

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

IN RE:

**NORTHLAKE DEVELOPMENT, LLC,

DEBTOR.**

**CASE NO. 06-01934-NPO

CHAPTER 7**

**KINWOOD CAPITAL GROUP, LLC AND
GEORGE KINIYALOCTS, INDIVIDUALLY
AND AS GENERAL PARTNER OF
KINIYALOCTS FAMILY PARTNERS I, LTD.**

PLAINTIFFS

V.

ADV. PROC. NO. 06-00171-NPO

**NORTHLAKE DEVELOPMENT, LLC AND
BANKPLUS**

DEFENDANTS

**MEMORANDUM OPINION AND ORDER
GRANTING MOTION FOR CORRECTION OF JUDGMENT**

On June 3, 2008, there came on for hearing (the “Hearing”) the Motion for Supplemental Judgment or Correction of Judgment of Kinwood Capital Group, LLC and George Kiniyalocts, Individually and as General Partner of Kiniyalocts Family Ptrs. I, Ltd. (the “Plaintiffs”) filed on April 25, 2008 (the “Motion to Correct”) (Adv. Dk. No. 127); BankPlus’s Objection to Motion for Supplemental Judgment or Correction of Judgment of Kinwood Capital Group, LLC and George Kiniyalocts, Individually and as General Partner of Kiniyalocts Family Ptrs. I, Ltd. filed by BankPlus (“BankPlus”) on May 22, 2008 (“BankPlus’ Objection”) (Adv. Dk. No. 131; Exh. A, Parts 1, 2, and 3, Adv. Dk. Nos. 132-134); and the Rebuttal to BankPlus’ Objection to Motion for Supplemental Judgment or Correction of Judgment of Kinwood Capital Group, LLC and George Kiniyalocts Family Ptrs.I, Ltd. filed on June 2, 2008, (the “Rebuttal”) (Adv. Dk. No. 135) in the above-styled

adversary proceeding (the “Adversary”). James R. Mozingo and William M. Simpson represented the Plaintiffs. William H. Leech, C. Glen Bush, and Danny E. Ruhl represented BankPlus.¹ The Court, having considered the pleadings, exhibits, and arguments of counsel presented at the Hearing, finds that the Motion to Correct is well taken and should be granted as set forth herein. Specifically, the Court finds as follows:²

Jurisdiction

This Court has jurisdiction over the parties to and the subject matter of this proceeding pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(H) and (K). Notice of the Hearing on the Motion to Correct was proper under the circumstances.

Facts

The facts of this case are stated more fully in the Memorandum Opinion and Order Granting Amended Complaint (the “Opinion”) (Adv. Dk. No. 94) issued previously by this Court. In short, Michael Earwood (“Earwood”), an attorney and member of Kinwood Capital Group, LLC (“Kinwood”), attempted to transfer certain real property (the “Property”) owned by Kinwood to Northlake Development, LLC (the “Debtor”)³ in violation of the Kinwood Operating Agreement.

¹BankPlus was represented by Edward E. Lawler, Jr. and R. Keith Foreman at the October 31 - November 2, 2007 trial on the merits of the Amended Complaint (Adv. Dk. No. 25) filed by the Plaintiffs and the Answer (Adv. Dk. No. 27) filed by BankPlus, and at the February 14, 2008 hearing on the Motion to Alter or Amend Judgment and Amendment thereto filed by the Plaintiffs (Adv. Dk. Nos. 101, 110) and the Response of BankPlus to Motion and Amendment to Motion to Alter or Amend Judgment (“BankPlus’ Response”) (Adv. Dk. No. 111). Leech, Bush, and Ruhl appeared as additional counsel for BankPlus at the hearings on the post-trial motions.

²The following constitutes the findings of fact and the conclusions of law of the Court pursuant to Federal Rule of Bankruptcy Procedure 7052.

³As discussed in the Opinion, the Debtor is a Mississippi limited liability company of which Earwood is the sole owner and managing member.

Earwood, on behalf of the Debtor, subsequently executed several deeds of trust pledging the Debtor's interest in the Property as collateral for loans from BankPlus.⁴ In that actions taken by an LLC member in contravention of an LLC operating agreement are null and void *ab initio*, the Court determined that Earwood's attempted transfer of the Property from Kinwood to the Debtor conveyed nothing. Consequently, the Debtor had no interest in the Property which it could convey to BankPlus, and the deeds of trust from the Debtor to BankPlus did not create valid security interests in the Property in favor of BankPlus.

