

ORIGINAL

IN THE SUPREME COURT OF OHIO

ARLISS MORTGAGE COMPANY, LLC	)	Case No. 12-1116
	)	
Plaintiff-Appellee,	)	ON APPEAL from the Court
	)	of Appeals Tenth Appellate District
v.	)	
	)	Court of Appeals Case No. 11 AP-883
CARL H. WOODFORD, et al.,	)	
	)	
Defendants-Appellant	)	

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**APPELLEE ARLISS MORTGAGE COMPANY'S MEMORANDUM IN RESPONSE TO APPELLANT'S MOTION IN SUPPORT OF JURISDICTION**

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**STATEMENT OF APPELLE'S POSITION AS TO WHY THIS CASE IS NOT OF  
PUBLIC OR GREAT GENERAL INTEREST**

This case is not one of public or great general interest. Appellant Carl H. Woodford ("Appellant") attempts to characterize the issue in this case by stating "what is at stake in this case is the ability of an Ohioan to contest the damages awarded by a default judgment where the judgment allows for a double collection of interest and an interest rate that is unlawful." This is totally inaccurate. This case is not about "interest on interest", alleged usurious interest rates or alleged violations of the Ohio Revised Code. This case is about whether the filing of a Civ.R. 60(B)(5) Motion to Vacate Judgment two (2) years and two (2) months after a default judgment entry was journalized, is timely under Civ.R. 60(B). The Trial Court and the Tenth District Court of Appeals have held that it was not timely. That is the issue and the only issue. It is of interest to Arliss Mortgage Company and Appellant and only to Arliss Mortgage Company and Appellant. It has absolutely no public or great general interest and jurisdiction should be denied.

Appellant attempts to obfuscate his failure to timely file his Civ.R. 60(B)(5) Motion to Vacate Judgment by likening his situation with countless other unfortunate homeowners who not only have lost their property to foreclosure in the challenging economic times, but had to suffer through the additional indignity of being sued for a deficiency judgment. The majority of homeowners who have lost their homes to foreclosure have little if anything in common with Appellant. Appellant would like to paint himself as a naïve homeowner unwise to sophisticated banking practices and court procedures. This, however, is not an accurate depiction of Appellant. In fact, Appellant made his living by buying foreclosed properties. Appellant is also a realtor. It should be noted that Appellant has been a party in countless lawsuits both as a plaintiff and defendant. Appellant did not occupy the subject property as his residence immediately

subsequent to the purchase; rather, the property at issue was purchased as an investment property by the Appellant. Appellant is a sophisticated real estate investor, familiar with banking practices and court proceedings.

Appellant's interest in this matter is a recent development. Appellant chose not to file an answer to the complaint of Arliss Mortgage Company; not to file a compulsory counterclaim or participate in the judicial process for over two years after the default judgment entry was journalized. Appellant, when provided with a copy of the calculations and other discovery materials by Arliss, chose not to submit alternative calculations, chose not to present evidence of payment, chose not to communicate that he felt the calculations were inaccurate to the Court or to Arliss and, most importantly, chose not to file a Civ.R. 60 (B) motion to vacate. Instead, Appellant chose to wait two years and two months after the default judgment entry was journalized and the subject property scheduled for sale, to file his Civ.R. 60 (B)(5) motion. Appellant chose not to protect his interests, or participate in the judicial process in any form or fashion until the eve of the sale of the subject property when his Civ.R. 60 (B)(5) motion was filed. Appellant chose to sit inactive throughout the entire litigation and now is unwilling to bear the consequences of this inaction.

In his Memorandum in Support of Jurisdiction, Appellant states that case law in Ohio indicates that this Court has a strong policy in favor of deciding cases on the merits rather than on technical grounds. Failing to answer a complaint or participate in the judicial process is far from a technical matter. Appellant had every opportunity to have this case settled on the merits. Instead, Appellant did not answer the complaint of Appellee, file a compulsory counterclaim or participate in the judicial process prior to judgment. Appellant states that it is the Court's responsibility to "protect the rights of those being foreclosed upon..." However, it is not the

Court's responsibility to act where an Appellant has failed to do so. Appellant bears the initial responsibility for protecting his rights; not the Court. This Appellant deliberately and knowingly chose to sit on his rights for two years, two months and now tries to claim that the issue before the Court is an improper judgment amount and not his lack of timeliness. The judgment amount is a red herring and has been so identified by both the lower court and the Court of Appeals.

Appellant is asking this Court to stand for the proposition that no judgment is ever final and a hearing is a matter of right at any time after the default judgment has been entered so long as the Appellant questions the damages amount and requests a hearing, Appellant is proposing perpetual litigation. The time for Appellant to raise issues relating to the judgment amount, the calculations relating to the judgment amount and the statute that provides for the interest charged has long since passed. Appellant had the opportunity to file an answer and a compulsory counterclaim if he believed that Appellee had any liability and chose not to avail himself of the judicial process. Appellant and Appellant alone made the decision not to participate in the legal process and should be forced to bear the consequences of his inaction. For the reasons outlined above, this case is not a case of public or great general interest and jurisdiction should be denied.

