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IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE, PART III [I]

RAYMOND RAY

Plaintiff

vs.

NICOLE AND TERRY HICKS

Defendants

F04

NO 15-1176-III [1], transferred from part III, by inter-court order for handling pilot project case load

NOTICE OF ENTRY REQUESTED

FINAL ORDER FOR DECLARATORY PARTIAL DEFAULT JUDGEMENT
AND
ORDER OF DISMISSAL WITHOUT PREJUDICE TO RE-FILE IN PERSONAM CLAIMS.

This matter is before the Court on May 13, 2016, upon motion of Plaintiff for a partial default judgment on the *In Rem* portion of his Complaint--that part seeking transfer of certain Davidson County real estate title to wit, 1113 and 1115 Dickerson Road [Lots 13, 14, and 15 in Sharp and Horn's Addition to Northeast Nashville, a plan of which is of record in Book 161, page 53, of the Register's Office of Davidson County, Tennessee, all as more particularly described in the deed of trust, EXHIBIT B to the Complaint, AND hereinafter.]. No response to the Motion has been filed. [FILED CONTEMPORANEOUSLY HEREWITH, by Plaintiff was a NOTICE OF nonsuit, a NOTICE voluntary dismissal without prejudice to refile, of all of Plaintiff's monetary claims for money owed by any claim description as contained in the Complaint.]

Subsequent to the filing of the motion, by inter-court order, due to considerations of

BILL GARRETT, Davidson County
Trans:T20160052316 ORDER
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docket size in the Business Court, finalizing this Motion was randomly transferred from Chancery Court of Davidson County, Tennessee, Part III, the Honorable Ellen Hobbs Lyle Chancellor, to Chancery Court of Davidson County, Part I, the Honorable Claudia Bonnyman, Chancellor.

WHEREAS, in this matter previously, a Complaint for declaratory judgment was filed on September 30, 2015, and attempts were made to serve the Defendants using certified mail. The Complaint sought a declaratory judgment that Plaintiff was entitled under the furnished of record Contract, Promissory Note, and Deed of Trust, to a return of the title of the real estate under a lease-purchase agreement that was the subject of those documents for various breaches of the agreements. As reflected in the record, the postal attempts of service of summons and Complaint were returned undeliverable and unclaimed, using all known addresses for Defendants. Further, searches for local mailing addresses produced no other addresses. Attempts to use known phone numbers went unanswered, the phones disconnected or not working. See the previous Affidavit of Plaintiff and the postal returns furnished demonstrating this.

Plaintiff's Affidavit detailed that the real estate, commercial property on Dickerson Road in Nashville, Tennessee had been abandoned by defendants over a year ago and payments had stopped as detailed. Various damages to the building and violations to building codes were set forth in the Complaint and Affidavit of Plaintiff, exceeding $324,000.00. Further, the unprotected and uninsured building, in violation of the agreement documents, was and is threatened with destruction or further damage as street people have repeatedly broken in and invaded it for use. Plaintiff described confrontations with them. See the Affidavit of Plaintiff.

AND WHEREAS, according to the undisputed affidavit of Plaintiff, later it was learned that Defendants were living somewhere outside of the United States, as they called counsel for

Plaintiff and Plaintiff, furnishing an email to be used as well as using a foreign phone number to be used for communication. Emails to Defendants identified the lawsuit and explained it was seeking return of the title to Plaintiff, and that such action was imminent in January, 2016, , and sought their postal address for service of process, multiple times. Calls to the phone revealed no way to leave messages and no answer. Use of the email furnished produced responses from that email by defendants, demonstrating its use by them, but Defendants refused to furnish a requested postal mail address for serving the lawsuit. Defendants were thus deliberately evading service of process. No mailing address is known or has been furnished by Defendants.

AND WHEREAS, no response to the Complaint has been filed.

AND WHEREAS, Plaintiff made a good faith and reasonable attempt to locate the mailing address of Defendants, without success, and were thwarted by Defendant's evasion of service of process.

