

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

REBECCA E. KING
Debtor

CASE NO. 01-56078
CHAPTER 13

REBECCA KING
Plaintiff

V.

ADV. PROC. NO. 02-05057

FRED BUHRER REAL ESTATE, INC.
Defendant

OPINION

The matter before the court is the Complaint filed by the debtor, Rebecca King, against Fred Buhrer Real Estate, Inc., requesting damages in connection with a lease purchase agreement for real estate located in Marion County, Mississippi. Having considered the matter, the court concludes that the relief requested should be denied.

I. FACTUAL BACKGROUND

1. Rebecca E. King filed a petition for relief under Chapter 13 of Title 11 of the United States Code on November 16, 2001, in the United States Bankruptcy Court for the Southern District of Mississippi.
2. The debtor filed an adversary complaint against Fred Buhrer Real Estate, Inc., requesting judgment for \$400,000.00 in actual damages and \$1,000,000.00 in punitive damages. The complaint alleged that the defendant, Fred Buhrer Real Estate, Inc., in the absence of any

agreement authorizing it to do so, collected rent due under a lease purchase agreement (wherein the plaintiff was the lessor), from the lessees and paid the notes (owed by the plaintiff) on the property to Citizens Bank. The complaint further alleged that the defendant, Fred Buhner Real Estate, Inc., failed to timely make payments on the property causing the note with Citizens Bank to go into default, and that as a result the bank foreclosed on the property causing the plaintiff to lose the property. The complaint alleged breach of fiduciary duty, conversion, negligence, and negligence per se against the defendant, and demanded judgment against the defendant.

3. The defendant filed its answer denying that the plaintiff is entitled to judgment. The answer was subsequently amended to add defenses that the plaintiff's negligence was the sole proximate cause of plaintiff's damages or was a major contributing cause, and that the plaintiff failed to mitigate her damages.

4. Briefs were submitted to the court and the matter was set for trial. The matter was removed from the trial with supplemental briefs being submitted to the court. The matter has been submitted to the court for determination without an evidentiary presentation.

5. As noted in the Reply to Rebuttal Brief of Plaintiff initially filed by the defendant, the plaintiff has stated that the defendant's Statement of Facts is basically accurate, except as to paragraphs 18 and 19 (relating to whether funds were timely remitted by the defendant to Citizens Bank, and to whether the defendant's actions caused or contributed to the foreclosure). Therefore, all portions of the Statement of Facts recited in the Trial Brief, except paragraphs 18 and 19, are taken by the court to be accurate.

II. CONCLUSIONS OF LAW

The matter before the court is a non-core proceeding under 28 U.S.C. § 157. The court has jurisdiction to hear the matter pursuant to 28 U.S.C. § 157 (c) and 28 U.S.C. § 1334.

The court agrees with the arguments and authorities presented by the defendant and finds that the defendant's action in failure to remit immediately to the bank any payments that it received from the lessees did not contribute to the ultimate foreclosure of the property, that the defendant did not breach any fiduciary duty it may have owed the plaintiff, did not convert any of the funds received to its own use, and did not act negligently. The court concludes that the plaintiff has not met its burden of proof on its complaint to prove a breach of fiduciary duty, conversion or negligence, and the requested relief should be denied.

An order will be entered consistent with these findings and conclusions pursuant to Federal Rule of Bankruptcy Procedure 9021 and Federal Rule of Civil Procedure 58. This opinion shall constitute findings and conclusions pursuant to Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52.

DATED this the 28th day of March, 2007.

/s/ Edward R. Gaines
EDWARD R. GAINES
UNITED STATES BANKRUPTCY JUDGE

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