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STATE OF INDIANA)
)SS
COUNTY OF LAKE)

IN THE LAKE SUPERIOR COURT
ROOM NUMBER THREE
SITTING IN GARY, INDIANA

RAY PERRY and LYNN HALL,)
)
Plaintiffs,)

vs.)

Cause No.: 45D03-0703-CC-00152

CLEAN EARTH, OTHO LYLES, SR.;)
JEAN H. FRANKLIN, and ALICE)
LYLES, all in their individual and)
professional capacities both joint and)
severable, and ALL UNKNOWN)
PERSONS AND/OR ENTITIES,)

Defendants.)

*****)

OTHO LYLES, SR., AGENT OF CLEAN)
EARTH, INC., and CLEAN EARTH, INC.)
Jointly and Individually,)

Cross-claimants.)

vs.)

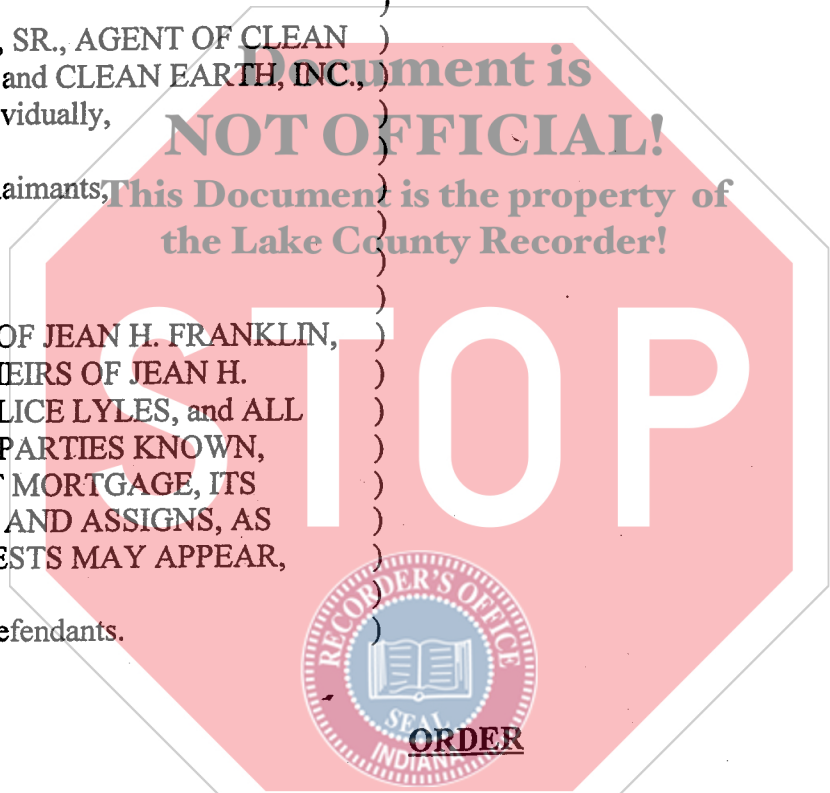
THE ESTATE OF JEAN H. FRANKLIN,)
Deceased, the HEIRS OF JEAN H.)
FRANKLIN, ALICE LYLES, and ALL)
INTERESTED PARTIES KNOWN,)
and COMFORT MORTGAGE, ITS)
SUCCESSORS AND ASSIGNS, AS)
THEIR INTERESTS MAY APPEAR,)

Cross-Defendants.)

Filed in Open Court

MAY 28 2008

Elizabeth A. ...
SUPERIOR COURT OF LAKE COUNTY
CIVIL DIVISION, COURT ROOM 3



2008 044474

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORDED
MICHAEL A. ...
2008 JUN 18 11:05:35
RECORDED

This matter comes before the Court for hearing on Plaintiffs' Complaint to Quiet Title, Breach of Contract, Specific Performance, Conversion and Fraud and Cross-Claimants' Complaint. Plaintiff Ray Perry appears in person and by counsel, Jerry Lee Peteet. Plaintiff Lynn Hall fails to appear.

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vel

Defendant/Cross-Complainant Otho Lyles, Sr., appears in person and by counsel, John Henry Hall. Defendant Clean Earth appears by representative and by counsel, John Henry Hall. Witnesses sworn. Evidence heard on November 16, 2007 and February 7, 2008. At the close of evidence, the Court takes this matter under advisement.

This matter arises out of a real estate transaction between Plaintiff Ray Perry (Perry) and Defendant/Cross-Claimant Clean Earth, Inc., acting by and through its agent, Defendant/Cross-Claimant Otho Lyles, Sr (Lyles). On November 2, 2001, Perry and Clean Earth entered into an "Agreement to Sell Personal Property." By the terms of the Agreement, Clean Earth, acting through Lyles, purported to sell a one-story house with basement located at 1530 Arthur Street in Gary, Indiana, for the sum of \$38,000.00. Clean Earth sold the property "as is" and expressly disclaimed "any warranty of merchantability, fitness or working order or condition of the property except that it shall be sold in its present condition, reasonable wear and tear excepted."