#### **STATEMENT OF THE CASE**

This case is about a Motion to Vacate Judgment not timely filed by Appellant. Appellee filed its Complaint in Foreclosure on January 6, 2009 ("Complaint"). See Trial Court Docket. Plaintiff filed a Motion and Amended Motion for Default Judgment against Appellant and the Trial Court granted Judgment on April 20, 2009 ("Judgment Entry"). *Id.* A "Notice of Final Appealable Order" was mailed by the Clerk of April 20, 2009 ("Notice of Judgment"). *Id.* Appellant did not perfect an appeal from the Judgment but rather filed his Civ.R. 60(B) Motion

with the Trial Court on June 6, 2011, and served it on Appellee on June 7, 2011 (“Motion to Vacate”). *Id.* On July 5, 2011 Appellee filed its “Memorandum In Opposition to Defendant’s Motion To Vacate Judgment” (“Memo in Opposition”). *Id.* On October 5, 2011, the Trial Court entered its Decision denying the Appellants Motion to Vacate Judgment (“Decision”). *Id.* On October 12, 2011 the Trial Court issued a Nunc Pro Tunc order correcting a mistake in the Decision (“Nunc Pro Tunc”).

The Tenth District Court of Appeals affirmed the decision of the Trial Court and held “The question thus becomes has Woodford lost the right to contest these issues by waiting for over two years after the entry was journalized until he filed a motion to contest the entry’s content? The answer to that question is yes.” (“Appellate Decision”) Appellate Court Decision ¶9 , 10. Appellant also applied for En Banc review. The Appellate Court denied the application stating “We can find no case from the 10<sup>th</sup> District Court of Appeals which has sanctioned such a delayed effort to contest a trail court’s judgment.” (“Memorandum Decision”) Memorandum Decision ¶2.

This case turns on the sole issue of whether the Appellant’s Motion to Vacate was timely filed under the requirements of Civ.R. 60(B). Every Court, at every level, has held that waiting over two (2) years to file a 60(B) Motion is not timely.

#### **STATEMENT OF THE FACTS**

This case involves property located at 593 Indian Mound Road, Columbus, Ohio 43213. This address is made up of two parcels: an unimproved parcel having parcel number 010-041652-000 and an improved parcel having parcel number 010-104144-000. On October 30, 1998, Appellant acquired title to the unimproved parcel by means of a Sheriff’s Deed as a result of a foreclosure action Case Number 97 CVE-07-7022. See Trial Court Docket at Updated Title

Commitment Schedule "A" paragraph 3. Appellant financed this acquisition by means of a loan from WMC Mortgage Corporation ("WMC") in the amount of \$86,840.00. See Trial Court Docket at Updated Title Commitment Schedule "B". At some time subsequent to the purchase of the unimproved parcel, Appellant became aware that he had purchased and financed only the unimproved parcel. In order to remedy the situation, on or about December 15, 1998, Appellant, without informing WMC, obtained a quit claim deed from Jean S. Bradley, a former party defendant in the foreclosure case preceding the Sheriff's sale for approximately \$10,040.60 using funds from the above referenced WMC mortgage. See Trial Court Docket at Updated Title Commitment Schedule "A" ¶ 3. By this deed, Appellant acquired an unencumbered title to the improved parcel. On February 10, 1999, Appellant executed a mortgage note in favor of Arliss Mortgage Company on behalf of himself as an individual and as attorney in fact for his wife, Diedre L. Williams-Woodford. This mortgage note was secured by the unimproved parcel. See Trial Court Docket, Updated Title Commitment Schedule "B" section e ¶ 2. The lien positions at this point as they relate to the unimproved parcel have WMC in first position and Arliss Mortgage Company in second. On March 2, 1999, Appellant borrowed additional money from Arliss Mortgage Company by executing on behalf of himself as an individual and as attorney in fact for his wife, Diedre L. Williams-Woodford, a mortgage note secured by both the improved and unimproved parcel placing Arliss Mortgage Company in first lien position as it related to the improved parcel. See Trial Court Docket, Updated Title Commitment Schedule "B" section e ¶ 3. On August 28, 2007, the Bank of New York as successor (among others) to WMC Mortgage Corp., and holder of the mortgage the above referenced mortgage on the unimproved parcel, initiated a foreclosure action against Carl H. Woodford in Case Number 07 CVE -08-11525 which was dismissed on December 22, 2008.

Appellee filed its Complaint on January 6, 2009. *See Trial Court Docket.* Between the date the Complaint was filed and the date this Reply brief was filed, Appellant has made no payments to Appellee. The initial Certified Mail service of the Complaint was returned “unclaimed” and proof of service by ordinary mail was certified by the Clerk on February 6, 2009. *Id.*

Appellee filed a Motion and Amended Motion for Default Judgment against Appellant and the Trial Court granted Judgment on April 20, 2009. *Id.* A Notice of Final Appealable was mailed by the Clerk of April 20, 2009. *Id.* Appellant did not perfect an appeal from the Judgment.