In the Opinion and Final Judgment Granting Amended Complaint (the "Final Judgment") (Adv. Dk. No. 95), entered on December 13, 2007, the Court gave the Plaintiffs an opportunity to apply for any relief requested in the Amended Complaint, but not granted in the Final Judgment, within ten (10) days.⁵ The Plaintiffs timely filed a Motion to Alter or Amend Judgment on December 24, 2007 ("Motion to Alter") (Adv. Dk. No. 101). The Motion to Alter included a request for "Technical Amendment in Aid of Recording" as follows:

I. Technical Amendment in Aid of Recording

1. In order to clarify the Judgment for the purposes of its entry in the land records of Panola County, Mississippi, and in aid of the Chancery Clerk recording such Judgment and properly noting its effects in the said land records, Plaintiff asks that the Court amend Paragraphs A and B of the Judgment and replace them with the following language:

⁴Although the language in the Opinion focused primarily on the original deed of trust and defined it for purposes of the Opinion as the "BankPlus Deed of Trust," the Court stated that Earwood pledged the Debtor's interest in the Property as collateral for subsequent BankPlus loans. *See* Opinion, pp. 8-9.

⁵Aggrieved by the Opinion and the Final Judgment entered contemporaneously therewith, BankPlus timely filed a notice of appeal (the "Notice of Appeal") (Adv. Dk. No. 98) which was suspended by the Motion to Alter or Amend Judgment discussed herein. *See* Federal Rule of Bankruptcy Procedure 8002(b), Advisory Committee Note (1994).

A. The request for issuance of a judgment declaring the Kinwood Warranty Deed (covering the property described in Exhibit A) null and void *ab initio* and requiring it to be cancelled of record in the land records of the First Judicial District of Panola County, Mississippi, hereby is granted;

B. The request for the issuance of a judgment declaring the BankPlus Deeds of Trust null and void *ab initio* and requiring it to be cancelled of record in the land records of the First Judicial District of Panola County, Mississippi, hereby is granted;

C. The Chancery Clerk of Panola County, Mississippi is directed to file this Judgment in the Land Records of the First Judicial District of Panola County, Mississippi, with regard to the property described in Exhibit A, and the Chancery Clerk is further directed as follows:

1. Make an appropriate marginal notation on the warranty deeds from Kinwood Capital Group, LLC to Northlake Development, LLC covering the property described in Exhibit A that such deeds have been rendered null and void *ab initio* by this Judgment and are hereby cancelled of record, said deeds being recorded in Deed Book B-21 at Page 717 and Deed Book B-31 at Page 611;
2. Make an appropriate marginal notation on all the deeds of trust from Northlake Development, LLC to BankPlus covering the property described in Exhibit A that such deeds of trust have been rendered null and void *ab initio* by this judgment and are hereby cancelled of record, said deeds of trust being recorded in Deed of Trust Books and Pages 276 at 61; 278 at 687; 285 at 137; 288 at 17; 288 at 483; 294 at 673 and 297 at 291.

A legal description of the property was included in the Motion to Alter as Exhibit A.

The Plaintiffs thereafter filed an Amendment to Motion to Alter or Amend Judgment on January 22, 2008 (“Amendment to Motion to Alter”) (Adv. Dk. No. 110). In the Amendment to Motion to Alter, the Plaintiffs sought to correct a clerical error in the Motion to Alter by substituting a new Exhibit A with the “correct” legal description of the Property.

On February 4, 2008, BankPlus filed BankPlus’ Response. The first paragraph of the “Argument” section (p. 3) of BankPlus’ Response stated, “Concerning Roman Numeral[] I [] of

the Motion, BankPlus does not object to amendments to the Judgment to correct the legal description of the subject property, nor does it object to the release of the injunction bond in light of the Court's Memorandum Opinion and Order." BankPlus' Response made no other objections to Plaintiffs' requested relief under Roman Numeral I of the Motion to Alter. Furthermore, BankPlus did not raise any objections to the relief requested in Roman Numeral I of the Motion to Alter at the hearing held on February 14, 2008 on the Motion to Alter, Amendment to Motion to Alter, and BankPlus' Response.

