

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT
AT NASHVILLE, BUSINESS COURT

FAMILY TRUST SERVICES, LLC,)
STEVEN REIGLE, REGAL HOMES CO.,)
BILLY GREGORY, JOHN SHERROD,)
CARL CHAMBERS, and DEBRA IRVIN, on)
behalf of themselves and those similarly)
situated,)

Plaintiffs,)

v.)

GREEN WISE HOMES LLC,)
CHARLES E. WALKER, JON PAUL)
JOHNSON, JULIE COONE,)
NATIONWIDE INVESTMENTS, LLC,)
MERDAN IBRAHIM, and JAMES BRETT,)

Defendants.)

NO. 15-780-BC
JURY DEMAND

MEMORANDUM AND ORDER

The Court has pending before it five summary judgment motions, four of which were filed separately by Defendants James Brett, Merdan Ibrahim, Julie Coone, and Nationwide Investments, LLC (“Nationwide”) (collectively “Non-REO Defendants”), and one filed jointly by Defendants Charles Walker, Jon Paul Johnson, and Green Wise Homes, LLC (collectively the “REO Defendants”). Previously, the REO Defendants sought to bifurcate the trial, and Plaintiffs did not oppose and supported same to simplify the case. Thus, on August 2, 2021, the Court entered an Order bifurcating the trial between the REO and Non-REO Defendants.

As to the REO Defendants, a jury trial was held September 13-20, 2021 on the claims of Plaintiffs Carl Chambers, Debra Irvin, Dorothy Booher, and Glenna Davis Ponce (collectively “Taxpayer Plaintiffs”). The jury returned a verdict in favor of Plaintiff Irvin against Defendant Charles Walker in the amount of \$53,450 in compensatory damages on her claim of

misrepresentation by concealment and fraud. As to the remaining claims, the jury found in favor of the REO Defendants; notably, the jury found that none of the REO Defendants engaged in a civil conspiracy as to the Taxpayer Plaintiffs' underlying torts.

Now, the remaining claims involve the Taxpayer Plaintiffs as well as Family Trust Services, LLC ("Family Trust"), Steven Reigle, Regal Homes, Co., Billy Gregory, and John Sherrod (collectively "Non-Taxpayer Plaintiffs") against only the Non-REO Defendants. In their motions, the Non-REO Defendants seek to dismiss all Plaintiffs' claims, while the REO Defendants seek dismissal of any pending claims against them.

FACTUAL FINDINGS

Taxpayer Plaintiffs

As to the Taxpayer Plaintiffs, the Court incorporates its factual findings from its Order entered on August 6, 2021.

Non-Taxpayer Plaintiffs

In the Amended Complaint, Plaintiffs allege that Family Trust, Steven Reigle, Regal Homes Co., Billy Gregory, and John Sherrod are involved in the business of investing in properties sold at public tax sales. (Am. Compl. ¶250).

Family Trust Services, LLC

Plaintiffs assert that Family Trust is the owner of claims arising from the "Moore Property" as the assignee of Jack Moore and the owner of claims arising from the "Bottoms Property" as the assignee of Terrell Starks. (Am. Compl. ¶¶217-18). However, in response to Defendants' motions, Family Trust only points to documents related to the "Bottoms Property" in support of its claims.

Following her death in 2009, Vernon Irene Bottoms devised 3503 Mays Street in Nashville, Tennessee (the "Bottoms Property") in trust to her grandson, David Bottoms, for the benefit of her

great-granddaughter, Lani Jade Bottoms. The real property taxes that accrued against the Bottoms Property went unpaid, and, as a result, the Bottoms Property was sold at a tax sale to Terrell Starks. Walker thereafter commenced a redemption proceeding, relying on a quitclaim deed purportedly executed by David Bottoms in his capacity as the guardian of Lani Jade Bottoms, in favor of Howard Bottoms. Plaintiffs contend that REO Holdings, LLC (“REO”) sold the Bottoms Property to a third party for \$38,000.

Steven Reigle and Regal Homes, Co.

Plaintiff Steven Reigle asserts he was the tax-sale purchaser of the “Rozh Property” and that Plaintiff Regal Homes, Co. (“Regal Homes”) is the successor in interest to the rightful owner of the “Rozh Property.” (Am. Compl. ¶¶220-21). The property at issue in relation to Reigle’s and Regal Homes’ claim is located at 923 40th Avenue in Nashville, Tennessee (the “Rozh Property”). The Rozh Property was purchased by Akram M. Rozh in 2007. In 2010, Steve A. Long executed a Notice and Affidavit of Lien, asserting a debt for engineering services against the Rozh Property. In 2015, an Assignment of Lien was recorded purporting to assign the rights under Long’s lien to REO. In the meantime, the property was subject to a tax sale and purchased by Reigle. Thereafter, REO commenced a redemption of the Rozh Property.

Billy Gregory

Gregory asserts he is the owner of claims arising from the “Booher Property” as a result of his purchase of that property at a tax sale. (Am. Compl. ¶219). The Court incorporates its factual findings regarding the “Booher Property” from its Order entered on August 6, 2021. Gregory purchased this property on June 5, 2014 in satisfaction of unpaid property taxes that had accrued against it. REO attempted to redeem the property but withdrew same after initiation of this suit.