On September 18, 2009, although Judgment has already been granted and Appellant had not perfected an appeal, Appellee caused its responses to Defendant Bank of New York’s First Set of Interrogatories, Requests for Admission and Requests for Production of Documents Propounded to Plaintiff Arliss Mortgage Company LLC, to be served upon Appellant as well. *See Nunc Pro Tunc Order and Memo in Opposition.* Included among the documents and records provided to Appellant were Appellee’s copies of the actual loan files, payment histories, and payoff calculations on both loans made to Appellant that were at issue in this case. *Id.*

After service upon Appellant of the loan files, payment histories, and payoff calculations, Appellant failed to make an appearance to timely file Civil Rule 60(B) motions under subsections (1), (2), or (3) within one year after judgment required by Civil Rule 60(B).

On April 26, 2011, Appellee caused a “Notice of Sherriff’s Sale” to be served on Appellant. Appellant filed his Motion to Vacate on June 6, 2011, and served it on Appellee on June 7, 2011 by ordinary mail. *See Trial Court Docket.* On June 10, 2011, Defendant Bank of New York purchased the foreclosed property at the Sherriff’s Sale for the opening bid. *Id.* On

July 5, 2011 Appellee filed its “Memo In Opposition to Defendant’s Motion To Vacate Judgment.” *Id.* On August 17, 2011, thirty eight (38) days after Appellee filed its Memorandum in Opposition; Appellant filed his Reply without obtaining an extension from the Trial Court or Appellee’s counsel. *Id.* On October 5, 2011, the Trial Court entered its Decision denying the Appellants Motion to Vacate Judgment. *Id.* On October 14, 2011, Appellant filed his Notice of Appeal. *Id.*

On March 27, 2012, The Tenth District Court of Appeals affirmed the decision of the Trial Court in denying Appellants 60(B) Motion to Vacate. See Appellate Court Docket. On April 4, 2012, Appellant filed his Motion to Reconsider (“Motion to Reconsider”) *Id.* On April 17, 2012, Appellee filed its “Memorandum In Opposition to the Motion of Appellant’s Application for En Banc Review.” *Id.* On May 9, 2012 Appellant filed his Motion for Leave to File Instantly Appellant’s Reply in Support of Application for En Banc Consideration, as well as his Reply for En Banc Consideration. *Id.* On May 10, 2012, Appellant’s Motion for Leave to File Instantly was granted. On May 17, 2012, Appellant’s Motion for En Banc Consideration was denied. *Id.*

On July 29, 2012, Appellant filed his Memorandum in Support of Jurisdiction of Appellant Carl H. Woodford (“Jurisdiction Application”). *Id.*

#### **APPELLEE’S ARGUMENT IN SUPPORT**

##### **Appellant’s Proposition of Law:**

**A court abuses its discretion where it denies a motion made pursuant to Civ.R. 60(B) to the extent that the motion challenges the amount awarded by a judgment.**

##### **Appellee’s argument in support of its position:**

**The Trial Court did not abuse its discretion because Appellant did not timely file his Motion by Defendant Carl Woodford to Vacate Judgment Pursuant to Civil Rule 60 (B)(5).**

In order to prevail on a motion brought pursuant to Civ.R. 60(B), “the movant must demonstrate that: (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time, and, where the grounds of relief are Civ.R. 60(B)(1), (2), or (3), not more than one year after the judgment, order or proceeding was entered or taken.” *GTE Automatic Elec., Inc. v. ARC Industries, Inc.* (1976), 47 Ohio St.2d 146, 351 N.E.2d 113 at paragraph two of the syllabus. All three elements must be established, and the test is not fulfilled if any one of these requirements is not met. *ABN AMRO Mtge. Group, Inc. v. Jackson* (2005), 159 Ohio App.3d 551, 556, 824 N.E.2d 600. *JP Morgan Chase Bank v. Wells Fargo Financial Leasing, Inc.* 180 Ohio App.3d 1, 5-6, 903 N.E.2d 1249, 1253 (Ohio App. 3 Dist.,2008) Appellant has failed to meet the timeliness requirement of rule 60(B). Appellant has not met the timeliness requirement of Civ.R. 60(B). It should be noted that Appellant filed his Motion to Vacate improperly attempting to utilize Civ.R. 60(B)(5). The Appellate Court states “Civ.R. 60(B)(5). Cannot be used to increase the strict time limitations for Civ. R.60(B)(1) and (3).” Appellate Court Decision ¶ 12.

In *Fenner v. Kenny*, the appellant failed to timely file an answer in the action and the Plaintiff was awarded default judgment. *Fenner v. Kenny* (March 6, 2003) 10<sup>th</sup> Dist No. 02AP-749. In *Fenner*, as in the case sub judice, the Appellant waited over two years to file his motion to vacate. *Id.* The Tenth District Court held:

The default judgment appellant sought to have vacated was entered on January 26, 2000. Appellant's motion to have that judgment vacated was not filed until May 24, 2002, more than two years from the entry of the default judgment and well outside the one-year time limit applicable to Civ.R. 60(B)(1). Moreover,

even if the timeliness of appellant's motion is assessed under a Civ.R. 60(B)(5) standard, a delay of more than two years is unreasonable under these circumstances. *Id.* at ¶ 23.