On March 20, 2008, the Court entered its Amended Final Judgment Granting Amended Complaint ("Amended Final Judgment") (Adv. Dk. No. 117). Among other relief granted therein, the Amended Final Judgment declared the Kinwood Warranty Deed and the BankPlus Deeds of Trust null and void *ab initio* and required that they be cancelled of record in the land records of the First Judicial District of Panola County, Mississippi, thus incorporating the language from §§ I.1.A. and I.1.B. of the Motion to Alter. The Court denied the relief the Plaintiffs requested in § I.1.C. of the Motion to Alter because the Court found that it had no personal jurisdiction over the Panola County Chancery Clerk and, therefore, could not issue a mandatory injunction giving such instructions. The Court made no ruling regarding whether the book and page references found in §§ I.1.C.1. and I.1.C.2. of the Motion to Alter correctly identified the instruments affected by the Final Judgment and Amended Final Judgment.

On April 25, 2008, Plaintiffs filed the Motion to Correct presently before the Court which represents the Plaintiffs' third attempt⁶ to provide the Court with the language needed to effectuate the Final Judgment and Amended Final Judgment, and requests the Court to supplement, amend, or

⁶The fourth attempt is contained in footnote 8 herein.

correct its Amended Final Judgment, pursuant to 11 U.S.C. § 105 and Federal Rule of Bankruptcy Procedure 9024, to include the book and page numbers of the instruments affected by the Amended Final Judgment. The Plaintiffs assert in the Motion to Correct that the Chancery Clerk of Panola County, Mississippi, has advised that “in order to properly and accurately make all notations and entries necessary on the Panola County land records to reflect the adjudications of the Court in this Adversary Proceeding, the specific instruments affected by the Amended Final Judgment [DN 117] need to be specified by the Court.” (Mot. to Correct, ¶ 4) (Adv. Dk. No. 127). In short, Plaintiffs want the Amended Final Judgment to be amended further so that the instruments affected thereby are specified by book and page number.

As entered, the Amended Final Judgment identifies the affected instruments as follows:

- A. The request for issuance of a judgment declaring the Kinwood Warranty Deed (covering the property described in Exhibit A) null and void *ab initio* and requiring it to be cancelled of record in the land records of the First Judicial District of Panola County, Mississippi, hereby is granted;
- B. The request for the issuance of a judgment declaring the BankPlus Deeds of Trust null and void *ab initio* and requiring them to be cancelled of record in the land records of the First Judicial District of Panola County, Mississippi, hereby is granted;

Plaintiffs’ Motion to Correct requests that the Amended Judgment be amended again to state the following:

- A. The request for issuance of a judgment declaring the Kinwood Warranty Deed⁷ (covering the property described in Exhibit A), ***being the warranty deeds from Kinwood Capital Group, LLC to Northlake***

⁷Although it is evident that Plaintiffs were attempting to track the language used by the Court in the Opinion, i.e. “Kinwood Warranty Deed,” for purposes of clarification in aid of appeal, the Court will correct the language in ¶ A of the Amended Final Judgment to read “Kinwood Warranty Deeds.”

Development, LLC recorded in Deed Book B-21 at Page 717 and Deed Book B-31 at Page 611, null and void *ab initio* and requiring **them** to be cancelled of record in the land records of the First Judicial District of Panola County, Mississippi, hereby is granted;

B. The request for the issuance of a judgment declaring the BankPlus Deeds of Trust Deeds (*sic*) **from Northlake Development, LLC to BankPlus covering the property described in Exhibit A and being recorded in Deed of Trust Books and Pages 276 at 61; 278 at 687; 285 at 137; 288 at 17; 288 at 483; 294 at 673, 296 at 155⁸ and 297 at 291** null and void *ab initio* and requiring **them** to be cancelled of record in the land records of the First Judicial District of Panola County, Mississippi, hereby is granted;

(Emphasis added to denote proposed amendment).

BankPlus' Objection asserts that this Court does not have jurisdiction to consider the Motion to Correct because: (A) BankPlus' filing of the Notice of Appeal divested this court of jurisdiction, and (B) none of the exceptions to (A) apply in this case. Encompassed in its jurisdictional argument, BankPlus asserts that Plaintiffs are asking for substantively new relief by requesting the addition of the book and page number notations. First, BankPlus asserts that the Court's Opinion defined the Kinwood Warranty Deed in such a way that the Court declared the Warranty Deed, dated July 12, 2000, and recorded on August 7, 2000, in Deed Book B-21 at Page 717⁹, null and void *ab initio* but did not nullify the Correction and Amendment to the Kinwood Warranty Deed, dated August 5, 2004, and recorded on August 9, 2004 in Deed Book B-31 at Page 611. *See* BankPlus' Obj., ¶ 6. Second, BankPlus asserts that the Court declared the first BankPlus Deed of Trust, dated August 15, 2000, and recorded on August 25, 2000, in Deed Book 276 at Page 61, null and void *ab initio*, but

⁸The addition of this Book and Page notation was requested at the Hearing by Counsel for Plaintiffs by oral motion.