John Sherrod

Sherrod asserts he is the owner of claims arising from the “Sherrod Property” as a result of his purchase of that property at a tax sale. (Am. Compl. ¶222). The property at issue in relation to Sherrod’s claim is located at 6016 Lenox Ave in Nashville, Tennessee (the “Sherrod Property”). The Sherrod Property was originally owned by Henry and Mildred Huff. After their death, the Sherrod Property was sold to Sherrod at a tax sale. REO commenced a redemption proceeding, relying upon an Assignment of Deed of Trust and Appointment of Substitute Trustee executed by Ibrahim on REO’s behalf, purporting to assign the deed of trust to REO.

LEGAL CONCLUSIONS

Summary Judgment Standard

Tenn. R. Civ. P. 56.04 sets forth the summary judgment standard, requiring that summary judgment be granted “if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Tennessee law interpreting Rule 56 provides that the moving party shall prevail if the non-moving party’s evidence is insufficient to establish an essential element of her claim. Tenn. Code Ann. § 20-16-101; *Rye v. Women’s Care Center of Memphis, M PLLC*, 477 S.W.3d 235, 261-62 (Tenn. 2015). In response, the non-moving party “may not rest upon the mere allegations or denials of the adverse party’s pleading, but his or her response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” *Tolliver v. Tellico Village Property Owners Ass’n, Inc.*, 579 S.W.3d 8, 21 (Tenn. Ct. App. 2019) (quoting Tenn. R. Civ. P. 56.06).

REMAINING CLAIMS

On May 13, 2022, the Court heard oral argument on the Non-REO Defendants' motions. At the hearing, Plaintiffs' counsel advised, for the first time, that "we are not going to pursue any of the following counts against any of these remaining Defendants: Count IV Unfair Competition; Count V Intentional Interference; Count VI Malicious Prosecution; Count VII Theft and Trespass." In response, the Non-REO Defendants asked the Court to enter summary judgment dismissing Counts IV, V, VI, and VII. Prior to oral argument, the Court had reviewed the motions and responses thereto, and the relevant caselaw. The Court finds that Plaintiffs have failed to point to sufficient evidence in the record to support their claims of unfair competition, intentional interference, malicious prosecution, or theft and trespass.

Unfair Competition and Intentional Interference

These two business torts are, for all practical purposes, duplicative of each other. Unfair competition was brought by the Non-Taxpayer Plaintiffs against Ibrahim and Nationwide; intentional interference with advantageous business relations was brought by the Non-Taxpayer Plaintiffs against Nationwide. As discussed below, Plaintiffs concede that they are only bringing a claim for civil conspiracy against Nationwide and are not bringing any direct claims against it. Unfair competition is a generic name for several related torts involving improper interference with business prospects. *B & L Corp. v. Thomas & Thorngren, Inc.*, 162 S.W.3d 189, 215 (Tenn. Ct. App. 2004) (citing Prosser and Keeton on the Law of Torts § 130 at 1013 (5th ed.1984)). As with the claim of civil conspiracy, a claim of unfair competition requires an underlying tort. *Dominion Enterprises v. Dataium, LLC*, No. M2012-02385-COA-R3CV, 2013 WL 6858266, at *7 (Tenn. Ct. App. Dec. 27, 2013). To establish liability, a plaintiff must demonstrate the following: (1) an existing business relationship with specific third parties or a prospective relationship with an

identifiable class of third persons; (2) the defendant's knowledge of that relationship and not a mere awareness of the plaintiff's business dealings with others in general; (3) the defendant's intent to cause the breach or termination of the business relationship; (4) the defendant's improper motive; and finally, (5) damages resulting from the tortious interference. *Trau-Med v. Allstate Ins. Co.*, 71 S.W.3d 691, 701 (Tenn. 2002). There is insufficient evidence to support a claim that Ibrahim engaged in unfair competition and interfered with any business relationship of the Non-Taxpayer Plaintiffs. In fact, the Non-Taxpayer Plaintiffs do not dispute that Ibrahim had no knowledge or awareness of Family Trust or Regal Homes' business dealings with others. (Responses to Def. Ibrahim's Statement of Undisputed Material Facts, No. 62-63). Thus, this claim is dismissed.

Malicious Prosecution

This claim is brought by the Non-Taxpayer Plaintiffs against the Non-REO Defendants. To establish the essential elements of malicious prosecution, a plaintiff must prove that (1) a prior suit or judicial proceeding was instituted without probable cause; (2) defendant brought such prior action with malice; and (3) the prior action was finally terminated in plaintiff's favor. *Lane v. Becker*, 334 S.W.3d 756, 761 (Tenn. Ct. App. 2010) (citing *Parrish v. Marquis*, 172 S.W.3d 526, 530 (Tenn. 2005)); *see also Ryerson v. Am. Sur. Co. of New York*, 373 S.W.2d 436, 437 (Tenn. 1963) ("An action for malicious prosecution, by its very nature, must be brought with reference to some other judicial proceeding. Thus, one of the essential allegations in an action for malicious prosecution is that a prior suit has been instituted."). None of the Non-REO Defendants brought a prior suit or judicial proceeding against the Non-Taxpayer Plaintiffs which terminated in plaintiff's favor. Plaintiffs acknowledge in their omnibus response that "Ms. Coone did not initiate any judicial proceedings in her own name." (Omnibus Resp. p.33). Further, the Non-Taxpayer

Plaintiffs do not dispute that Brett did not institute a prior suit or judicial proceeding against them; Gregory, Reigle, and Regal Homes do not dispute that Ibrahim did not institute a prior suit or judicial proceeding against them. Family Trust and Sherrod only point to warranty deeds and an assignment of trust to support this claim against Ibrahim; based on the foregoing, this claim is dismissed.