AND WHEREAS, there being no provision in law for service by email, on January 29, 2016, Plaintiff moved for a partial default judgment for title to the Davidson County real estate within the jurisdiction of the Court–reserving the claims for money judgment, or in the alternative, for an order directing publication of notice of the lawsuit as a basis for default judgment. The Court ordered on February 17, 2016, service by publication which by direction of the Court Clerk on February 19, 2016 took place on 2-26-16 3-4-16 3-11-16 and 3-18-16 by Affidavit of the Tennessean on April 18, 2016.

AND WHEREAS, the publication of Notice of the lawsuit was carried out by the Tennessean newspaper as set forth in its affidavit to that effect. From the record it is shown that more than thirty [30] days have lapsed since the completion of the published Notice for thirty

days. Thus the Court has jurisdiction over the real estate for purposes of the requested judgment of the sought return of title to Plaintiff, but not personal jurisdiction over the Defendants Nicole and Terry Hicks to take up the various money judgments sought in the Complaint.

THEREFORE, the Court finds and IT IS ORDERED AND DECLARED:

1. No response to the Motion has been filed and Defendant's did not appear.

2. That service by publication was properly completed.

3. That the foregoing recitals of the procedural history and claims in the Complaint of this matter are established for purposes of default, and jurisdiction over the subject real estate is undisputed and taken as true and correct and is a basis for the *In Rem* relief of return of title to Plaintiff for the various breaches by Defendants as provided in the Complaint, Contract,, Promissory Note, Deed of Trust, and Affidavit.

4. IT IS ORDERED AND DECLARED that FEE SIMPLE ABSOLUTE and all title to 1113 and 1115 Dickerson Road, Nashville, Davidson County, Tennessee, [Lots 13, 14, and 15 in Sharp and Horn's Addition to Northeast Nashville, a plan of which is of record in Book 161, page 53, of the Register's Office of Davidson County, Tennessee. and more particularly described in EXHIBIT B to the Complaint– and below], [and Being the same property conveyed by Raymond (Glenn) Ray to Nicole and Terry Hicks on January 26, 2007, of record in the Register's Office of Davidson County, Tennessee, on 02/02/07, transaction # 20070202 0014087.] or claim thereto whatsoever by Defendants, whether statutory or at common law, free and clear of all claims of homestead, marital share or other exemption, dower, right of redemption, or exemption, or otherwise, is hereby divested out of Nicole and Terry Hicks and vested in Raymond Ray. THE PROPERTY

BEING MORE PARTICULARLY DESCRIBED AS:

FIRST PARCEL:

Said lots number 14 and 15 front 50 feet each on the Easterly side of North First Street, formerly the Whites Creek Pike, and runs back between parallel lines, 145 feet to an alley. This improved property known as 1115 North First Street, Nashville, TN 37207.

BEING THE SAME PROPERTY CONVEYED to Nicole and Terry Hicks by Warranty Deed of record in the Register's Office of Davidson County, Registration # 20070202-0014087, on 02;02/07, from Raymond Glenn Ray, and the re-conveyed by TRUST DEED to Trustee Charles Cross, Attorney, 3813 Whites Creek Pike, Nashville, TN 37207, the same date of 0/02/07 of record in the Register's Office of Davidson County, TN , Registration # 20070202-0014088, also, MORE PARTICULARLY:

BEING THE SAME PROPERTY conveyed dto Raymond Ray by deed from Claude M. Richmond, Jr., and Wife Katherine richomond, in an installment deed of record in Book 8091, Page 922, and previously to Clude M. Richmond, Jr., and R.J. Richmond, as equal tenants in common, in Book 4400 Page 347, in the Register's Office of Davidson County. The said R.J. having died on August 3, 1981, and by his will of record in Will Book 135, Page 661, Probate clerks Office of Davidson County, devised his interest in the above described property to his wife, Bertha T. Richmond. And, by deed of record in book 6010, Page 244, Register's Office for said County, Bertha Richmond conveyed her interest in the described property to Claude M. Richmond, Jr., and wife Katherine Richmond. The said Bertha Richmond and Bertha T. Richmond is one and the same person.