⁹Hereinafter, all references to Book and Page numbers refer to Book and Page numbers in the land records of the First Judicial District of Panola County, Mississippi.

did not nullify seven (7) other BankPlus Deeds of Trust which “ultimately cover at least the majority of the property conveyed by Kinwood to Northlake pursuant to the Kinwood Warranty Deed, as corrected and amended by the Correction and Amendment to the Kinwood Warranty Deed.” *See* BankPlus’ Obj., ¶ 8.

Discussion

The issue before the Court is whether the Court should enter a second amended final judgment pursuant to 11 U.S.C. § 105 and Federal Rule of Bankruptcy Procedure 9024 to include the identifying book and page numbers of the instruments affected by the Amended Final Judgment as requested in Plaintiffs’ Motion to Correct.

A. This Court has Jurisdiction to Consider the Motion to Correct.

The Motion to Correct requests that this Court supplement, amend, or correct its Amended Final Judgment, pursuant to 11 U.S.C. § 105¹⁰ and Federal Rule of Bankruptcy Procedure 9024 (“Bankruptcy Rule 9024”), to include the book and page numbers of the instruments affected by the Amended Final Judgment.

Section 105 outlines the power of the bankruptcy court. Section 105(a) states:

The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

§ 105(a). Under this section, this Court expressly has the power to take any action necessary or appropriate to implement court orders. Given the request by the Panola County Chancery Clerk, the

¹⁰Hereinafter, all code sections refer to the United States Bankruptcy Code, located at Title 11 of the United States Code, unless otherwise noted.

Court finds that the action requested in the Motion to Correct is “necessary or appropriate to enforce or implement” this Court’s Amended Final Judgment.

Bankruptcy Rule 9024 governs relief from judgments and orders and states in pertinent part that Federal Rule of Civil Procedure 60 (“Civil Rule 60”) applies in bankruptcy cases.¹¹ Bankruptcy Rule 9024 states:

Corrections Based on Clerical Mistakes; Oversights and Omissions. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. But after an appeal has been filed and docketed in the appellate court and while it is pending, such a mistake may be corrected only with the appellate court’s leave.

Bankruptcy Rule 9024 (*quoting* Civil Rule 60(a)). While a trial court is generally divested of jurisdiction upon a party’s filing a notice of appeal, the trial court retains jurisdiction “to take action in aid of appeal until the case is remanded to it by the appellate court or to correct clerical errors under Civil Rule 60(a).” *See Travelers Ins. Co. v. Liljeberg Enterprises, Inc.*, 38 F.3d 1404, 1408, n.3 (5th Cir. 1994) (*citing* 7 James W. Moore, et al., *Moore’s Federal Practice*, ¶ 60.30[2]); *see also* *L. King*, 10 *Collier on Bankruptcy*, ¶ 8001.04 (15th ed. rev. 2006).

In this case, BankPlus’ appeal has not yet been docketed with the United States District Court for the Southern District of Mississippi. Accordingly, this Court retains jurisdiction to correct clerical errors under Civil Rule 60(a). The Motion to Correct was filed to correct a clerical error pursuant to Bankruptcy Rule 9024 and Civil Rule 60(a). Thus, the Court finds that it has jurisdiction to consider the Motion to Correct pursuant to §105, Bankruptcy Rule 9024, and Civil Rule 60(a).

¹¹Bankruptcy Rule 9024 states that there are exceptions in which Civil Rule 60 does not apply in bankruptcy cases, but those exceptions are not applicable here.

1. Civil Rule 60(a).

According to Wright & Miller, Civil Rule 60(a) deals with the correction of errors that “properly may be described as clerical or as arising from oversight or omission.” 11 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2854 (2d ed. 1995). Additionally, Wright & Miller states that Civil Rule 60(a) “can only be used to make the judgment or record speak the truth and cannot be used to make it say something other than what originally was pronounced.” Id. The mistake sought to be corrected under Civil Rule 60(a) “need not be committed by the clerk or the court; the rule may be utilized to correct mistakes by the parties as well.” Id.