Theft and Trespass

Family Trust, Chambers and Irvin bring a claim for theft and trespass on real property. Trespass in Tennessee “requires the intentional entry onto the land of another.” *Twenty Holdings, LLC v. Land South TN, LLC*, No. M2018-01903-COA-R3-CV, 2019 WL 4200970, at *8 (Tenn. Ct. App. Sept. 5, 2019). It requires the tortfeasor to “intentionally enter[] or remain[] . . . upon the property of another. . . .” *Id.* (quoting *Trespass, Plaintiff’s Proof Prima Facie Case* § 14:24). It is undisputed that the Non-REO Defendants did not intentionally enter the property of Family Trust, Chambers, or Irvin. Thus, this claim is dismissed. As to the theft claim, the Court previously dismissed that claim in its Order entered on April 22, 2020.

Thus, the Court GRANTS the Non-REO Defendants’ motion as to these claims, and the Court hereby DISMISSES Counts IV - VII with prejudice. The claims remaining are:

- Count I: Defamation of Title (asserted by all Plaintiffs except D. Irvin)
- Count II: Fraud (asserted by all Plaintiffs)
- Count III: Liability pursuant to TCA 66-22-113 (asserted by all Plaintiffs against Defendant Julie Coone only)
- Count VIII: Civil Conspiracy (asserted by all Plaintiffs)

Standing

The Non-REO Defendants contend that Plaintiffs have no standing to bring their claims, arguing that they cannot show they have suffered a “distinct and palpable injury” caused by them. However, Plaintiffs redemption interests are actual interests in property. Further, a reasonable fact

finder could determine that their actions caused the Plaintiffs' injuries based upon the evidence in the record. Thus, the Court declines to dismiss these claims based upon a lack of standing.

Civil Conspiracy

In their omnibus response, Plaintiffs emphasize that this case arises from a purported conspiracy:

This is a case involving a complex conspiracy to fraudulently acquire title to real estate through the purchase and redemption of properties at tax sales. Defendants and their confederates either forged or falsified the signatures or notary acknowledgements regarding at least twelve distinct pieces of property. . . . Mr. Walker is the glue that holds many of the pieces in this case together. . . . Mr. Johnson manages real estate property and owns several rental properties with Mr. Walker. . . . REO [Holdings, LLC] was at the time of the conspiracy owned jointly in equal shares by Messrs. Walker and Johnson REO is the company to which many of the properties were transferred and eventually sold to third parties and through which the redemption proceedings were commenced.

(Plaintiffs' Omnibus Resp., p.2-3). In their Amended Complaint filed on July 10, 2020, Plaintiffs allege:

284. The averments set forth in Paragraphs 1 through 283 are incorporated herein by reference.

285. The Defendants here entered into an agreement, expressly or implicitly, with the other Defendants and with the non-party Confederates, to engage in the conduct described herein for the purpose of obtaining real property and money, including money through the sale or mortgage of real property, based on forged and pretended deeds and muniments of title.

286. Ms. Coone agreed to facilitate and work for the enterprise, despite knowing that its method and aims were fraudulent.

287. Mr. Ibrahim agreed to serve as a pawn in the enterprise and to facilitate its moneymaking through the renovation of homes, despite knowing that its methods and aims were fraudulent.

288. Nationwide acted in all respects as the alter ego of Messrs. Johnson and Walker in the conduct of the enterprise. To the extent it maintained any will of its own, it willfully and knowingly participated in a conspiracy with them and with REO despite having full and perfect knowledge of each aspect of the fraud described in this Complaint.

289. The Defendants knew that the means and intent of the remaining Defendants and the non-Party Confederates were unlawful, and they intended, upon entering into and continuing with the enterprise described herein, to cooperate in the accomplishment of those unlawful ends.

290. Pursuant to such agreement, Defendants and the non-Party Confederates committed the numerous tortious and wrongful acts detailed above.

291. The Defendants, in addition to being liable for their own direct misconduct, are liable for the wrongs asserted in Count I, Count II, and Counts IV through IX on account of their participation in this conspiracy.

292. As a direct and proximate result of the commission of Defendants' tortious and wrongful acts, the plaintiffs have been damaged.

