed the terms of the Settlement Agreement, and the Settlement provided for therein, and it appears to be fair, adequate, and reasonable for the entirety of the Class and the product of arm's length negotiations. Accordingly, the Settlement is preliminarily approved as fair, adequate, and reasonable for the entirety of the Class, subject to further consideration thereof at the Fairness Hearing described set forth in Part VII of this Order.

III. Notice and Notice Plan

6. The Notice of Proposed Class Action Settlement and Settlement Hearing, attached as Exhibit B to the Agreement, and the Publication Notice attached as Exhibit E to the Agreement are approved by the Court.

7. Within the time period provided in the Agreement, the Settlement Administrator shall provide by first-class mail a copy of the Notice of Proposed Class Action Settlement and Settlement Hearing and a Claim Form pursuant to paragraph 11 to all Class Members.

8. Within the time period provided in the Agreement, the Settlement Administrator shall arrange for the publication of the Publication Notice in two Wednesday editions and one Sunday edition of *The Kansas City Star*, *The St. Louis Post Dispatch*, *The Springfield News-Leader*, *The St. Joseph News-Press*, *The Cape Girardeau Southeast Missourian*, *The Columbia Tribune*, *The Rolla Daily News*, *The Hannibal Courier-Post*, *The Kirksville Daily Express* and *The Joplin Globe*. The publication shall be two column inches by four column inches and placed in the paper

where legal notices typically appear. Any Class Member who inquires of the Settlement Administrator concerning the Settlement in response to the Publication Notice shall be provided with a Class Notice and Claim Form.

9. The Notice of Proposed Class Action Settlement and Settlement Hearing and Publication Notice contain sufficient information which a reasonable person would consider to be material in making an informed, intelligent decision of whether to opt out or remain a member of the Class and be bound by a final judgment, fairly apprises the Class members of the terms of the Settlement, the formula for computing individual recoveries and an estimated amount of or range of each Class members' individual recoveries, the options that are open to them in connection with the proceedings and refers them to the Court or Class Counsel for further detailed information. Accordingly, for these and other reasons, notice in compliance with the provisions set forth in paragraphs 6, 7, and 8 above and the Agreement is hereby found to be the best notice practicable under the circumstances, and constitutes due and sufficient notice of this Order to all persons affected by and/or entitled to participate in the Settlement, in full compliance with the notice requirements of Mo. R. Civ. P. 52.08.

10. Prior to the hearing described in Part VII herein, the Settlement Administrator shall file a sworn statement evidencing compliance with the provisions of this Order and the Agreement concerning the provision of Notices and Claim Forms.

IV. Claim Form

11. The Court has closely reviewed the Claim Form attached as Exhibit A to the Settlement Agreement. The Claim Form will be mailed to the Class members with the Notice of Proposed Class Action Settlement and Settlement Hearing. The Claim

Form is straightforward, unambiguous, and will be easily be understood by the Class members who must complete the Claim Form and return it to the Settlement Administrator in order to obtain any recovery under the Settlement. Because the Claim Form is to be executed by the Class members under penalty of perjury, it will provide adequate due process protections to the Defendant, as well as the Class members, and will allow the Settlement Administrator to accurately and efficiently review Claims submitted by the Class members. Accordingly, the Claim Form is approved for use as part of the Settlement.

12. The Court has closely reviewed the claims process and procedures set forth in the Agreement. In order to be entitled to receive any compensation under the Agreement, Class Members must submit a Valid Claim Form to the Settlement Administrator within ninety (90) days after mailing of the Class Notice, as provided in the Agreement. The validity of Claim Forms, claims dispute resolution procedures, and the payment process (collectively, the "Claims process") shall be governed by the terms stated in the Agreement. The Court finds that the Claims process as described in the Agreement provides adequate due process protections to the Parties and the Class members and is appropriate, fair, adequate and reasonable.

V. Settlement Administration

13. The Settlement Administrator shall be Tilghman & Co., P.C., and is appointed by the Court to perform the settlement administration duties described in the Settlement Agreement and in this Order.

