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Order on Defendant JLB EON LLC's Motion for Judgment on the Pleadings (ELITE FLOORING & DESIGN, INC.)

Alice D. Bonner
Superior Court of Fulton County

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

FILED IN OFFICE
DEC 15 2010
DEPUTY CLERK SUPERIOR COURT
FULTON COUNTY, GA

ELITE FLOORING & DESIGN, INC.,	)	
Plaintiff,	)	
v.	)	**Civil Action File No. 2010-CV-190165**
JLB EON, LLC, and CAPITAL ONE, NATIONAL ASSOCIATION,	)	
Defendants.	)	

ORDER ON DEFENDANT JLB EON LLC'S MOTION FOR JUDGMENT ON THE PLEADINGS

On December 13, 2010, counsel appeared before the Court to present oral argument on a Motion for Judgment on the Pleadings filed by Defendant JLB Eon LLC ("JLB"). After hearing the arguments made by counsel, and reviewing the briefs submitted on the motion and the record in the case, the Court finds as follows.

Plaintiff Elite Flooring & Design, Inc. ("Elite") was a subcontractor who performed work on a condo/commercial project near the Lindbergh MARTA station ("the Project") owned by LCDP Condo Holdings I, LP ("LCDP"). Elite was never paid for its work on the Project and filed a claim of lien against LCDP's ownership interest.

Regions Bank originally held the deed to secure debt on the Project. In December 2009, Regions Bank assigned the deed to secure debt to JLB. In early January 2010, acting under that assignment and pursuant to the power of sale contained in the deed to secure debt, JLB sold the property to itself through a non-

judicial foreclosure sale. That foreclosure operated to dissolve Elite's claim of lien. Plaintiff alleges that the manner and method by which JLB was assigned the deed to secure debt and conducted the foreclosure sale was invalid and brings this suit to have the foreclosure sale set aside.

Elite alleges that as of December 28, 2009, Regions Bank was still making affirmative representations that it was the holder of the loan for the Project and that it intended to conduct a non-judicial foreclosure sale. However, Elite further alleges that on or about December 31, 2009, after inquiry from Elite, JLB confirmed Regions Bank had assigned the deed to secure debt to JLB and that JLB intended to conduct the non-judicial foreclosure sale previously advertized by Regions Bank. Elite alleges that on New Year's Day, Friday, January 1, 2010, Elite located a copy of the assignment of the deed to secure debt from Regions Bank to JLB in the Georgia Superior Court Clerks' Cooperative Authority, thus leaving Elite one full business day before the advertized foreclosure sale to investigate any defects with the assignment or foreclosure procedures and to address its concerns to JLB. JLB conducted the foreclosure sale on Tuesday, January 5, 2010. After months of settlement talks with JLB, Elite filed its Complaint in this case in August 2010. JLB has filed a Motion for Judgment on the Pleadings based on the equitable defense of laches.

A motion for judgment on the pleadings should be granted if there is a complete failure by the plaintiff to state a cause of action. McKenna, Long & Aldridge, LP v. Keller, 267 Ga. App. 171, 172 (2004). The well-pled material allegations on the non-movant are treated as true for purposes of the motion. Id.

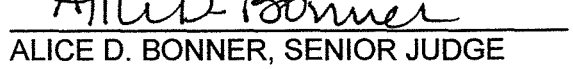
Courts sitting in equity may bar a claim based on laches when "from the lapse of time and laches of the complainant, it would be inequitable to allow a party to enforce his legal rights." O.C.G.A. § 9-3-3. Laches is "peculiarly a factual defense" and "rests with the sound discretion of the trial judge." McGhee v. Johnson, 268 Ga. 731,732 (1997). For laches to apply, a defendant must show "inexcusable delay" on the part of the plaintiff and "prejudice resulting therefrom." Harvey v. Bank one, N.A., 290 Ga. App. 55, 58 (2008). Courts weigh the following factors when determining whether laches applies: (1) the length of the delay, (2) the sufficiency of the excuse, (3) the loss of evidence on disputed matters, (4) the opportunity for the claimant to have acted sooner, and (5) whether the plaintiff or defendant possessed the property during the delay. McGhee, 268 Ga. at 732.

JLB argues that Elite's claims should be barred by laches because Elite knew of an alleged defect in the assignment of the deed to secure debt, but despite this knowledge, did nothing to stop the impending foreclosure sale. The specific failure noted by JLB was Elite's decision not to file for a temporary restraining order in an attempt to stop the foreclosure sale. The Court finds that Elite's failure to file any action, including a motion for a TRO, on the one full business day between its discovery of the assignment of the deed to secure debt in the public record and the date set for the foreclosure sale does not constitute "inexcusable delay." The Court further finds that the approximate eight-month delay in Elite's filing of its Complaint is reasonable in light of the history of settlement negotiations that lasted until July of 2010. The Court further finds that Elite's delay in filing has not caused any loss of evidence most of which is a matter of public record. Finally, the Court finds that the fifth factor in the laches

analysis—whether the plaintiff of defendant possessed the property during the delay—is inapplicable in this case. Given the totality of the circumstances, Elite's actions do not constitute "inexcusable delay" and the affirmative defense of laches does not bar its claims.

For the foregoing reasons, JLB's Motion for Judgment on the Pleadings is hereby **DENIED**.

SO ORDERED this 15th day of December, 2010.



ALICE D. BONNER, SENIOR JUDGE
Superior Court of Fulton County
Atlanta Judicial Circuit

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