Because the Appellant waited over two (2) years and two (2) months to file his Motion to Vacate, the Trial Court did not abuse its discretion in denying Appellant's Motion to Vacate.

Whether a Civ. R. 60(B) motion is filed within a reasonable time depends on the facts and circumstances of the particular case. *Scotland Yard Condominium Assn, v. Spencer* , 10<sup>th</sup> Dist No 05AP- 1046, 2007- Ohio 1239, ¶ 33. The Movant bears the burden of submitting factual material which demonstrates the timeliness of the motion. *State ex. Rel. Minnis v. Lewis* (Dec. 30, 1993) 10<sup>th</sup> Dist. No. 93AP-812, citing *Youssefi v. Youssefi* (1991). 81 Ohio App.3d 49, 53, 610 N.E.2d 455. *Herlihy Moving and Storage v. Nickison* (December 30, 2010) Tenth District No. 09 Ap-831. Appellant has offered no factual material demonstrating the timeliness of his motion. An unexplained or unjustified delay in making the motion, after discovering a ground for relief, may put the motion beyond the pale of a reasonable time. *State ex rel. Minnis v. Lewis* at 5. In the Appellant's Motion to Vacate a casual reference is made to "difficulties in his personal life" but no factual material demonstrating the timeliness of Appellant's Motion to Vacate has ever been presented.

**Appellant's reliance on the holdings in Carr, Capital-Plus and Nicol is misplaced.**

In *Carr v. Charter Nat'l Life Ins. Co.* an insured brought an action against an insurer for failure to pay a valid claim on a life insurance policy. The *Carr* Court held that "When the evidence presented at a default judgment hearing is insufficient to support the damages awarded, the trial court abuses its discretion when it denies a Civ.R. 60(B) motion to the extent that the motion challenges the amount of the award. *Carr v. Charter Nat'l Life Ins. Co.* (1986), 22 Ohio St.3d 11, 488 N.E.2d 199. In *Carr*, the trial court granted judgment to the plaintiff-appellee on

May 23, 1984. Defendant-appellant, claiming it had not learned of the default judgment until Nov 1, 1984, filed a motion on November 9, 1984, to vacate the judgment under Civil Rule 60(B), only one hundred-seventy (170) days after the judgment and well within the time constraints for Civil Rule 60(B)(1),(2),(3), or (5). *Carr* is easily distinguishable from the case at bar because Appellant did not file an answer or otherwise participate in the judicial process before the judgment entry was journalized. Appellant waited two (2) years and two (2) months to file his 60(B) Motion. Because *Carr* is distinguishable from the case at bar, Appellant's reliance on *Carr* is misplaced and jurisdiction should be denied.

In *Capital-Plus, Inc. v. Consol Ambulance Serv Corp.* (10th Dist), 2003 Ohio 759, a default judgment was granted by the trial court on Jan 22, 2002. The defendant-appellee timely filed a Civil Rule 60(B)(5) motion on March 1, 2002, a mere thirty-eight (38) days after the judgment and well within the time constraints for Civil Rule 60(B)(1),(2),(3), or (5). *Capital-Plus* therefore stands for the proposition of law that when the Civil Rule 60(B) motion has been **timely filed**, and challenges the amount of damages awarded, the defendant-appellee is entitled to a hearing on the issue of damages.

Appellant's reliance on *Nicol* is similarly misplaced. In *Nicol v. Cecutti* (May 2, 1988), Franklin App No. 87AP-1192, the defendant timely filed an answer to the complaint but failed to comply with a trial court order requiring that he appear for a deposition. The plaintiff filed a motion for default judgment based upon the defendant's violation of Civil Rule 37(B) and was granted a default judgment on August 4, 1987. The defendant moved for relief from the judgment pursuant to Civil Rule 60(b)(5) on September 10, 1987, thirty-seven (37) days after the judgment and well within the time constraints for Civil Rule 60(B)(1),(2),(3), or (5).

The Tenth District in denying Appellant's Application For En Banc Review stated "We... cannot find that two or more decisions of this court are in conflict, as required by App.R/26(A)92). Memorandum Decision ¶2. In short, in *Capital-Plus, Nicol, and Carr*, the applicable Civil Rule 60(B) motions were all timely filed. The decisions in the above referenced cases are not in conflict with the Trial Court Decision or the Appellate Court Decision in the case at bar. In the instant case, Appellant was found by both the Trial Court and the Tenth District Court of Appeals to have failed to: (1) file an answer to the complaint, (2) file an appeal from the judgment journalized on April 20, 2009, (3) file his 60(B)(5) motion until over two years after the judgment was rendered and only four days before a scheduled Sheriff's Sale. The dispositive issue in this case is the Appellant's excessively untimely filing of the Civil Rule 60(B)(5) rather than the contents of the underlying default judgment or damage calculations.