The Court of Appeals for the Fifth Circuit has held:

[Civil Rule 60(a)] allows courts to modify their judgment in order to insure that the record reflects the actual intentions of the court and the parties. The court’s responsibility in this case is to correct “errors, created by mistake, oversight or omission, that cause the record or judgment to fail to reflect what was intended at the time of trial.”

United States of America v. Kellogg (In re: West Texas Marketing Corp.), 12 F.3d 497, 504 (5th Cir. 1994) (*citing Warner v. Bay St. Louis*, 526 F.2d 1211, 1212 (5th Cir. 1976)). The Fifth Circuit also has held that “[a] mistake correctable under [Civil] Rule 60(a) need not be committed by the clerk or the court and Civil Rule 60(a) is even available to correct mistakes by the parties.” Warner, 526 F.2d at 1212.

In the Motion to Correct, Plaintiffs request a second amended order so as to add the identifying book and page numbers to the descriptions of the instruments affected by the Amended Final Judgment as requested by the Panola County Chancery Clerk. The mistake sought to be corrected, therefore, properly may be described as an “error created by mistake, oversight or omission.” *See In re West Texas Mktg. Corp.*, 12 F.3d at 504. The correction of this error will not

make the Amended Judgment say something other than what was originally pronounced or intended by this Court. The correction will serve only to add clarifying descriptive language to the Amended Final Judgment for the clerical use of the Panola County Chancery Clerk regarding the instruments this Court has declared null and void *ab initio*. Accordingly, the Motion to Correct a clerical error under Civil Rule 60(a) is well taken and shall be granted as set forth herein.

2. Action in Aid of Appeal.

In addition to their arguments regarding the clerical error issue, both parties present arguments regarding whether the Court's ruling on the Motion to Correct constitutes an action in aid of appeal. BankPlus' Objection asserts that a ruling on the Motion to Correct does not constitute an action in aid of appeal because the appellate court already will have a complete understanding of the proceedings below. *See* BankPlus' Obj., ¶ 35. BankPlus cites In re Barrick Group, Inc., 100 B.R. 152, 154 (Bankr. D. Conn. 1989) for the proposition that actions in aid of appeal "generally involve ensuring that the appellate court is afforded a complete understanding of the proceedings below." *See* BankPlus' Obj., ¶ 35. Yet, In re Barrick in no way limits the type of actions a trial court may take in aid of appeal, but instead says that "[s]uch actions *include* those intended to ensure that the district court is afforded a complete understanding of the proceedings in the bankruptcy court." *See In re Barrick*, 100 B.R. at 154.

The Rebuttal filed by the Plaintiffs asserts that if the Court denies the Motion to Correct, the Court will, in fact, be making a substantive change in its prior rulings, which would be outside the scope of Civil Rule 60(a). *See* Rebuttal, p. 4. The Rebuttal also asserts that "if there is any real question as to what the Court intended as to the deeds and deeds of trust, an order by the Court, such as the one sought by Kinwood, would be much in aid of appeal." *Id.*, p. 5.

While the Court finds that it retains jurisdiction pursuant to § 105, Bankruptcy Rule 9024, and Civil Rule 60(a), in the alternative and to the extent necessary or appropriate to demonstrate which instruments are affected by the Amended Final Judgment, this ruling by the Court on the Motion to Correct is an act in aid of appeal.

B. The Motion to Correct Does Not Request New Relief.

The Motion to Correct requests relief under Bankruptcy Rule 9024. Plaintiffs assert that they are requesting relief in order to effectuate the original intent of the Court's Final Judgment and Amended Final Judgment. BankPlus asserts that the Motion to Correct is, in fact, a motion under Federal Rule of Civil Procedure 59(e), a Motion to Alter or Amend a Judgment, which must be filed within ten (10) days after the entry of the judgment sought to be amended. In order for BankPlus to prevail on this point, the Court must find that the relief sought by Plaintiffs in the Motion to Correct is substantively new relief not intended or granted by the Court previously. The Court declines.