All the Taxpayer and Non-Taxpayer Plaintiffs assert a claim of civil conspiracy against the Non-REO Defendants. "A civil conspiracy is an agreement between two or more persons to do an unlawful act or to do a lawful act in an unlawful way." *Trau-Med of Am., Inc.*, 71 S.W.3d at 703; *Chenault v. Walker*, 36 S.W.3d 45, 52 (Tenn. 2001). "[I]t is a derivative claim that requires the existence of an underlying tort or wrongful act committed by one or more of the conspirators in furtherance of the conspiracy." *Forrester v. Stockstill*, 869 S.W.2d 328, 330 (Tenn. 1994); *Tenn. Publ'g Co. v. Fitzhugh*, 165 Tenn. 1, 5-6, 52 SW.2d 157, 158 (1932); *Levy v. Franks*, 159 S.W.3d 66, 82 (Tenn. Ct. App. 2004). "The elements of a civil conspiracy claim are: (1) an agreement between two or more persons; (2) to engage in some concerted action either for an unlawful purpose or for a lawful purpose by unlawful means; (3) the commission of a tortious or wrongful act by one or more of the conspirators; and (4) resulting injury or damage to person or property." *Kincaid v. Southtrust Bank*, 221 S.W.3d 32, 38 (Tenn. Ct. App. 2006); *Kirksey v. Overton Pub., Inc.*, 739 S.W.2d 230, 236-37 (Tenn. Ct. App. 1987).

Nationwide

As to Defendant Nationwide, Plaintiffs concede in their omnibus response that their case against Nationwide is based on civil conspiracy:

Plaintiffs' case against Nationwide is one of civil conspiracy. Plaintiffs do not dispute Nationwide's statements that it is not liable for the direct actions asserted in this action. Nationwide is instead liable as a member of the civil conspiracy.

...

2.1 Plaintiffs' Theory Against Nationwide is Civil Conspiracy, Not Direct Claims.

Nationwide asserts that Plaintiffs have not asserted direct claims against it with regard to the defamation of title and fraud counts. Plaintiffs agree that Nationwide is not liable for the direct actions of defamation of title, fraud, unfair competition, intentional interference with business relations, malicious prosecution, theft, and trespass on real property. . . . Rather, Nationwide is liable under each of these claims for the actions of its confederates as a civil co-conspirator.

(Omnibus Resp. p.14). To support its claim for civil conspiracy against Nationwide, Plaintiffs point to the Irvin Property and actions taken by Walker and Johnson. Specifically, that Walker recorded two forged quitclaim deeds transferring the property from the Irvins to REO, and that Johnson provided the fraudulent "Oath of Consideration." Nationwide subsequently purchased the Irvin Property from REO in November 2014. In further support of their claim for civil conspiracy against Nationwide, Plaintiffs point to Nationwide's involvement in the "Cleveland Property," although they concede that no Plaintiff has an interest in the "Cleveland Property." However, Plaintiffs do not dispute that Walker at all relevant times was the sole member of Nationwide and served as the sole officer, director, and manager of Nationwide. Plaintiffs do not dispute that Nationwide has not been involved in any other business other than its involvement in the Irvin Property and that Nationwide was set up for the sole purpose of owning and leasing the Irvin Property. Plaintiffs do not dispute that there is no evidence that Nationwide has commenced a redemption proceeding or purchased property from a tax sale in Tennessee.

Plaintiffs also allege that Nationwide acted in all respects as the alter ego of Walker and Johnson in the conduct of the enterprise and that Plaintiffs seek to hold Walker and Johnson liable for Nationwide's liability under Plaintiffs' civil conspiracy claim. Plaintiffs argue that they have asserted a traditional alter ego theory, seeking to pierce the corporate veil of Nationwide and hold Walker and Johnson liable.

In its motion, Nationwide argues that Plaintiffs' claims against it must fail as a matter of law because there is insufficient evidence that Nationwide participated in any alleged conspiracy to harm Plaintiffs via the alleged predicate torts. In addition, that Plaintiffs' alter ego claim fails because the REO Defendants were found not liable for civil conspiracy, or, alternatively, that Tennessee law does not recognize the concept of reverse piercing the corporate veil.

A civil conspiracy requires "an agreement between two or more persons," *Kincaid*, 221 S.W.3d at 38, and "the existence of an underlying tort or wrongful act committed by one or more of the conspirators in furtherance of the conspiracy." *Forrester*, 869 S.W.2d at 330. Notably, in their response, Plaintiffs state, "To be clear, Walker and Johnson are directly responsible for much of the harm the conspiracy has caused, but that is not at issue here; the instant issue is Nationwide's involvement in the conspiracy and the resulting liability of its alter egos." (Omnibus Resp. p.12). Plaintiffs seek to put on proof of Walker and Johnson's actions to support a civil conspiracy claim against Nationwide. However, a jury previously found that none of the REO Defendants, including Walker and Johnson, were liable for civil conspiracy, or any of the underlying torts, but for Irvin's claim of misrepresentation by concealment and fraud as to Walker. Further, the Non-Taxpayer Plaintiffs released any claims they had against the REO Defendants. The crux of Plaintiffs' civil conspiracy claim against Nationwide relies upon the actions of Walker and Johnson as co-conspirators—but they were found not to be involved in any civil conspiracy. Plaintiffs do not

allege that Nationwide committed a wrongful act; instead, they argue that Nationwide is liable for conspiracy based on the actions of Walker and Johnson. If Walker and Johnson were found not liable for civil conspiracy, then Nationwide cannot be found liable for civil conspiracy, as it requires “an agreement between two or more persons,” and “the commission of a tortious wrongful act by one or more of the conspirators.”