**Appellant's discussions regarding "interest on interest", interest rates and alleged violations of the Ohio Revised Code are not relevant to the issue contested in this case.**

Appellant devotes much of his Jurisdiction Application explaining his perception that Appellee's judgment contains "interest on interest" and a usurious rate of interest. Remarkably Appellant asserts that Appellee has liability under R.C. 1321.53 regarding the maximum rate of interest applicable to any loan transaction. All these claims are compulsory counterclaims. Civ.R 13 (A) provides:

**A) Compulsory counterclaims.** A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. Civ.R 13

O.R.C. 1321.13 provides:

As an alternative to the interest permitted in division (A) of section 1321.13 and in division (B) of section 1321.16 of the Revised Code, a licensee may contract for and receive interest at any rate or rates agreed upon or consented to by the parties to the loan contract or open-end loan agreement, but not exceeding an annual percentage rate of twenty-five per cent. O.R.C. 1321.13

Appellant's claims of usury are devoid of merit. Appellant chose not to file an answer, a compulsory counterclaim or avail himself of the judicial process prior to judgment. Appellant chose not to file his 60(B) Motion until two (2) years and two (2) months after the judgment entry was journalized and in so doing has lost his opportunity to raise any issue related to the underlying default judgment or damage calculations.

Appellant raises the issues of "interest on interest", alleged usurious rates of interest and alleged violations of the Ohio Revised Code in his Memorandum in Support in an attempt to obfuscate the fact that his Motion to Vacate was not timely filed. The Trial Court held "It has long been held one important tenant of American Jurisprudence is the finality of Judgments. Defendant has offered NO reason justifying Relief from Judgment or that his motion is timely made" See Trial Court Decision ¶5 and Nunc Pro Tunc ¶5 . The Tenth District Court of Appeals stated "The question thus becomes has Woodford lost the right to contest these issues by waiting for over two years after the entry was journalized until he filed a motion to contest the entry's content. The answer to that question is yes." Appellate Court Decision ¶ 9-10. The Tenth District's decision was based on the express time limits in the rule for motions under Civ.R. 60(B) (1), (2), and (3). The Tenth District, in denying Appellant's Application For En Banc Review stated " Our decision turned upon the fact that Woodford waited over two years after judgment was rendered before filing his motion under Civ.R.60(B) seeking to set aside the trial court's judgment." Memorandum Decision ¶ 1. Appellant's arguments about interest on interest,

usury and alleged violations of the Ohio Revised Code have no bearing on the issue before this Court, therefore jurisdiction should be denied.

**Appellant has not met the necessary burden to demonstrate an abuse of discretion by the Trial Court.**

The standard of review for a trial court's denial of a Civ. R. 60(B) motion for relief from judgment is an abuse of discretion standard. *Brewer v. Brewer* (10<sup>th</sup> Dist.), 2010 Ohio 1319. ¶ 19 citing *GTE Automatic Electric v. ARC Industries* (1976), 447 Ohio S. 2d 146,148. An abuse of discretion:

Involves the idea of choice, of an exercise of the will, of a determination made between competing considerations. In order to have an 'abuse' in reaching such determination, the result must be so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise for reason but rather of passion or bias.

*Huffman v. Hair Surgeon, Inc.* (1985), 19 Ohio St3d. 83, 87, 482 N.E.2d 1248, quoting *State v. Jenkins* (1984), 15 OhioSt.3d 164,222,473 N.E.2d 264. The Supreme Court of Ohio has also held that "[t]he term abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable." *Blakemore v. Blakemore* (1983), 5 OhioSt.3d 217,219, 450 N.E.2d 1140, quoting *State v. Adams* (1980), 62 OhioSt.2d 151,157,404 N.E. 2d 144. Appellant has not alleged one operative fact that would demonstrate that the decision of the Trial Court was "palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise for reason but rather of passion or bias." *Id at 222*. Appellant has not provided any facts that would rise to the level of unreasonable, arbitrary, or unconscionable. The Trial Court has accurately held that filing a 60(B)(5) Motion to Vacate

Judgment two years (2) and two (2) months after a judgment entry has been journalized is not reasonable.

### **SUMMARY**

This case is not a case of public or great general interest. This case is about a Rule 60(B)(5) Motion to Vacate that was not timely filed, and the Appellant's regret about not taking any steps to protect his interests or participate in the judicial process prior to the default judgment being journalized. Appellant attempts to characterize himself as an unsophisticated real estate buyer that believed he could ignore a complaint and walk away without any consequences. In fact, Appellant is a sophisticated real estate investor, well versed in court procedures. The only parties interested in the outcome of this litigation are Arliss Mortgage Company and Appellant. Appellant waited two (2) years and two (2) months after the judgment entry was journalized to file his Rule 60(B) Motion to Vacate. The Franklin County Court of Common Pleas as well as the Tenth District Court of appeals held that Appellants 60(B) Motion to Vacate was not timely filed. Appellant tries to obfuscate the issue of timeliness by engaging in a lengthy and superfluous discussion about "interest on interest", rates of interest and alleged violations of the Ohio Revised Code. Appellant has not met his burden of showing that the Trial Court abused its discretion. The lone issue of this case is whether a Rule 60(B) Motion to Vacate filed two (2) years and two (2) months after the judgment entry was journalized was timely. This case is simply about an Appellant that failed to file an answer or to timely file his Motion to Vacate. Appellant is unwilling to bear the consequences of his inaction. Because Arliss and Appellant are the only parties with any interest in the outcome of this case, this case is not of public or great general interest jurisdiction should be denied.