First, BankPlus is now attempting to assert positions that were not argued at the post-trial hearing on the Motion to Alter on February 14, 2008. The prayer for relief sought in § I of the Motion to Alter included the book and page numbers for both the Kinwood Warranty Deed, dated July 12, 2000 and recorded on August 7, 2000, in Deed Book B-21 at Page 717, and the Correction and Amendment to the Kinwood Warranty Deed, dated August 5, 2004, and recorded at Deed Book B-31 at Page 611. *See* Mot. to Alter, § I.C.1. The prayer for relief in § I of the Motion to Alter also included the book and page numbers for the first BankPlus Deed of Trust, dated August 15, 2000, and recorded on August 25, 2000, in Deed Book 276 at Page 61, and six other deeds of trusts

wherein Earwood purported to convey a security interest in the Property to BankPlus.¹² *See* Mot. to Alter, § I.C.2. In litigating the Motion to Alter, BankPlus did not object to Plaintiffs’ requested relief under § I of the Motion to Alter in BankPlus’ Response, nor did BankPlus raise any objection to the relief requested in § I of the Motion to Alter at the hearing on February 14, 2008. Additionally, in BankPlus’ Objection to the Motion to Correct, BankPlus states in ¶ 13, “As stated therein [in BankPlus’ Response], BankPlus did not object to the proposed amended Paragraphs A and B, the proposed additional Paragraph C, and the related Exhibit A contained in the *timely* filed Motion to Alter or Amend.” (Emphasis in original). As explained *supra*, the Court did not include § I.C. in its Amended Final Judgment because it found that it lacked personal jurisdiction over the Panola County Chancery Clerk to issue a mandatory injunction. Importantly, the Court’s decision not to include § I.C. was not a ruling on whether the book and page notations properly identified the instruments affected by the Amended Final Judgment. BankPlus is estopped from now objecting to the inclusion of book and page numbers which Plaintiffs propose for the purpose of identifying the instruments affected by the Amended Final Judgment given that such objection contradicts BankPlus’ earlier position.

Second, BankPlus’ Objection mischaracterizes this Court’s ruling. BankPlus’ Objection, in part, states:

6. The Memorandum Opinion expressly defined the term “Kinwood Warranty Deed” (hereinafter, the “Kinwood Warranty Deed”) to mean a July 12, 2000 Warranty Deed conveying certain “Property” and recorded on August 7, 2000 in the land records of the First Judicial District of Panola County, Mississippi in Deed Book 21 at Page 717. (Memorandum Opinion, p. 8; *see also* P-30). The Memorandum

¹²As discussed in footnote 8, the Plaintiffs did not include the deed of trust from Northlake, LLC to BankPlus recorded at Deed Book 296 at Page 155 in the Motion to Correct but did request the addition of that book and page number notation at the Hearing by oral motion.

Opinion also recognized that the Kinwood Warranty Deed, and, as such, the description of the property covered thereby, was corrected and amended on August 5, 2004 Correction and Amendment to Warranty Deed (hereinafter, the “Correction and Amendment to Kinwood Warranty Deed”) recorded on August 9, 2004 in the land records office of the First Judicial District of Panola County, Mississippi in Deed Book 31 at Page 611. (Memorandum Opinion, p. 8; *see also* P-56).

7. The Memorandum Opinion appears to have defined the term “BankPlus Deed of Trust” to mean an August 15, 2000 Deed of Trust recorded on August 25, 2000 in the land records of the First Judicial District of Panola County, Mississippi in Deed Book 276 at Page 61. (Memorandum Opinion, p. 8; *see also* P-33 and BP-7). That said, the Memorandum Opinion went on to state that Earwood also pledged Northlake’s interest in the “Property” as collateral for subsequent BankPlus loans. (Memorandum Opinion, pp. 8-9).

8. For purposes of clarification, it should be noted that the following were recorded in favor of BankPlus in connection with securing indebtedness owed to it by Northlake, and that such recordings (hereinafter sometimes referred to as the “BankPlus Deeds of Trust”) ultimately cover at least the majority of the property conveyed by Kinwood to Northlake pursuant to the Kinwood Warranty Deed, as corrected and amended by the Correction and Amendment to the Kinwood Warranty Deed:

- (a) the aforementioned August 15, 2000 Deed of Trust recorded on August 25, 2000 in the land records of the First Judicial District of Panola County, Mississippi in Deed Book 276 at Page 61;
- (b) the February 10, 2001 Deed of Trust recorded on March 28, 2001 in the land records of the First Judicial District of Panola County, Mississippi in Deed Book 278 at Page 687 (*see* BP-27);
- (c) the November 27, 2001 Deed of Trust recorded on March 29, 2002 in the land records of the First Judicial District of Panola County, Mississippi in Deed Book 285 at Page 137 (*see* BP-132);
- (d) the April 8, 2002 Deed of Trust recorded on September 19, 2002 in the land records of the First Judicial District of Panola County, Mississippi in Deed Book 288 at Page 17 (*see* BP-72);

