

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ELIZABETH CAIN, ROXANNE ROSARIO
and EARL ALEXIS ROSARIO CAIN

Plaintiffs,

Docket No.

CV 04 3946

Complaint

---against---

SHEILA BETHEA, ARTHUR RIPLEY, REGGIE MAJOR,
ROBERT HERMAN, GREGORY NANTON, BARRY ROSEN
LOUISE M. BROWN, AMERICAN INTERNATIONAL
MORTGAGE BANKERS, INC., D & M FINANCIAL
CORP., MOREQUITY, PARADIGM TITLE COMPANY, LLC
and IDA D'ANGELO & ASSOC. P.C.

GLEESON, J.

POLLAK, M.J.

Defendants.

Plaintiffs, by their attorney, Robert Litwack, Esq., as and for their verified
complaint allege as follows:

1. Jurisdiction is founded on the existence of a question arising under 18 USC § 1962, 18 USC § 1964(d), 15 USC 1635, and 12 USC § 2607.
2. At all times herein, plaintiff ELIZABETH CAIN has resided at 114-40 123rd Street, So. Ozone Park, N.Y. 11420.
3. At all times herein plaintiffs ROXANNE ROSARIO and EARL ALEXIS ROSARIO CAIN have resided at 1952 First Avenue, #11L, New York, N.Y.
4. Upon information and belief defendant SHEILA BETHEA (hereinafter "BETHEA") resides at 39 Cottonwood St., Jersey City, N.J.
5. Upon information and belief defendant ARTHUR RIPLEY (hereinafter "RIPLEY") is a mortgage broker residing at 173-23 Murdock Avenue, Jamaica, N.Y. 11434.

6. Upon information and belief defendant REGGIE MAJOR (hereinafter "MAJOR") is a mortgage broker whose current address is unknown.

7. Upon information and belief defendant ROBERT HERMAN (hereinafter "HERMAN") is a mortgage broker who maintains a place of business at 1246 East 104th Street, Brooklyn, N.Y.

8. Upon information and belief defendant GREGORY NANTON is an attorney duly licensed in the State of New York who maintains an office at 26 Court Street, Brooklyn, N.Y.

9. Upon information and belief defendant BARRY ROSEN (hereinafter "ROSEN") resides at

10. Upon information and belief defendant LOUISE M. BROWN is an attorney duly licensed in the State of New York who maintains an office at 1892 Morris Avenue, #5P, Bronx, N.Y. 10453.

11. Upon information and belief defendant AMERICAN INTERNATIONAL MORTGAGE BANKERS, INC. (hereinafter "AMERICAN INTERNATIONAL") is a duly incorporated Mortgage Banker with offices at 2001 Marcus Avenue, Lake Success, N.Y. 11042.

12. Upon information and belief AMERICAN INTERNATIONAL maintained a branch office at 114-12 Merrick Blvd., Jamaica, N.Y.

13. Upon information and belief AMERICAN INTERNATIONAL was indicted in the United States District Court, Eastern District of New York for participation in schemes to defraud the United States Department of Housing and Urban Development in mortgage transactions.

14. Upon information and belief some of the transactions involved in the indictment of AMERICAN INTERNATIONAL employees and agents were "straw man" transactions in which third parties were brought in by the employees and agents of AMERICAN INTERNATIONAL to be the mortgagor.

15. Upon information and belief AMERICAN INTERNATIONAL has surrendered its mortgage bankers license and its licenses to run its branch offices including the office located at 114-12 Merick Blvd., Jamaica, N.Y. to the New York State Banking Department.

16. Upon information and belief D & M FINANCIAL CORP. is a mortgage banker duly incorporated and licensed in the State of New York with a place of business at 383 Washington Avenue, Belleville, NJ 07109.

17. Upon information and belief defendant MOREQUITY is a duly incorporated and licensed mortgage banker wholly owned by American General Financial Services which is in turn a subsidiary of AIG insurance. MOREQUITY has a place of business located at 601 Northwest Second Street, Evansville, IN 47701.

18. Upon Information and belief defendant PARADIGM TITLE COMPANY LLC (hereinafter "PARADIGM") is a title abstract company with a place of business located at 7115 13th Avenue, Brooklyn, N.Y. 11218.