Respectfully submitted,

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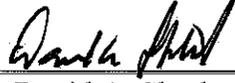
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By:   
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Brett R. Sheraw (0074130)  
John C. Ridge (0086046)

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was served upon the following by ordinary U.S. mail, postage prepaid from Columbus, Ohio 43215, this ~~30th~~ 30th day of July, 2011:

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By:   
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QA322 K32 L65

FILED  
COURT OF APPEALS  
MARCH 27 2012

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT  
2012 MAR 27 PM 2:49  
CLERK OF COURTS

Arliss Mortgage Company, LLC, :

Plaintiff-Appellee, :

v. :

Carl H. Woodford et al., :

Defendants-Appellants. :

No. 11AP-883  
(C.P.C. No. 09CVE-165)  
(REGULAR CALENDAR)

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on March 27, 2012, appellant's assignment of error is overruled. Therefore, it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas is affirmed. Costs shall be assessed against appellants.

TYACK, SADLER & CONNOR, JJ.

By Mary Tyack  
Judge G. Gary Tyack

THE STATE OF OHIO  
Franklin County, ss  
I, MARVELLEN O'SHAUGHNESSY, Clerk  
OF THE COURT OF APPEALS  
WITHIN AND FOR SAID COUNTY,  
HEREBY CERTIFY THAT THE ABOVE AND FOREGOING IS TRULY TAKEN  
AND CORRECTLY FILED.  
NOW ON FILE IN CASE NO. 11AP-883 AND SEAL AND  
CERTIFY THIS 27th DAY OF MARCH, 2012.  
MARVELLEN O'SHAUGHNESSY, Clerk  
By [Signature] Esq.

0A322 - L61

FILED  
COURT OF APPEALS  
FRANKLIN CO. OHIO  
2012 MAR 27 PM 12:40  
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Arliss Mortgage Company, LLC, :  
 :  
Plaintiff-Appellee, :  
 :  
v. :  
 :  
Carl H. Woodford et al., :  
 :  
Defendants-Appellants. :

No. 11AP-883  
(C.P.C. No. 09CVE-165)  
(REGULAR CALENDAR)

---

D E C I S I O N

Rendered on March 27, 2012

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*Fisher, Skrobot & Sheraw, LLC, David A. Skrobot and  
Brett R. Sheraw, for appellee.*

*Law Office of Joseph C. Lucas, LLC, and Tyler W. Kahler, for  
appellants.*

---

APPEAL from the Franklin County Court of Common Pleas

TYACK, J.

{¶ 1} Carl H. Woodford is appealing from the trial court's overruling of his motion for relief from judgment under Civ.R. 60(B). He assigns a single error for our consideration:

The Trial Court erred in denying Carl H. Woodford's Motion for Relief from Judgment, which asserted that the amount of damages awarded were not supported by the evidence, where the damages allowed for a double collection of interest at an interest rate of 24 percent, and where the damages failed to account for payments made.

{¶ 2} Woodford and his counsel are not contesting the fact that Woodford was behind in the payment of his mortgages. Nor are they contesting the fact that a

0A322 - L62

No. 11AP-883

2

foreclosure should occur. Instead, they are contesting the damage figure contained in the judgment entry.

{¶ 3} The record demonstrates that Woodford borrowed money from Arliss Mortgage Company, LLC on two occasions. On March 2, 1999 Woodford borrowed \$25,846.90. He agreed to an interest rate of 24 percent per annum. The mortgage note listed pre-computed interest of \$69,913.00 for a total fare amount of the note of \$95,760.00. The note also had a provision for a default charge. The final payment was to be due on March 2, 2014.

{¶ 4} The mortgage note followed a previous loan of \$10,397.06 made on February 10, 1999. This loan is evidenced by a note which also included pre-computed interest of \$28,122.94, resulting in a total fare amount of \$38,520.00. The interest rate was again 24 percent per annum. Again, a default charge was listed as possible in the note.

{¶ 5} Woodford was allowed to sign both mortgage notes for his then-wife Deidre Williams-Woodford based on an assertion he was her "Attorney in Fact."

{¶ 6} The Woodfords fell behind on their mortgages, which led to the filing of this foreclosure action. When they did not file an answer, a default judgment was taken. Counsel for Arliss Mortgage prepared the judgment entry. The entry awarded interest at 24 percent for the amount listed in the mortgage note as pre-computed interest. The judgment was journalized April 20, 2009.