- (e) the October 3, 2002 Deed of Trust recorded on October 21, 2002 in the land records of the First Judicial District of Panola County, Mississippi in Deed Book 288 at Page 483 (*see* BP-88);
- (f) the September 4, 2003 Deed of Trust recorded on October 16, 2003 in the land records of the First Judicial District of Panola County, Mississippi in Deed Book 294 at Page 673 (*see* BP-107);
- (g) the December 22, 2003 Amendment to Deeds of Trust recorded on December 30, 2003 in the land records of the First Judicial District of Panola County, Mississippi in Deed Book 296 at Page 155 (*see* BP-3); and
- (h) the February 20, 2004 Deed of Trust recorded on March 8, 2004 in the land records of the First Judicial District of Panola County, Mississippi in Deed Book 297 at Page 291 (*see* BP-136).

BankPlus' Objection, therefore, seems to assert that while the Court declared the Kinwood Warranty Deed null and void *ab initio*, the Correction and Amendment to the Kinwood Warranty Deed is a valid instrument. The Court disagrees. The Court does not agree that it "recognized" that the Kinwood Warranty Deed was corrected and amended by the Correction and Amendment to the Kinwood Warranty Deed executed by Earwood on August 5, 2004. The Court recognized only that Earwood created a document entitled "Correction and Amendment to Warranty Deed" by which he purported to correct and amend the Kinwood Warranty Deed and which he then recorded on August 9, 2004. Since Earwood never had authority to convey the Property from Kinwood to the Debtor, the Correction and Amendment to the Kinwood Warranty Deed also was null and void *ab initio*.

BankPlus' Objection also seems to assert that although the Court declared the first BankPlus Deed of Trust null and void *ab initio*, all of the other instruments described above in subparagraphs 8(b) through (h) of BankPlus' Objection are valid and, therefore, BankPlus has valid security

interests in the Property. Such an assertion leads to the absurd result that even though the Court's Opinion stated clearly that Earwood lacked the authority to convey the Property from Kinwood to the Debtor, that no title passed from Kinwood to the Debtor, and that the Debtor had no interest in the Property to convey to BankPlus; nevertheless, somehow, BankPlus has a valid security interest in the Property. Such a result was neither the intent nor the ruling of the Court. The Court will address the assertions of BankPlus by stating the obvious:

1. At no time did Michael Earwood have authority to convey the Property from Kinwood to the Debtor;

2. The "Kinwood Warranty Deed" executed by Earwood on July 12, 2000, in which he purported to convey the Property from Kinwood to the Debtor, which was recorded at Deed Book B-21 at Page 717 on August 7, 2000 was null and void *ab initio*, and logically so was the instrument entitled "Correction and Amendment to Warranty Deed" executed by Earwood on August 5, 2004, which was recorded at Deed Book B-31 at Page 611 on August 9, 2004;

3. At no time was the Property conveyed from Kinwood to the Debtor;

4. At no time did the Debtor have any interest in the Property that it could convey to BankPlus; and,

5. The first BankPlus Deed of Trust dated August 15, 2000, and recorded on August 25, 2000, in Deed Book 276 at Page 61 was null and void *ab initio*, and logically so were the deeds of trust that Earwood subsequently executed on behalf of the Debtor in which he purported to convey an interest in the Property to BankPlus and which are recorded as follows: Deed Book 278 at Page 687; Deed Book 285 at Page 137; Deed Book 288 at Page 17; Deed Book 288 at Page 483; Deed Book 294 at Page 673; Deed Book 296 at Page 155; and Deed Book 297 at Page 291.

C. Plaintiffs Request for Costs and Attorney Fees is Denied.

For the reasons previously set forth in the Memorandum Opinion and Order Granting in Part and Denying in Part Motion to Alter or Amend Judgment (Adv. Dk No. 115), the Court denies Plaintiffs' request for costs and fees associated with the litigation of this Motion.

A separate final judgment consistent with this Memorandum Opinion and Order will be entered by this Court in accordance with Federal Rules of Bankruptcy Procedure 7054 and 9021.

IT IS, THEREFORE, ORDERED that the Motion hereby is granted as set forth herein.

SO ORDERED,