In response, Plaintiffs argue that the trial against the REO Defendants has no preclusive effect on the merits of their proceeding against Nationwide. Specifically, Plaintiffs argue that they have appealed the order from that trial with respect to all the REO Defendants and contend that in Tennessee, a “judgment is not final and *res judicata* where an appeal is pending.” *Creech v. Addington*, 281 S.W.3d 363, 377 (Tenn. 2009) (quoting *McBurney v. Aldrich*, 816 S.W.2d 30, 34 (Tenn. Ct. App. 1991)). However, the facts of that case are not directly on point and do not involve a bifurcated trial. In this case, based upon the REO Defendants’ motion and Plaintiffs’ agreement thereto, the Court bifurcated the trial and subsequently certified the order as final in an effort to promote judicial economy and avoid inconsistent verdicts. Now, Plaintiffs appear to seek two bites at the apple by putting on proof that Walker and Johnson are liable based upon civil conspiracy; however, Plaintiffs have already had their chance to prove that the REO Defendants were part of a conspiracy. If Walker and Johnson were found not liable for civil conspiracy, then Nationwide cannot be found liable for same, because Plaintiffs would not be able to demonstrate an agreement between Walker, Johnson, and Nationwide. Thus, Plaintiffs claims of civil conspiracy and alter ego against Nationwide would fail as a matter of law if the jury verdict in the previous trial against the REO Defendants were upheld.

In an effort to avoid any *res judicata* issues, the Court, *sua sponte*, removes the trial set for the week of July 25, 2022 until appeals of the jury verdict related to the REO Defendants are

exhausted. The Court, therefore, partially grants Nationwide’s Motion for Summary Judgment and dismisses any direct claims the Plaintiffs have brought against Nationwide. Further, the Court reserves ruling on the Plaintiffs’ claim of civil conspiracy against Nationwide until appeals are exhausted as to the jury verdict related to the REO Defendants. If the jury verdict is upheld, the Court will likely dismiss the civil conspiracy claim against Nationwide.

Remaining Defendants

Like Nationwide, Plaintiffs conspiracy claim against Ibrahim, Brett, and Coone arises from the overt acts of Walker and Johnson. In the Amended Complaint, Plaintiffs highlight and emphasize that the conspiracy stemmed from the acts of Walker and Johnson:

209. Messrs. Walker and Johnson have conducted an unlawful enterprise to acquire property and money through dishonest and fraudulent means.

210. Such enterprise has used as instrumentalities the various entities under Messrs. Walker’s and Johnson’s control, including, without limitation, Defendant Nationwide, Confederates REO and C&J Properties, a title company known as Team Title Inc. f/k/a Vandybine Title and Escrow Inc., and Mr. Walker’s law practice. Upon information and belief, neither Nationwide nor REO is or has been operated as a legitimate limited liability company with a respected corporate form. But in the alternative, to the extent those entities had any separate identity at the time in question, they were willing participants in the criminal enterprise described herein.

211. Messrs. Walker and Johnson operated their criminal enterprise and its various fronts and instrumentalities out of offices located at 69 Thompson Lane in Nashville.

212. Ms. Coone and Mr. Ibrahim willfully and knowingly cooperated in the criminal enterprise.

213. Ms. Coone served, at the time relevant hereto, as the general office staff for the enterprise’s operations at 69 Thompson Lane. She handled, maintained, and notarized the false documents described in this Complaint. She repeatedly and knowingly facilitated **the fraudulent enterprise being undertaken by Defendants Walker and Johnson** by notarizing documents that she knew to be false, by notarizing false consideration attestations or consideration attestations on documents—such as the Brown Quitclaim, the so-called “original” of which contains photostatic image of an embossed Georgia notary seal—that were

manifestly false, by submitting false instruments for recording on behalf of the other Defendants and their Confederates, and by notarizing numerous false true-copy certifications—or permitting a prior true-copy certification notarized by her to be improperly appended to recorded instruments for which no lawfully executed original existed. She agreed with the other Defendants and Confederates to participate in the enterprise described herein in furtherance of the scheme or enterprise’s goal of obtaining property and the proceeds thereof by false pretenses and for personal gain.

214. Mr. Ibrahim likewise participated in the criminal enterprise described herein. **He permitted Messrs. Johnson and Walker to use his name and signature** to facilitate the operation of REO and Nationwide and to obscure their own exclusive control of those entities. He willingly signed documents prepared and presented to him by his fellow Confederates in furtherance of the criminal enterprise. He helped fund the enterprise by providing renovation services for properties obtained by the other Confederates, which were then leased or sold. He agreed with the other Defendants to participate in the scheme or enterprise described herein in furtherance of the scheme or enterprise’s goal of obtaining property and the proceeds thereof by false pretenses and for personal gain.

215. The Defendants cooperated in the recording of false instruments. **Mr. Walker maintained electronic-recording accounts** with the Davidson County Register of Deeds and the multi-county service Simplifile. He and Defendant Coone used these systems to record instruments in, at least, Davidson and Hamilton Counties, including the instruments described therein.