Perry made payments of \$575.00 per month for several years. Over that course of time, he and his wife, Lynn Hall, made improvements to the property. In August of 2006, Perry approached Lyles,¹ and requested a payoff balance. Perry intended to obtain a mortgage for additional improvements and to pay off the property. The title search revealed that there were two mortgages on the property: one Mortgage was in the amount of \$15,467.76 from Jean H. Franklin to the Bank of Indiana and was recorded on November 26, 1985; and the other mortgage was in the amount of \$10,000.00 from Jean H. Franklin to Bank One and was recorded on September 6, 1989. The title search reflected that title was vested in Clean Earth, Inc.

¹It is not contested that Lyles had the authority to act for Clean Earth, Inc.

Clean Earth claims title under a "Quitclaim Deed" which was executed on June 29, 2001 by Thomas Shivers. That deed was recorded in Lake County, Indiana, in July of 2001. Lyles testified that Shivers was the son of Jean Franklin and that both Franklin and Shivers are now deceased. No evidence has been presented that either decedent's estate was probated.

No evidence has been presented that Lyles or Clean Earth had any knowledge of any previous problem with the legal title to the property. Clean Earth did not do a title search when it obtained the property interest from Stivers, and Perry did not do a title search when he entered into the purchase agreement with Clean Earth.

Pursuant to I.C. 32-30-3-14, Lyles and Clean Earth published statutory notice of their Quiet Title action to The Estate of Jean H. Franklin and her heirs; Alice Lyles²; and Comfort Mortgage³. In addition to publication, Comfort Mortgage also received notice of Lyles' and Clean Earth's Quiet Title action by certified mail. Although Perry and Hall served Clean Earth, Lyles, and Alice Lyles with Summons and Complaint, there is no evidence in the record that Perry and Hall made any attempt to serve Jean H. Franklin or that Perry and Hall published statutory notice of their Quiet Title action.

Clean Earth claims title under the quitclaim deed which was delivered to it by Stivers who was understood by Clean Earth's agent, Lyles, to be the son of the deceased owner. Although Clean Earth cannot prove that Stivers was Franklin's son, Perry cannot prove that Stivers was not Franklin's son.

²Perry alleges that Lyles and/or Clean Earth attempted to quitclaim any interest in the property to Alice Lyles, Lyles' daughter, in an attempt to "clear" title. Alice Lyles appeared in this matter and disclaimed any interest in the property. She was dismissed as a party on May 8, 2007.

³Comfort Mortgage is the mortgage company to which Perry and Hall applied for a mortgage. No mortgage was issued on the property by Comfort Mortgage.

The Court FINDS that Clean Earth, by its agent, Lyles, entered into the transaction with Stivers in good faith and further recorded the quitclaim deed in a timely manner and thereby established notice to any interested party of Clean Earth's interest in the property. While it is true that Stivers conveyed by quitclaim deed only the interest that he had, the evidence is that, with the exception of Perry and Hall, no other person has taken action to assert an interest in the property in the nearly seven (7) years since the quitclaim deed to Clean Earth was filed. Further, despite publication of statutory notice, no other person has come forward to assert any interest on behalf of Franklin, her heirs or any other person.

The Court FINDS that title on the real estate located at 1530 Arthur Street, Gary, Indiana, which is described as follows:

Lot Two (2) and Three (3), except the South 55 feet of Lot 3 in Block 2, Woldt's Second Addition to Gary, as per plat thereof, recorded in Plat Book 9, page 27, in the Office of the Recorder of Lake County, Indiana.

should be and is quieted in Clean Earth, Inc., subject to the provisions of Indiana law. The Court further FINDS that the contract entered into between Perry and Clean Earth is valid and enforceable.

WHEREFORE, judgment of Quiet Title is entered in favor of Defendant/Cross-claimant Clean Earth, Inc., and against the Estate of Jean H. Franklin, the heirs of Jean H. Franklin, Alice Lyles, and all interested parties, and Comfort Mortgage, its Successors and Assigns.

FOUND AND RECOMMENDED this 20 day of May, 2008.


MAGISTRATE KRISTEN D. HILL
LAKE SUPERIOR COURT ROOM THREE

APPROVED AND SO ORDERED this 28 day of May, 2008.

Nanette Raduenz

TEMPORARY JUDGE NANETTE K. RADUENZ
LAKE SUPERIOR COURT ROOM THREE

"I AFFIRM, UNDER PENALTIES FOR PERJURY, THAT I HAVE TAKEN REASONABLE CARE TO REVIEW EACH SOCIAL SECURITY NUMBER IN THIS DOCUMENT, UNLESS REQUIRED BY LAW."

PREPARED BY: *JH*

Distribution:
Jerry Lee Peteet
John Henry Hall

CERTIFICATION OF CLERK

As legal custodian I hereby certify that the above and foregoing is a true and complete copy of the original on file with this office in the cause stated thereon.

Witness my hand and the seal of the court this 30th day of May, 2008.

Clerk of the Lake Circuit and Superior Courts

By: *Thomas R. Pappas*
Deputy Clerk

