

STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

STEVENS & COOPER, LLC and)
FIDELITY NATIONAL TITLE)
INSURANCE CO.,)

Plaintiffs,)

v.)

Civil Action File
No. 05 VS 088745-F

DONALD MORELAND and)
MORELAND & LERMAN, PC,)

Defendants/Third-Party)
Plaintiffs,)

v.)

CHASE MANHATTAN MORTGAGE)
CORPORATION,)

Third-Party Defendant.)

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
AGAINST PLAINTIFFS STEVENS & COOPER, LLC
AND FIDELITY NATIONAL TITLE INSURANCE CO.

NOW COME Donald Moreland and Moreland & Lerman, PC, Defendants/Third-Party Plaintiffs in the above-styled action, and file this "Defendants' Motion for Summary Judgment against Plaintiffs Stevens & Cooper, LLC and Fidelity National Title Insurance Co." ("Defendants' Motion for Summary Judgment") pursuant to O.C.G.A. § 9-11-56 and

applicable law, and respectfully show the Court as grounds therefore as follows:

1.

Defendants incorporate by reference herein the sixty-nine enumerated, undisputed facts stated in Defendants' "Statement of Uncontested Material Facts and Theories of Recovery in Support of Defendants' Motion for Summary Judgment against Plaintiffs Stevens & Cooper, LLC and Fidelity National Title Insurance Co." ("Defendants' Statement of Uncontested Fact").

2.

This case arises over an issue pertaining to the status of title to an improved residential lot located at 2270 Polar Rock Avenue, Atlanta, Georgia 30315 (the "Polar Rock Property").

3.

Plaintiffs claim to have suffered money damages as a result of an alleged negligent misrepresentation by Defendant Moreland concerning an outstanding deed to secure debt (the "Security Deed") encumbering title to the Polar Rock Property, which was originally held by Advanta National Bank to secure a debt in the amount of \$45,000.00, and which was originally recorded on October 1, 1998 in Fulton County Deed Book 25447, page 313.

4.

Based on Defendants' Statement of Uncontested Fact, Defendants are entitled to summary judgment against Plaintiff Stevens & Cooper, LLC and Plaintiff Fidelity National Title Insurance Company with respect to each and every count of Plaintiffs' Complaint because the uncontested facts show as a matter of law that:

- (a) Plaintiff Stevens & Cooper, LLC did not reasonably rely on any statement by Defendant Moreland or Defendant Moreland & Lerman, PC concerning the Security Deed; and alternatively
- (b) Neither Defendant Moreland nor Defendant Moreland & Lerman, PC misrepresented any fact concerning the Security Deed to Plaintiff Stevens & Cooper, LLC or Plaintiff Fidelity National Title Insurance Company.

5.

Additional grounds for Defendants' Motion for Summary Judgment are shown in Defendants' "Brief in Support of Defendants' Motion for Summary Judgment against Plaintiffs Stevens & Cooper, LLC and Fidelity National Title Insurance Co.", filed concurrently herewith and incorporated by reference herein.

6.

Defendants rely, without limitation, on the following filings to support

Defendants' Motion for Summary Judgment:

- (a) All pleadings filed in this case;
- (b) All affidavits filed in this case, including:
 - i. Affidavit of Donald D. Moreland, filed January 8, 2006; and
 - ii. Affidavit of Thomas E. Reardon, filed October 17, 2006;
- (c) All depositions filed in this case, including:
 - i. Deposition of Donald D. Moreland, taken August 24, 2006; and
 - ii. Deposition of Charles R. Burditt, Jr., taken August 25, 2006.

WHEREFORE, Defendants Moreland and Moreland & Lerman, PC,

pray:

- 1) That this Motion for Summary Judgment be granted;
- 2) That Summary Judgment be entered against Plaintiff Stevens & Cooper, LLC and Plaintiff Fidelity National Title Insurance Company in favor of Defendant Moreland and Defendant Moreland & Lerman, PC, as to each and every count of Plaintiffs' Complaint;

- 3) That the Court enter an Order:
- (a) dismissing all counts of Plaintiffs' Complaint and the entire action; and
 - (b) taxing all costs of this litigation against Plaintiffs Stevens & Cooper and Fidelity National Title Insurance Company; and
- 4) That the Court grant Defendants/Third-Party Plaintiffs Moreland and Moreland & Lerman, PC such other and further relief as just and proper.

Dated this 8th day of January, 2007.

Respectfully submitted,

By: 

JAMES L. PAUL

Georgia State Bar No. 567600

F. BEAU HOWARD

Georgia State Bar No. 142641

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served a true and correct copy of the within and foregoing "Defendants' Motion for Summary Judgment against Plaintiffs Stevens & Cooper, LLC and Fidelity National Title Insurance Co.", upon the following parties by manner of service as indicated below, in properly addressed envelopes, addressed as follows:

John C. Porter, Jr.
Gard Smiley Bishop & Porter, LLP
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Via Certified Mail, RRR #70032260000558393470

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Dated this 27th day of January, 2007.

By: 

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Georgia State Bar No. 567600

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