216. As the result of the Defendants’ acts, each of the Plaintiffs has suffered damages.

(Am. Compl. ¶¶209 – 216) (Emphasis added). Plaintiffs contend and assert that the architects of this purported criminal enterprise were Walker and Johnson. Thus, if a jury previously found that the REO Defendants, including Walker and Johnson, were not involved in a civil conspiracy to commit any of the underlying torts, then Plaintiffs would not be able to prove that the remaining Non-REO Defendants were involved in a civil conspiracy that was “conducted,” “operated,” or “undertaken” by Walker and Johnson. To prove the civil conspiracy, Plaintiffs must present proof that Walker and Johnson were involved in a civil conspiracy with the Non-REO Defendants which would undermine the previous jury verdict and create inconsistent results. Thus, if Walker and Johnson were found not liable for civil conspiracy, then Plaintiffs would not be able to prove their

claims for civil conspiracy against the Non-REO Defendants. However, the Court reserves ruling on the civil conspiracy claim against Defendants Ibrahim, Brett, and Coone until appeals are exhausted as to the jury verdict related to the REO Defendants. If the jury verdict is upheld, the Court will likely dismiss the civil conspiracy claim against Ibrahim, Brett, and Coone. Further, if Plaintiffs civil conspiracy claim fails, the remaining claims become more narrowed.

In their Responses to the Non-REO Defendants' Statements of Undisputed Material Facts, Plaintiffs point to the following evidence to support their claims:

As to Brett, the only documents in which his name and signature appear are associated with the transfer of the Irvin Property to Nationwide. Plaintiffs point to only five (5) exhibits in which Brett's name appears or in which he signed on behalf of Nationwide:

- Dep. Ex. 41: Deed of Trust dated February 24, 2015;
- Dep. Ex. 42: Modification Agreement to Deed of Trust dated September 11, 2018;
- Dep. Ex. 44: Assignment of Rents dated February 24, 2015;
- Dep. Ex. 45: Deed of Trust with exhibits and Certificate of Authenticity; and
- Dep. Ex. 48: Complaint for Declaratory Judgment to Quiet Title brought by Nationwide.

As to Ibrahim, Plaintiffs point to only two (2) exhibits in which his name and signature appear individually and on behalf of REO, one related to the Sherrod Property, and the other to the Bottoms Property:

- Dep. Ex. 4: Assignment of Deed of Trust to REO and Appointment of Walker as Substitute Trustee dated May 6, 2015 regarding the Sherrod Property; and
- Dep. Ex. 30: Warranty Deed transferring Bottoms Property from REO to third party dated January 28, 2015.

As to Coone, Plaintiffs allege that she signed or notarized eighteen (18) documents related to the fraudulent transfer of properties.¹

¹ These are cited by Plaintiffs as follows:

Defamation of Title

This claim is asserted by all Plaintiffs except for Irvin. Defamation of title, also known as slander or libel of title, is a cause of action recognized in Tennessee by a plaintiff showing “(1) that it has an interest in the property; (2) that the defendant published false statements about the title to the property; (3) that the defendant was acting maliciously; and (4) that the false statements proximately caused the plaintiff a pecuniary loss.” *Brooks v. Lambert*, 15 S.W.3d 482, 484 (Tenn. Ct. App. 2000).

The Non-REO Defendants contend that there is no evidence that any of them published any statement regarding property that any plaintiff had an ownership interest in. In response, Plaintiffs point to the specific documents identified above which purport to transfer various properties to support their claim and argue that they have established an inference that the Non-REO Defendants are liable to all Plaintiffs for defamation of title as part of the civil conspiracy. However, the Court has found that Plaintiffs would not be able to maintain their civil conspiracy claim if the jury verdict as to Walker and Johnson is upheld; if that is the case, the only Non-REO Defendants that could be liable for defamation of title would be Ibrahim and Coone.² The Court finds that Plaintiffs did have an interest in their respective properties, and a jury could determine that Ibrahim and Coone published false statements, acted maliciously, and proximately caused the

Trial Ex. 2 2015-05-28 Quitclaim Deed (Jesse Berber); Trial Ex. 7 2014-10-02 Quitclaim Deed (Jennifer Clark); Trial Ex. 11 2015-06-10 Quitclaim Deed (Sims Ex. 2); Trial Ex. 17 2010-10-05 Quitclaim Deed (Karen Norman); Trial Ex. 20 2015-03-16 Recorded Assignment (Rhonda Norman); Trial Ex. 23 2021-06-02 Quitclaim Deed (Danita Toone); Trial Ex. 25 2015-06-05 Quitclaim Deed (Judith Weaver); Trial Ex. 33 2014-10-10 Decree for Redemption (Chambers); Trial Ex. 38 2015-06-12 Statement of Person (Booher); Trial Ex. 39 2015-09-22 Order withdrawing Redemption (Booher); Trial Ex. 50 2015-06-04 Statement of Person (Ponce); Trial Ex. 53 2013-11-08 Scrivener's Affidavit (Coone Ex. 101); Trial Ex. 56 2014-11-03 Decree for Redemption (Irvin); Trial Ex. 58 2014-11-05 Quitclaim Deed (Irvin); Trial Ex. 61 2015-02-25 Assignment of Rents (Irvin); Trial Ex. 62 2015-02-25 Deed of Trust (Irvin); Trial Ex. 63 2015-04-09 Complaint-Sunmyeade (Irvin); Trial Ex. 64 2014-11-24 Warranty Deed (Irvin).

² The Court notes that Brett only signed documents purporting to transfer the Irvin Property and that Irvin did not bring a claim of defamation of title.

Plaintiffs' losses based on the evidence in the record. Thus, summary judgment is inappropriate on this claim and is denied to the extent liability is not based on civil conspiracy. To the extent liability on this claim is based on civil conspiracy, the Court reserves ruling on whether to narrow the parties as to this claim pending an exhaustion of appeals as to the verdict related to the REO Defendants.

