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Order on Defendant Kingsley Motion to Dismiss
(Shailendra)

Alice D. Bonner
Superior Court of Fulton County

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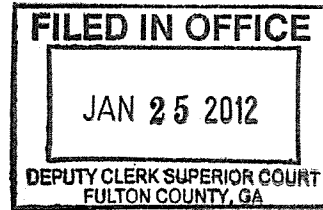
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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

M. ("SHI") SHAILENDRA, et al.)
)
 Plaintiffs,)
)
 v.)
)
 RAHIM SABADIA, et al.)
)
 Defendants,)
)
 and)
)
 RAHIM SABADIA AND NAFEES EL)
 BATOOL, et al.)
)
 Nominal Parties.)

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CIVIL ACTION FILE
NO.: 2011CV195621
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ORDER

This matter is before the Court on Defendant Kingsley Asset Management, LLC's ("Kingsley") Motion to Dismiss pursuant to O.C.G.A. § 9-11-12(b)(6) which was heard before this Court on January 19, 2011. For the reasons discussed below, the Court **GRANTS** Defendant's Motion as to Count Ten (10) of Plaintiffs' Complaint. The Court will take under advisement Defendant's Motion with respect to Counts Seven (7), Nine (9) and Eleven (11).

A. Standard for a Motion to Dismiss.

The Georgia Supreme Court has set forth the standard for a motion to dismiss for failure to state a claim as follows:

A motion to dismiss for failure to state a claim upon which relief can be granted "should not be sustained unless (1) the allegations of the complaint disclose with certainty that the claimant would not be entitled to relief under any state of provable facts asserted in support thereof; and (2) the movant establishes that the claimant could not possibly introduce evidence within the framework of the complaint sufficient to warrant a

grant of the relief sought. In deciding a motion to dismiss, all pleadings are to be construed most favorably to the party who filed them, and all doubts regarding such pleadings must be resolved in the filing party's favor."

Stendahl v. Cobb County, 284 Ga. 525, 525 (2008) (quoting *Scouten v. Amerisave Mtg. Corp.*, 283 Ga. 72 (2008)).

The allegations in Count Ten of Plaintiffs' Complaint disclose with certainty they are not entitled to the relief they seek under any state of provable facts asserted in support thereof. In Count Ten, Plaintiffs ask the Court to exercise its equitable powers to enjoin a foreclosure action or the parties to a foreclosure action presently pending in a Florida court. This Court is without jurisdiction to enjoin a foreclosure action or the parties to a foreclosure action in Florida.

B. The Court lacks jurisdiction to order an injunction barring Kingsley's Florida foreclosure action.

Count Ten of the Complaint, entitled "Temporary, Interlocutory and Permanent Injunctive Relief," fails to state a claim against Kingsley for which relief can be granted because this Court cannot enjoin a foreclosure action, or the parties to a foreclosure action in Florida because it is an inherently local action.

A court in Georgia is without jurisdiction over a local action in Florida. This Court's power to enjoin conduct outside of this state is limited by O.C.G.A. § 9-5-11 as follows: "Equity may enjoin the defendant as to transactions involving fraud, trust, or contracts beyond the limits of this state." The Supreme Court of Georgia has held this statute does not apply to local actions in other jurisdictions respecting title to land. See *Laslie v. Gragg Lumber Co.*, 184 Ga. 794, 799 (1937) ("An action for an injunction to restrain acts of continuing trespass on land, which involves necessarily and chiefly the

question of the title to the land, is local and not transitory, and a court of equity has no power to entertain such a suit where the land in question is without its territorial jurisdiction, notwithstanding the fact that it has jurisdiction of the persons of the alleged trespassers.”) “The test by which a transitory action may be differentiated from a local one has often been stated in substance as follows: If a cause of action is one that might have arisen anywhere, it is transitory; but if it is one that could only have arisen in one place, it is local.” *Id.* at 797.

A foreclosure is a local action. See O.C.G.A. § 44-14-180 (foreclosure must be brought in the county where the property is located); see *also* Fla. Stat. Ann. § 47.011 (West) (foreclosure action must be brought in the county where the property in litigation is located.) This Court has no jurisdiction to order an injunction in a local action where the land in question is located in a foreign jurisdiction. See *Laslie*, 184 Ga. at 799 *supra*. Accordingly, **Count Ten (10) of Plaintiffs’ Complaint is DISMISSED WITH PREJUDICE.**

C. Plaintiffs’ Verified Motion for Temporary Restraining Order and Interlocutory Injunction.

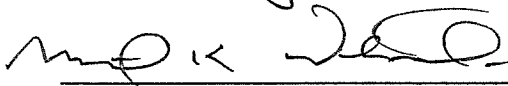
On January 19, 2012, the same day oral argument was held on Defendant Kingsley’s Motion to Dismiss, Plaintiffs filed a Verified Motion for Temporary Restraining Order and Interlocutory Injunction asking the court to enjoin the foreclosure action or the parties to the Florida foreclosure action. For the reasons set forth above, Plaintiffs’ Motion for a Temporary Restraining Order and Interlocutory Injunction is **DENIED.**

D. Plaintiffs’ First Amended Complaint.

On January 18, 2012 Plaintiffs filed their First Amended Complaint, asserting a new Count Twelve (12) against Defendant Kingsley. Defendant Kingsley shall have up to and

through Feb 20, 2012 to file a motion to dismiss with respect to Count Twelve (12) of the First Amended Complaint. Plaintiffs shall have up to and through March 6, 2012 to file their response. The Court will rule thereafter without oral argument.

SO ORDERED this 25th day of January, 2012.


 Senior Judge Melvin K. Westmoreland *for* **ALICE D. BONNER, SENIOR JUDGE**
Superior Court of Fulton County
Atlanta Judicial Circuit

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