14. All events and actions contemplated under the Settlement Agreement to occur after the entry of this Order and before the hearing described in Part VII and the

rights, duties and obligations of the Parties their Counsel, Plaintiffs' Counsel, the Class Members and the Settlement Administrator, shall be governed by the Agreement, to the extent not inconsistent herewith, including but not limited to requirements placed on Class Members with respect to objections, intervention requests, appearances, claims, and exclusion requests. The Settlement Agreement is incorporated into this Order. Class Counsel and Plaintiffs' Counsel, as defined in the Agreement, shall be bound by the rights, duties and obligations as set forth in the Agreement with respect to Class Counsel and Plaintiffs' Counsel, including without limitation that Class Counsel and Plaintiffs' Counsel shall do all things required of them, and refrain from doing all things they are prohibited from doing, under paragraphs 2.24-2.27, 6.01-6.03, 6.05 and 6.08 of the Settlement Agreement.

15. The Settlement Administrator shall take such further actions as are required under the Agreement and as agreed to by the Parties.

16. The reasonable costs and expenses of settlement administration shall be paid for as set forth in the Agreement.

VI. Class Member Rights and Actions (Exclusion, Objection, Intervention, Appearance)

17. Each Class Member can elect not to be a part of the Class and not to be bound by this Agreement, if, within sixty (60) days of the mailing of the Notice of Proposed Class Action Settlement, the Class Member completes an individual, written, and signed notice of intention to opt out or request for exclusion. The Court will not require the notice of intent to opt out or request for exclusion to be in a particular format, however, the notice of intent to opt out or request for exclusion must contain the

case number and name and the words "opt out," "exclusion," or words to that effect clearly indicating an intent not to participate in the settlement. Class members cannot opt out as a group or as representatives of a proposed class. The request to "opt out" of the Class shall be signed by all obligors on the Loan, or their legal representatives, as set forth in the Agreement and shall be sent to the Settlement Administrator. Any Class Member who does not submit a timely notice of intention to opt out or request for exclusion, and/or who otherwise fails to comply with all requirements for opting out, shall be bound by the Agreement and the Release entered as part of the final judgment in this action.

18. No later than ten (10) days after the deadline for submitting requests for exclusion, the Settlement Administrator shall: (i) notify in writing Defense Counsel and Class Counsel regarding the names of Class Members, if any, who request exclusion, and the mortgage loan numbers (if available) for which each is claiming exclusion, and (ii) provide copies of all Requests for Exclusion received by it to Defense Counsel and Class Counsel. The originals of all Requests for Exclusion shall be retained by the Settlement Administrator unless and until such originals are delivered to Defense Counsel following the Final Approval Date.

19. Any Class Member who wishes to object to the proposed Settlement must mail a written objection to the Settlement ("Objection") to Class Counsel and Defense Counsel, at the addresses set forth in the Notice, and file the Objection contemporaneously with the Court. Each Objection must (a) set forth the Class Member's full name, current address, and telephone number; (b) state that the Class Member objects to the Settlement, in whole or in part; (c) set forth a statement of the

legal and factual basis for the Objection; and (d) provide copies of any documents that the objecting Class member (or "Objector") wishes to submit in support of his/her position. Any Class Member who does not submit a timely Objection in complete accordance with the Settlement, the Notice of Proposed Class Action Settlement and Settlement Hearing, and otherwise as ordered by the Court shall not be treated as having filed a valid Objection to the Settlement. Objections shall be filed in Court within sixty (60) days of the mailing of Class Notice, or be forever barred. All objections to the Settlement which are not set forth in a written objection filed in accordance with these provisions shall be deemed waived by the Court.