Fraud

All Plaintiffs assert a claim for fraud, alleging that the Non-REO Defendants falsely represented a claim to and status of their respective interest in property and that these misrepresentations were intentional and material. (Am. Compl. ¶¶233-34.) As for Irvin, she alleges fraud based upon intentional misrepresentation as to Ms. Coone's statement to her that "something is better than nothing."

Under Tennessee law, fraud and fraudulent misrepresentation are the same cause of action. *Fulmer v. Follis*, No. W2017-02469-COA-R3-CV, 2018 WL 6721248, at *4 (Tenn. Ct. App. Dec. 20, 2018) (citing *Concrete Spaces, Inc. v. Sender*, 2 S.W.3d 901, 904 n.1 (Tenn. 1999); *Huddleston v. Harper*, No. E2014-01174-COA0R3-CV, 2015 WL 3964791, at *4 (Tenn. Ct. App. June 30, 2015)). The elements of a claim for fraudulent misrepresentation are:

(1) the defendant misrepresented an existing or past fact; (2) the representation was false when it was made; (3) the representation concerned a material fact; (4) the false representation was made knowingly or without belief in its truth or recklessly; (5) the plaintiff reasonably relied on the misrepresented fact; (6) the plaintiff suffered damage caused by the misrepresentation. *Id.*, at *4 (citations omitted).

Concealment of a material fact, as contrasted with an affirmative misrepresentation of fact, can also lead to liability. *See Patel v. Bayliff*, 121 S.W.3d 347, 352-53 (Tenn. Ct. App. 2003) (citation omitted). To establish a claim for fraudulent concealment, a plaintiff must prove:

(1) a defendant took affirmative action to conceal the cause of action or remained silent and failed to disclose material facts despite a duty to do so; and (2) the plaintiff could not have discovered the cause of action despite exercising reasonable

care and diligence. *Shadrick v. Coker*, 963 S.W.2d 726, 735 (Tenn. 1998) (citation omitted).

Fraudulent concealment is demonstrated through a showing that there was not only a failure to disclose a known fact but there is also “a trick or contrivance” or there exists a duty to disclose. *Continental Land Co., Inc. v. Investment Properties Co.*, No. M1998-00431-COA-R3-CV, 1999 WL 1129025, *5 (Tenn. Ct. App. Dec. 10, 1999). Reasonable reliance is an essential element of claims for intentional misrepresentation or fraudulent concealment. *Fulmer*, 2018 WL 6721248, at *6 (citations omitted).

The Non-REO Defendants contend that there is insufficient evidence that any of them made any representation of an existing or past fact to any plaintiff. In response, Plaintiffs again point to the specific documents identified above which purport to transfer various properties to support their claim and argue that they have established an inference that the Non-REO Defendants are liable to all Plaintiffs for fraud as part of the civil conspiracy. However, the Court has found that Plaintiffs would not be able to maintain their civil conspiracy claim if the jury verdict as to Walker and Johnson is upheld; if that is the case, the only plaintiffs that could maintain a claim for fraud would be Family Trust and Sherrod against Ibrahim and Coone; Irvin against Brett and Coone; and the remaining Plaintiffs against Coone.

While the Non-REO Defendants contend that there is insufficient evidence to prove a claim for fraud, the Court points to its Memorandum and Order entered on August 6, 2021:

The Court finds that the representations included in the forged property title documents filed with the Register of Deeds Office and Courts, if the allegations are shown as true – and a reasonable fact finder could find such -- could be false representations upon which it was expected the public, including the Taxpayer Plaintiffs, relied. *Davis v. McGuigan*, 325 S.W.3d 149, 159 (Tenn. 2010) (“The maker of a fraudulent misrepresentation is subject to liability for pecuniary loss to another who acts in justifiable reliance upon it if the misrepresentation, although not made directly to the other, is made to a third person and the maker intends or has reason to expect that its terms will be repeated or its substance communicated to the other, and that it will influence his conduct in the transaction or type of

transaction involved.”)³. Irvin also asserts that statements regarding her interests made to her by Defendant Coone, on behalf of the REO Defendants, constituted intentional misrepresentation of what she could recover if she exercised her redemption rights. Irvin alleges that the subject misrepresentations “were made in the course of a scheme or artifice to defraud.” Thus, the Court declines to dismiss these claims by the Taxpayer Plaintiffs.

Thus, summary judgment is inappropriate on this claim and is denied to the extent liability is not based on civil conspiracy. To the extent liability on this claim is based on civil conspiracy, the Court reserves ruling on whether to narrow the parties as to this claim pending an exhaustion of appeals as to the verdict related to the REO Defendants.

Violation of Tenn. Code Ann. § 66-22-113

Plaintiffs assert a claim pursuant to Tenn. Code Ann. § 66-22-113 against Coone. This statute provides:

If the clerk or other officer who takes the probate or acknowledgment of a deed or other instrument fails or refuses to comply with and discharge the duties required of the clerk or officer, the clerk or officer shall forfeit and pay the sum of one hundred dollars (\$100) for the use of the county in which the clerk or officer resides, which may be recovered by action of debt, in the name of the trustee of the county, in the circuit or chancery court; and the clerk or officer shall, moreover, be liable to the party injured for all damages the clerk or officer may sustain by such failure or refusal, together with costs, to be recovered by action on the case in the circuit or chancery court.