{¶ 7} Woodford did not move to set aside the judgment until June 6, 2011, only four days before a scheduled sheriff's sale.

{¶ 8} The trial court overruled the motions, finding "Defendant has offered NO reason justifying Relief from Judgment or that his motion is timely made." (Emphasis sic.)

{¶ 9} The default judgment entry filed in this case clearly contained errors in the amount of damages awarded. Further, the rate of interest awarded presents questions of usury, especially the 24 percent on top of the pre-computed interest of 24 percent. The question thus becomes has Woodford lost the right to contest these issues by waiting for over two years after the entry was journalized until he filed a motion to contest the entry's content.

0A322 - L63  
No. 11AP-883

{¶ 10} The answer to that question is "yes."

{¶ 11} Civ.R. 60(B) reads:

**(B) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud; etc.**

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (B) does not affect the finality of a judgment or suspend its operation.

The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules.

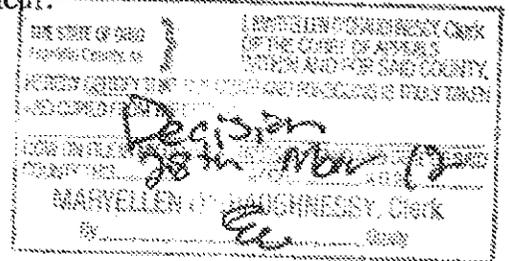
{¶ 12} The express time limits in the rule for motions under Civ.R. 60(B)(1), (2) and (3) were clearly violated. Civ.R. 60(B)(5) applies to situations which do not fit under Civ.R. 60(B)(1), (2) or (3). The issues presented on behalf of Woodford are issues under Civ.R. 60(B)(1) or Civ.R. 60(B)(3). Civ.R. 60(B)(5) cannot be used to increase the strict time limitations for Civ.R. 60(B)(1) and (3).

{¶ 13} The trial court was within its discretion to overrule the untimely motions for relief from judgment. The sole assignment of error is overruled.

{¶ 14} The judgment of the Franklin County Court of Common Pleas is affirmed.

*Judgment affirmed.*

SADLER and CONNOR, JJ., concur.



M

Sheward, J. - 14  
FILED  
COURT OF APPEALS  
FRANKLIN CO. OHIO  
2012 MAY 17 PM 12:47  
CLERK OF COURTS

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Arliss Mortgage Company, LLC, :  
Plaintiff-Appellee, :  
v. :  
Carl H. Woodford et al., :  
Defendants-Appellants. :

No. 11AP-883  
(C.P.C. No. 09CVE-01-165)  
(REGULAR CALENDAR)

MEMORANDUM DECISION

Rendered on May 17, 2012

*Fisher, Skrobot & Sheraw, LLC, David A. Skrobot and  
Brett R. Sheraw, for appellee.*

*Law Office of Joseph C. Lucas, LLC, and Tyler W. Kahler, for  
appellants.*

ON APPLICATION FOR EN BANC CONSIDERATION

TYACK, J.

{¶ 1} Counsel for Carl H. Woodford has filed an application requesting en banc consideration of our decision issued March 27, 2012. Our decision turned upon the fact that Woodford waited over two years after judgment was rendered before filing his motion under Civ.R. 60(B) seeking to set aside the trial court's judgment.

{¶ 2} We can find no other case from the 10th District Court of Appeals which has sanctioned such a delayed effort to contest a trial court's judgment. We, therefore, cannot find that two or more decisions of this court are in conflict, as required by App.R. 26(A)(2). The application for en banc consideration is therefore denied.

*Application for en banc consideration denied.*

SADLER and CONNOR, JJ., concur.

0A322 - L64

OA010 - B21

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

**Arliss Mortgage Company, LLC,**

**Plaintiff,**

v.

**Case No. 09CVE-165 (Sheward, J.)**

**Carl H. Woodford, et al.,**

**Defendants.**

**DECISION AND ENTRY DENYING DEFENDANT'S MOTION FOR RELIEF FROM  
JUDGMENT, FILED JUNE 6, 2011**

This matter comes before the Court upon Defendant Carl H. Woodford's Motion to Vacate Judgment pursuant to Civil Rule 60(B)(5) filed June 6, 2011; Plaintiff's Memorandum in Opposition filed July 5, 2011. The Bank of New York, Defendant, joined in the Motion for Relief from Judgment filed by Defendants Woodford by Motion filed July 18, 2011. Further, in the same filing, Defendant, the Bank of New York, requested the Court stay confirmation pending determination on the 60(B)(5) Motion. On July 26, 2011, Plaintiff, Arliss Mortgage Company, LLC's filed a Memorandum in Opposition to the Motion for Joinder and Stay. Defendant, Carl Woodford filed a Reply on August 17, 2011 in support of his Rule 60(B)(5) Motion and Plaintiff filed a response to Defendant's Reply on August 26, 2011. Defendant's Reply was 38 days after the deadline, without leave of court or agreement by Plaintiff. Pursuant to Local Rule 21 of the local rules of this Court, Defendant's Reply is therefore stricken and not considered.