20. Any Class Member who wishes to appear at the Fairness Hearing must file a Notice of Appearance in the Action and serve the Notice of Appearance, along with their Objection, upon Class Counsel and Defense Counsel. Class members shall only be permitted to appear at the Fairness Hearing and to argue those matters set forth in a written objection filed in accordance with paragraph 19 of this Order. As set forth in paragraph 19, above, no Class Member shall be permitted to raise matters at the Fairness Hearing that the Class Member could have raised in an Objection, but failed to do so and all other objections to the Settlement are deemed waived if not set forth in a written objection. All Notices of Appearance shall be filed in Court within sixty (60) days of the mailing of the Notice of Proposed Class Action Settlement, or the Class member will be barred from appearing at the Fairness Hearing.

21. Any Class Member who has not filed a timely written request for exclusion may also seek to intervene in the Lawsuit. All requests to intervene must be in compliance with the Missouri Rules of Civil Procedure and applicable law. No

person shall be permitted to intervene unless such person (i) has filed with the Clerk of the Court a request or motion seeking to intervene in the Action, together with appropriate suggestions in support of the request or motion to intervene and any supporting documentation, (ii) has served copies of such notice, statement, and documentation together with copies of any other papers or briefs that such person files with the Court, upon Class Counsel, and upon Defense Counsel, and (iii) otherwise complies with the Settlement Agreement and Notice of Proposed Class Action Settlement for purposes of such hearing. All requests or motions to intervene shall be filed in Court within sixty (60) days of the mailing of the Notice of Proposed Class Action Settlement or will be deemed untimely and denied.

VII. Fairness Hearing and Related Deadlines

22. A hearing (the "Fairness Hearing") shall be held before the undersigned on June 7, 2007 @ 9:00 AM, to consider the following:

- (a) the fairness, reasonableness, and adequacy of the proposed Settlement, including any objections to the Settlement and any requests to intervene in the proceedings,
- (b) the entry of any final order or judgment in the case granting final approval to the Settlement and giving effect to the Release set forth therein,
- (c) whether all requirements of statute, rule and Constitution necessary to effectuate this Settlement have been met and satisfied,
- (d) petitions for attorneys' fees and for reimbursement of expenses and costs,
- (e) requests for payment of incentive awards, and
- (f) any other matters which the Court deems necessary or that have been

brought to its attention by the Parties to consider for the purpose of determining whether to grant final approval to the Settlement.

This hearing may be postponed, adjourned, or continued by Order of the Court without further notice to the Class.

23. Memoranda in support of the Settlement, petitions for attorneys' fees and reimbursement of expenses by Class Counsel, Plaintiffs' Counsel or any other person or entity and requests for incentive awards shall be filed with the Clerk of the Court on or before fourteen (14) days prior to the Fairness Hearing, or be forever barred. Plaintiffs' Counsel may file a fee petition and nothing in the Agreement shall prevent Plaintiffs' Counsel from seeking a share of the fee award from the Court and, if desired by Plaintiffs' Counsel, appealing the Court's order with respect to the fee award. The designation of Travis & Calhoun as Plaintiffs' Counsel rather than Class Counsel shall not prejudice its claims, if any, for a share of the fee award.

VIII. Miscellaneous Matters

24. All proceedings in this Action, other than such as may be necessary to carry out the terms and conditions of the Agreement, Settlement Administration or the responsibilities related or incidental thereto, are stayed and suspended until further order of this Court. All motions pending as of the date of entry of this Order are hereby denied as moot, with leave of the moving party to reinstitute the motion(s) without prejudice in the event the Settlement is not approved by the court.

25. If Final Approval of the Settlement is not achieved, or if the Settlement is terminated for any reason whatsoever, the Settlement and all proceedings had in connection therewith shall be without prejudice to the *status quo ante* rights of the

parties to the Action, and all Orders issued pursuant to the Settlement shall be vacated.
In such an event, the Settlement and all negotiations concerning it shall not be used or
referred to in this Action or any other proceeding for any purpose whatsoever.

Dated:

21 Feb 07

Vernon E. Scoville, III

Vernon E. Scoville, III Circuit Court Judge

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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

2/21/07

Date

By

Charisawson

Deputy