As such, this statute establishes liability for a notary public who fails to comply with and discharge the duties associated with that position. Plaintiffs allege that Coone signed and notarized forged or fraudulent documents and witnessed false oaths and certifications related to twelve properties described in the complaint. As to the true-copy certificates, Plaintiffs allege that Coone knew that no true original existed or that the original was materially false or failed to exercise reasonable care to determine whether the oath was true or false.

³ This finding relies on the generally accepted legal premise that filing with the Register of Deeds Office is “notice to the world” of the subject document. *See Haiser v. McClung*, No. E2017-00741-COA-R3-CV, 2018 WL 4150877, *6 (Tenn. Aug. 29, 2018).

During oral argument, the Non-REO Defendants argued that Coone cannot be liable for those documents in which she notarized Walker's signature, because it is undisputed that she did not notarize Walker's signature without him being in her presence. (*See* Plaintiffs' Response to Defendant Coone's Statement of Undisputed Material Facts, No. 87). Thus, the Non-REO Defendants contend that Coone complied with her duty to properly acknowledge such instruments and cannot be liable under the statute for acknowledging Walker's signature.

While a notary "is not an insurer of the truth of the recitals," a notary is presumed to have executed her duties correctly and lawfully. *Dickson v. Long*, No. M2008-00279-COA-R3-CV, 2009 WL 961784, at *7 (Tenn. Ct. App. Apr. 8, 2009) (quoting *Peltz v. Peltz*, No. M1999-02299-COA-R3-CV, 2000 WL 1532996, at *1 (Tenn. Ct. App. Oct. 18, 2000)). A notary's acknowledgment says to the world that the execution of the instrument was carried out according to law. *Beazley v. Turgeon*, 772 S.W.2d 53, 59 (Tenn. Ct. App. 1988). It appears that the notary clauses utilized by Ms. Coone states something to the effect that this person personally appeared before me and that he executed the foregoing instrument for the purposes therein contained. The Tennessee Supreme Court has explained the significance of a notary's seal:

A creditor or purchaser who examines a deed of trust should be able to assume that if it contains an acknowledgment to which a notary's seal is affixed, then it has been properly authenticated and is valid, that is, free from apparent forgery or fraud. This is a legitimate assumption given the purpose of an acknowledgment, the role of a notary, and the purpose of the notary's seal. Without a notary's seal, however, the creditor or purchaser may be unsure as to the validity of the instrument.

Dickson, 2009 WL 961784, at *6-7 (quoting *In re Marsh*, 12 S.W.3d 449, 453 (Tenn. 2000)). This presumption may be rebutted, but the burden is on the person denying its correctness. *Id.* (citing *Manis v. Farmers Bank of Sullivan County*, 98 S.W.2d 313, 314 (Tenn. 1936)). Plaintiffs bring allegations of fraud against Coone, and it is undisputed that she made the statement "something is better than nothing" to Irvin. Further, Plaintiffs point to her inconsistent testimony as to whether

Coone acknowledged Brett's signature in his presence. This, combined with the other facts in this case, does create a genuine issue of material fact as to whether she knew that the documents Walker, or others, signed and that she acknowledged were forged or fraudulent. If a reasonable fact finder determines that she knew the documents were forged or fraudulent, a reasonable fact finder could also find that she violated the above statute.

CONCLUSION

Based on the foregoing, the Court GRANTS in part Nationwide's Motion for Summary Judgment for any direct claims brought against it, and, thus, Count I Defamation of Title; Count II Fraud; Count IV Unfair Competition; Count V Intentional Interference with Advantageous Business Relations; Count VI Malicious Prosecution; Count VII Theft and Trespass are hereby DISMISSED against Nationwide.

Further, the Court GRANTS in part Brett's, Ibrahim's, and Coone's Motions for Summary Judgment as to Count IV Unfair Competition; Count V Intentional Interference; Count VI Malicious Prosecution; Count VII Theft and Trespass. Those claims are hereby DISMISSED.

The Court RESERVES ruling on Count VIII Civil Conspiracy as to all defendants against whom it is asserted until appeals are exhausted as to the verdict related to the REO Defendants.

The Court DENIES in part Brett's, Ibrahim's, and Coone's Motions for Summary Judgment as to Count I Defamation of Title; Count II Fraud; and Count III pursuant to Tenn. Code Ann. § 66-22-113 against Coone.

Further, the Court REMOVES the trial set for the week of July 25, 2022, and any pre-trial conferences, until appeals are exhausted as to the verdict relating to the REO Defendants on the trial held September 13-20, 2021. The Court requires the parties to notify the Court when appeals are exhausted to reset the trial in this matter.

It is so ORDERED.

s/Anne C. Martin

ANNE C. MARTIN
CHANCELLOR
BUSINESS COURT DOCKET
PILOT PROJECT

cc by U.S. Mail, fax, or e-filing as applicable to:

Eugene N. Bulso, Jr., Esq.

Paul J. Krog, Esq.

Robert R. Laser III, Esq.

Patrick Newsom, Esq.

Paul Bruno, Esq.

Henry E. (Ned) Hildebrand, IV, Esq.

Gray Waldron, Esq.