19. Upon information and belief defendant IDA D'ANGELO & ASSOC. P.C. is law firm with a place of business located at 555 Broadhollow Road, Melville, N.Y. 11747.

20. Plaintiffs are the fee owners of a parcel of real estate as follows:

ALL that certain plot, piece or parcel of land with the buildings and

improvements thereon erected, situate, lying and being in the Borough and County of Queens, City and State of New York, bounded and described as follows:

BEGINNING at a point on the westerly side of 123rd Street, distant 196.50 feet northerly from the corner formed by the intersection of the westerly side of 123rd Street and the northerly side of 115th Avenue:

RUNNING THENCE westerly at right angles to 123rd Street and part of the distance through a party wall, 89.03 feet to the easterly side of Hawtree Creek Road:

THENCE in a northeasterly direction along the easterly side of Hawtree Creek Road, 16.12 feet:

THENCE easterly at right angles to 123rd Street and part of the distance through a party wall, 81.03 feet to the westerly side of 123rd Street:

THENCE southerly along the westerly side of 123rd Street, 14 feet to the point or place of BEGINNING.

SAID premises also known as 114 - 40 123rd Street, South Ozone Park, New York

Block 11649 Lot 27

21. Plaintiff ELIZABETH CAIN had purchased said parcel of real estate with the help of her uncle Earl Cain recorded with the City Register, Queens County in reel 4608 at page 886.

22. Plaintiff ELIZABETH CAIN owns a 99% interest in the property and the Earl Cain owned a 1% interest in the property.

23. Earl Cain died intestate, a resident of New York County, on February 4, 2004 and title to his legal interest in the property passed by operation of law to his distributees, plaintiffs ROXANNE ROSARIO, his wife, and EARL ALEXIS ROSARIO CAIN, his son.

24. At all times herein plaintiff ELIZABETH CAIN has been the only party who has made mortgage payments to any mortgagee involved herein and has paid for taxes and insurance for the premises in issue.

25. On or about October or November, 2001 plaintiff ELIZABETH CAIN went to the office of AMERICAN INTERNATIONAL located at 114-12 Merrick Blvd. , Jamaica, N.Y. seeking information about refinancing her property located at 114-40 123rd Street, So. Ozone Park, N.Y. 11420.

26. At the office of AMERICAN INTERNATIONAL on about October or November, 2001 plaintiff ELIZABETH CAIN was introduced to defendant ARTHUR RIPLEY, an employee or agent of AMERICAN INTERNATIONAL.

27. On or about October or November, 2001 at the Jamaica, N.Y. office of AMERICAN INTERNATIONAL defendant ARTHUR RIPLEY took information from plaintiff ELIZABETH CAIN pertaining to a refinance of her property located at 114-40 123rd Street, So. Ozone Park, N.Y. 11420.

28. On or about November, 2001 defendant RIPLEY told plaintiff that her credit scores were too low to obtain a mortgage without a co-signer and that if she had no one to sign for her he could obtain the aid of someone who would co-sign the loan.

29. On or about December, 2001 plaintiff ELIZABETH CAIN went to the Jamaica, N.Y. office of AMERICAN INTERNATIONAL at 114-12 Merrick Blvd., Jamaica, N.Y. to follow up on her mortgage loan application.

30. On that date at the office of defendant AMERICAN INTERNATIONAL Plaintiff ELIZABETH CAIN was introduced to defendant REGGIE MAJOR, an employee or agent of AMERICAN INTERNATIONAL.

31. Defendant MAJOR then went with plaintiff ELIZABETH CAIN to see her property located at 114-40 123rd Street, So. Ozone Park, N.Y.

32. Defendant MAJOR repeatedly told plaintiff that he had someone who would co-sign the mortgage loan for her.

33. Defendants RIPLEY, MAJOR and AMERICAN INTERNATIONAL and other employees of AMERICAN INTERNATIONAL repeatedly represented to plaintiff ELIZABETH CAIN that she was merely refinancing her mortgage.