SECOND PARCEL

Being Lot number 13 on the Plan of Sharpe and Horn's Second Addition, as of record in Book 161, Page, 53, Register's Office of Davidson County, Tennessee.

Said Lot number 13 fronts 50 feet on the Easterly side of North First Street, and runs back between parallel lines 145 feet, more or less, to an alley,

BEING THE SAME property conveyed to Raymond Glenn Ray, Jr., from Lois D. Ray, [widow of Raymond Glenn Ray, Sr.] and Freeman Ray, *unmarried*, by deed of record in Book 6145, Page 165, Register's Office of Davidson County, Tennessee. *Previously*, this property is the same as property conveyed to Lois D. Ray by deed from Raymond Glenn Ray, Jr., Jeffery Dewey Ray, Terri Lynne Ray, Sharon Simms and Jennifer Maria Ray as of record in Book 5700, Page 436. Inasmuch as the above referenced deed recited that the interest of Gregory Freeman Ray was not included because he was a minor at the time, the said Gregory Freeman Ray, having at the time of the deed to Raymond Glenn Ray, Jr. Attained his majority, joined in the execution of the deed to Raymond Glenn Ray, Jr., in Book 6145, Page 53. The said Gregory Freeman Ray and Gregory F. Ray,

and Freeman Ray mentioned herein being one and the same person.

This conveyance is subject to any recorded Master Deed, Declaration of Protective covenants, conditions, or Restrictions, and any easements or Plat affecting said property which is of record in said Register's Office.

5. The Deed of Trust of record reflects that the Trustee is attorney Charles Cross, Nashville, Tennessee held title in trust, and he is hereby empowered, should he choose to do so, to prepare and execute a Deed to Plaintiff free of all claims as described above of the real estate at 1113 and 1115 Dickerson Road, Nashville, Tennessee, as more particularly described in the Deed of Trust, EXHIBIT B to the Complaint, of record in the Register of Deeds Office for Davidson County, Tennessee in Transaction number 20070202-0014088. [Being the same property conveyed by Raymond (Glenn) Ray to Nicole and Terry Hicks on January 26, 2007, of record on 02/02/ 07, in the Register's Office of Davidson County, Tennessee, transaction # 20070202 0014087.]

6. It is FURTHER ORDERED that the various monetary claims contained in the Complaint, as updated by Plaintiff's Affidavit of record, as well as any claim for discretionary expenses by Plaintiff and counsel and costs of this cause, are voluntarily dismissed without prejudice, preserved for prosecution upon personal service being achieved upon Defendants, the Plaintiff having filed a Notice of Voluntary Dismissal purssuant to Tennessee Rule of Civil Procedure, Rule 41, without prejudice to re-file those claims .

IT IS FURTHER ORDERED, that the COSTS of this cause shall be taxed to Plaintiff,

ENTERED, THIS _____ DAY OF JUNE, 2016.

CLAUDIA BONNEMAN, CHANCELLOR PART I

APPROVED FOR ENTRY:

Charles Cross, BPR 003548
Counsel for Raymond Ray
3813 Whites Creek Pike
Nashville, TN 3720
PH 615-299-1511
FX 615-299-1518

CERTIFICATE OF SERVICE

I Charles Cross, counsel for Plaintiff, 3813 Whites Creek Pike, Nashville, Tennessee, hereby certify pursuant to the disclosures found and declared herein above, that I have no address for service of process as allowed by law of Tennessee, service having been by publication, this June 7, 2016.

Charles Cross, BPR 003548

I HEREBY CERTIFY THAT THIS IS A TRUE COPY
OF ORIGINAL INSTRUMENT FILED IN MY OFFICE.
THIS 20 DAY OF June 2016
MARIA M. SALAS, CLERK & MASTER
BY _____
DEPUTY

MAILED 6/9/16