34. Defendants RIPLEY, MAJOR and AMERICAN INTERNATIONAL and other employees of AMERICAN INTERNATIONAL repeatedly represented to plaintiff ELIZABETH CAIN that she would at all times remain in title to her property.

35. Defendants RIPLEY, MAJOR and AMERICAN INTERNATIONAL and other employees of AMERICAN INTERNATIONAL repeatedly represented to plaintiff ELIZABETH CAIN that she did not need a lawyer to represent her.

36. On or about March 14, 2002 defendant MAJOR demanded payment for an "appraisal" fee. Defendant MAJOR refused to accept a check for said fee and would only accept cash.

37. On or about April 25, 2002 plaintiff ELIZABETH CAIN met defendants MAJOR and BETHEA at the office of AMERICAN INTERNATIONAL to travel to the closing for the refinance.

38. Defendant BETHEA was introduced to plaintiff ELIZABETH CAIN as the co-signer of the mortgage.

39. Plaintiff traveled with MAJOR and BETHEA in defendant BETHEA's car to the offices of defendant IDA D'ANGELO & ASSOC., P.C. (hereinafter "D'ANGELO")

an attorney who represented the defendant mortgage lender D & M FINANCIAL CORP. (hereinafter "D & M").

40. Upon information and belief also present at the closing was defendant BARRY ROSEN (hereinafter "ROSEN"), who was present as agent and title closer acting on behalf of the defendant PARADIGM TITLE COMPANY, LLC (hereinafter "PARADIGM.")

41. Upon information and belief also present at the closing were the defendants LOUISE M. BROWN (hereinafter "BROWN") and GREGORY NANTON (hereinafter "NANTON.")

42. Upon information and belief defendants BROWN and NANTON were representing defendant BETHEA as attorneys at the mortgage closing.

43. Earl Cain, uncle of the plaintiff ELIZABETH CAIN and legal co-owner of the premises, was not present at the office of the defendant D'ANGELO on the day of the alleged refinance.

44. One of the duties performed by defendant ROSEN as title closer and agent of defendant PARADIGM was to act as notary public.

45. Upon information and belief someone, upon information and belief the defendant ROSEN, prepared a handwritten deed allegedly conveying 114-40 123rd Street, So. Ozone Park, N.Y. from ELIZABETH CAIN and Earl Cain to defendant BETHEA.

46. Said deed is dated April 25, 2002.

47. Said deed was notarized by defendant ROSEN and states that it was notarized on April 25, 2002.

48. Defendant ROSEN in acting as notary public made the following statement in said deed "On 4/25/02 before me, the undersigned, personally appeared Elizabeth Cain & Earl Cain personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose names is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument."

49. Earl Cain was not present at the closing on or about April 25, 2002 to sign, appear before defendant ROSEN or acknowledge said deed.

50. ELIZABETH CAIN never acknowledged any such instrument as her act and deed.

51. Said fraudulent deed was submitted for recording with a New York City cover sheet listing a preparation date of March 20, 2003, eleven months after the "refinance" closing.

52. Said fraudulent deed was not recorded until June 25, 2003 fourteen months after the "refinance" closing.

53. Said fraudulent deed was recorded with the New York City Register, Queens County under CRFN number 2003000193422.

54. On or about April 25, 2002 defendant BETHEA made a mortgage upon the premises in the amount of one hundred and eighty nine thousand (\$189,000.00) dollars to defendant D & M FINANCIAL CORP. (hereinafter "the fraudulent mortgage.")

55. Said fraudulent mortgage was recorded with the New York City Register, Queens County under CRFN number 2003000193423 on June 25, 2003.

56. Upon information and belief on or about April 25, 2002 defendant IDA D'ANGELO & ASSOC., P.C. acting as attorney and agent for defendant D & M and in connection prepared a fraudulent HUD-1 Settlement Statement in connection with said fraudulent mortgage.

57. Said fraudulent HUD-1 was purportedly signed by plaintiff ELIZABETH CAIN and Earl Cain on April 25, 2002 at the "refinance" closing.

58. Said HUD-1 Settlement Statement was also signed by Ida D'Angelo as settlement agent acting as attorney and agent for defendant D & M.

59. Said HUD-1 lists an ostensible "sale" price for the premises in issue of two hundred ten thousand (\$210,000.00) dollars.

60. Upon information and belief said fraudulent mortgage was simultaneously assigned by D & M to MOREEQUITY by instrument dated April 25, 2002.

61. Plaintiffs did not receive any monies from the "refinance."

62. Plaintiffs to date and continuing, have been, by the actions of defendants, deprived of the use and benefit of their properties in whole or in part.

First Cause of Action - Restoring Plaintiffs Record Title to Plaintiffs' Property by Compelling Determination of Claims to Real Property

63. Plaintiffs repeat and re-allege each and every allegation previously set forth herein.

64. Plaintiffs bring this action under Article Fifteen of the NY Real Property Actions and Proceedings Law to compel the determination of claims to plaintiffs' property and to obtain an order of the court setting aside the purported deeds from

plaintiffs to SHEILA BETHEA and the purported mortgage to D & M currently held of record by defendant MOREQUITY and any and all instruments of record or other claimed interests in plaintiffs' property arising from or through the purported deed.

Second Cause of Action – Fraud

23. Plaintiffs repeat and re-allege each and every allegation previously set forth herein.

24. Defendants BETHEA, ROSEN, D&M, D'ANGELO, AMERICAN INTERNATIONAL, RIPLEY, MAJOR, HERMAN, NANTON, BROWN, and PARADIGM fraudulently transferred title to plaintiffs' property.

25. Defendants BETHEA, ROSEN, D&M, D'ANGELO, AMERICAN INTERNATIONAL, RIPLEY, MAJOR, HERMAN, NANTON, BROWN, and PARADIGM fraudulently created a mortgage security interest for their benefit in plaintiffs' property.

26. Plaintiffs were damaged.

Third Cause of Action - Fraud and Misrepresentation

27. Plaintiffs repeat and re-allege each and every allegation previously set forth herein.

28. Defendants BETHEA, ROSEN, D&M, D'ANGELO, AMERICAN INTERNATIONAL, RIPLEY, MAJOR, HERMAN, NANTON, BROWN, and PARADIGM misrepresented themselves as aiding plaintiffs in refinancing their property.

29. Plaintiffs' property was not refinanced, but instead title was transferred to BETHEA.

30. Plaintiffs were damaged.

Fourth Cause of Action - Fraud and Misrepresentation (Defendants ROSEN and PARADIGM)

31. Plaintiffs repeat and re-allege each and every allegation previously set forth herein.

32. In acting as Notary Public on the purported deed defendant ROSEN fraudulently stated that plaintiff ELIZABETH CAIN and Earl Cain had appeared before him and signed the deed transferring 114-40 123rd Street, So. Ozone Park, N.Y. to BETHEA and acknowledged such signatures.

33. At all times defendant ROSEN acted as title closer and agent for PARADIGM.

34. Plaintiffs had not so signed, appeared and acknowledged said deed.

35. Plaintiffs were damaged.

Fifth Cause of Action — Civil RICO (as to Defendants BETHEA, ROSEN, D&M, D'ANGELO, AMERICAN INTERNATIONAL, RIPLEY, MAJOR, HERMAN, NANTON, BROWN, and PARADIGM)

39. That the defendants BETHEA, ROSEN, D&M, D'ANGELO, AMERICAN INTERNATIONAL, RIPLEY, MAJOR, HERMAN, NANTON, BROWN, and PARADIGM participated in, profited from and substantially and directly benefited from a racketeering enterprise by association in fact as defined in 18 USC § 1961.

40. That the common illicit purpose and goal of said enterprise by association in fact was to obtain by misrepresentation and fraud mortgage loan money by stealing the property owned by plaintiffs.

41. Mortgages such as the fraudulent mortgage herein are routinely sold on the secondary mortgage market.

42. That the secondary mortgage market is the sale and resale of mortgage loans, in a market that is national and international in scope, among banks, mortgage companies and investors after such mortgage loans have been made.

43. That the secondary mortgage market is a form of interstate commerce.

44. Defendants BETHEA and D & M are residents of the State of New Jersey.

45. That plaintiffs and the property in issue are residents of and located in the State of New York.

46. That the defendant MOREQUITY is resident of Evansville, Indiana.

47. That the misrepresentations and fraud in obtaining mortgage loans affected interstate commerce.

48. That as mortgages are loans secured by real property it was the common illicit goal and aim of the said enterprise by association in fact to obtain control of the property and to use the property to make mortgages in its scheme to obtain mortgage loan monies by misrepresentation and fraud.

49. That the allegations made herein on behalf of the plaintiffs were a part of a pattern of racketeering activity by said enterprise by association in fact.

50. That the activities of the defendants BETHEA, ROSEN, D&M, D'ANGELO, AMERICAN INTERNATIONAL, RIPLEY, MAJOR, HERMAN, NANTON, BROWN, and PARADIGM were a series of related and continuous acts which evidence a conspiracy to defraud plaintiffs.

51. That in furtherance of the fraud to obtain said mortgage money BETHEA, ROSEN, D&M, D'ANGELO, AMERICAN INTERNATIONAL, RIPLEY, MAJOR, HERMAN, NANTON, BROWN, and PARADIGM made false representations to the plaintiffs that they would help them in refinancing their property at 114-40 123rd Street, So. Ozone Park, N.Y.

52. That the defendants had actual and constructive knowledge and notice of the interests of plaintiffs in the properties at 114-40 123rd Street, So. Ozone Park, N.Y.

53. That on or about April 25, 2002 in furtherance of said fraud and misrepresentations defendants D & M, D'ANGELO, PARADIGM, ROSEN, BETHEA, RIPLEY, MAJOR, HERMAN, BROWN & NANTON knowingly caused the mortgage fraudulently obtained made upon 114-40 123rd Street, So. Ozone Park, N.Y. and recorded under CRFN number 2003000193423 with the City Register, Queens County to be delivered by mail by the United States Postal Service by placing the name and address

of the defendant D & M. on the "Record and Return" mailing address affixed to the back of said mortgage.

54. That on or about April 25, 2002 in furtherance of said fraud and misrepresentations defendants NANTON, BROWN, RIPLEY, MAJOR, BETHEA, ROSEN and PARADIGM knowingly caused the fraudulent deed placing title to the 114-40 123rd Street, So. Ozone Park, N.Y. into BETHEA to be delivered by the United States Postal Service by mail by placing the name and address of the defendant NANTON on the "Record and Return" mailing address affixed to the back of said deeds.

55. That on or about April 25, 2002 in furtherance of said fraud and misrepresentations defendants D & M, D'ANGELO, PARADIGM, ROSEN, BETHEA, RIPLEY, MAJOR, HERMAN, BROWN & NANTON knowingly caused the assignment of the fraudulent mortgage made upon 114-40 123rd Street, So. Ozone Park, N.Y. and not yet recorded of record with the City Register, Queens County to be delivered by mail by the United States Postal Service by placing the name and address of the defendant D & M on the "Record and Return" mailing address affixed to the back of said mortgage.

56. That upon information and belief the fraudulent mortgage was sent by defendant D'ANGELO and D & M by the United States Postal Service or private carrier.

57. That upon information and belief defendants D'ANGELO and D & M sent the fraudulent HUD-1 by the United States Postal Service or private carrier.

58. That on or about February 25, 2003 defendant BROWN mailed or faxed a letter addressed Queens County Civil Court, Landlord Tenant Section on behalf of defendant BETHEA vouching for the title obtained by the fraudulent deed.

59. That on or about May 1, 2004 defendant BETHEA knowingly caused to be sent by Certified Mail through the United States Postal Service a "Thirty Day Notice to Quit" dated April 28, 2004 addressed to plaintiff ELIZABETH CAIN and the deceased Earl Cain.

60. That by such mailings the defendants BETHEA, ROSEN, D&M, D'ANGELO, AMERICAN INTERNATIONAL, RIPLEY, MAJOR, HERMAN, NANTON, BROWN, and PARADIGM violated 18 USC § 1341 prohibiting mail fraud.

61. That the conspiratorial activities of the defendants BETHEA, ROSEN, D&M, D'ANGELO, AMERICAN INTERNATIONAL, RIPLEY, MAJOR, HERMAN, NANTON, BROWN, and PARADIGM in the actions affecting plaintiffs property' were an attempt to obtain moneys, credits and assets of financial institutions in violation of 18 USC § 1344 prohibiting bank fraud.

Sixth Cause of Action – Right of Rescission Pursuant to 15 U.S.C. 1635

62. Plaintiffs repeat and re-allege each and every allegation previously made herein.

63. Plaintiffs were never given notice of their right to rescind the mortgage transaction pursuant to 15 U.S.C. 1635.

64. Plaintiffs hereby seek to exercise their right to rescind the mortgage.

Seventh Cause of Action - To Reform the Deed into Defendant Bethea as a Mortgage and to Restore the Equity of Redemption in Plaintiffs

65. Plaintiffs repeat and re-allege each and every allegation previously set forth herein.

66. That the deed through which defendant BETHEA took title to the premises in issue was not in fact a true deed, but instead a mortgage as described in NY RPL 320 in which the true parties in interest are plaintiffs.

67. Plaintiffs bring this action to have the deeds transferring title to Parcels A and B into defendant Mount Moriah deemed to be a mortgage and not an absolute deed to restore the equity of redemption in said premises to plaintiffs.

Eighth Cause of Action – Joint and Several Liability for an Illegal Fee Under 12 USC § 2607

68. Plaintiffs repeat and re-allege each and every allegation previously set forth herein.

69. The entire mortgage scheme was an attempt by the defendants to obtain illegal fees under 12 USC § 2607 including, but not limited to, the theft of the equity in the property held by plaintiffs.

70. Plaintiffs were damaged.

WHEREFORE, plaintiffs demand judgment against the defendants as follows:
on the First Cause of Action plaintiffs seek judgment directing that the deed recorded on

June 25, 2003 in New York City Register, Queens County under CRFN number 2003000193422 be set aside and canceled of record and that any and all subsequent deeds or other instruments claiming under that deed be set aside and canceled of record including, but not limited to the mortgage made by BETHEA to D & M recorded with the New York City Register, Queens County under CRFN number 2003000193423 on June 25, 2003, and that the defendants, and all persons claiming under them, be barred forever of all claims to an estate or interest in the said Real Property described in the complaint; and

On the Second Cause of Action monetary damages in the sum of \$750,000.00 and punitive damages in the sum of \$750,000.00 with interest from April 25, 2001; and

On the Third Cause of Action monetary damages in the sum of \$750,000.00 and punitive damages in the sum of \$750,000.00 with interest from April 25, 2001; and

On the Fourth Cause of Action monetary damages in the sum of \$750,000.00 and punitive damages in the sum of \$750,000.00 with interest from April 25, 2001; and


On the Fifth Cause of Action monetary damages in the sum of \$750,000.00 and punitive damages in the sum of \$750,000.00 with interest from April 25, 2001, and reasonable attorneys fees; and

On the Sixth Cause of Action that the mortgage made by BETHEA to D & M be rescinded together with reasonable attorneys fees; and

On the Seventh Cause of Action that the mortgage made by BETHEA to D & M be reformed to be an equitable mortgage; and

On the Eighth Cause of Action monetary damages in the sum of \$750,000.00 and punitive damages in the sum of \$750,000.00 with interest from April 25, 2001, and reasonable attorneys fees;

together with the costs and disbursements of this action, and for such other and further relief as may be just and proper.


Robert Litwack, Esq. (1879)
42-40 Bell Blvd., Suite 300
Bayside, N.Y. 11361
718.428.4605

Jury Demand

Plaintiffs demand a trial by jury of all issues so triable in the matter, under the provisions of Rule 38(b) of the Federal Rules of Civil Procedure and respectfully request that this matter be placed on the jury docket

TO: Sheila Betha
39 Cottonwood St.
Jersey City, N.J.

Arthur Ripley
173-23 Murdock Avenue
Jamaica, N.Y. 11434

Reggie Major
Address unknown

Robert Herman
1246 East 104th Street
Brooklyn, N.Y.

Gregory Nanton
26 Court Street
Brooklyn, N.Y.