This is a foreclosure action filed January 6, 2009. Plaintiff obtained Judgment April 20, 2009. The subject real estate was sold at Sheriff's sale on June 10, 2011 to

OA010 - B22

The Bank of New York. Now, some 2 ½ years after judgment for Plaintiff, Defendant Carl H. Woodford asks this Court to vacate the Judgment pursuant to Civil Rule 60 (B)(5). Obviously, Defendant's appeal time has long since passed.

The pay-off amounts used as damages in the Judgment were all provided to Plaintiff on September 18, 2011.

This court found on April 20, 2009, Defendant Carl H. Woodford had been served with summons and properly before the Court. Prior to this Motion Defendant has not made an appearance on this case, taken any steps to defend this case, set forth any factual basis for relief, or asserted a meritorious defense.

He did not question the amount of the notes, mortgage, or damages for over two (2) years. His excuse, he was separated from his wife.

Defendant's Motion is made under Civil Rule 60(B)(5) "any other reason justifying relief from judgment." The Rule provides, "the motion shall be made within a reasonable time and for reasons (1), (2), and (3), not more than one year after the judgment was entered." It has long been held one important tenant of American Jurisprudence is the finality of judgments. Defendant has offered NO reason justifying Relief from Judgment or that his motion is timely made.

Defendants Motion is OVERRULED.

**IT IS SO ORDERED.**

Copies to:

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Counsel for Plaintiff

0A010 - B23

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Defendant

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Counsel for Defendant Bank of New York

Adria L. Fields  
Assistant Prosecuting Attorney  
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Counsel for Defendant Franklin County Treasurer

John Sumner  
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Counsel for Defendant Columbus City Division of Income Tax

Melanie Cornelius  
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21<sup>st</sup> Floor  
Collection Enforcement  
Columbus, OH 43215  
Counsel for Defendant Ohio State Department of Taxation

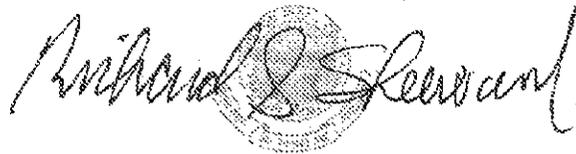
Jackie Berkowitz, DDS  
995 N. Hamilton Road  
Gahanna, OH 43230  
Defendant

0A010 - B24

Franklin County Court of Common Pleas

**Date:** 10-05-2011  
**Case Title:** ARLISS MORTGAGE COMPANY LLC -VS- CARL H  
WOODFORD  
**Case Number:** 09CV000165  
**Type:** DECISION/ENTRY

It Is So Ordered.



Judge Richard S. Sheward

OA018 - F44

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
CIVIL DIVISION

Arliss Mortgage Company, LLC,

Plaintiff,

v.

Case No. 09CVE-165 (Sheward, J.)

Carl H. Woodford, et al.,

Defendants.

**NUNC PRO TUNC DECISION AND ENTRY DENYING DEFENDANT'S MOTION FOR  
RELIEF FROM JUDGMENT, FILED JUNE 6, 2011**

This matter comes before the Court upon Defendant Carl H. Woodford's Motion to Vacate Judgment pursuant to Civil Rule 60(B)(5) filed June 6, 2011; Plaintiff's Memorandum in Opposition filed July 5, 2011. The Bank of New York, Defendant, joined in the Motion for Relief from Judgment filed by Defendants Woodford by Motion filed July 18, 2011. Further, in the same filing, Defendant, the Bank of New York, requested the Court stay confirmation pending determination on the 60(B)(5) Motion. On July 26, 2011, Plaintiff, Arliss Mortgage Company, LLC's filed a Memorandum in Opposition to the Motion for Joinder and Stay. Defendant, Carl Woodford filed a Reply on August 17, 2011 in support of his Rule 60(B)(5) Motion and Plaintiff filed a response to Defendant's Reply on August 26, 2011. Defendant's Reply was 38 days after the deadline, without leave of court or agreement by Plaintiff. Pursuant to Local Rule 21 of the local rules of this Court, Defendant's Reply is therefore stricken and not considered.

This is a foreclosure action filed January 6, 2009. Plaintiff obtained Judgment April 20, 2009. The subject real estate was sold at Sheriff's sale on June 10, 2011 to

0A018 - F45

The Bank of New York. Now, some 2 ½ years after judgment for Plaintiff, Defendant Carl H. Woodford asks this Court to vacate the Judgment pursuant to Civil Rule 60 (B)(5). Obviously, Defendant's appeal time has long since passed.

The pay-off amounts used as damages in the Judgment were all provided to Defendant(s) on September 18, 2009.

This court found on April 20, 2009, Defendant Carl H. Woodford had been served with summons and properly before the Court. Prior to this Motion Defendant has not made an appearance on this case, taken any steps to defend this case, set forth any factual basis for relief, or asserted a meritorious defense.

He did not question the amount of the notes, mortgage, or damages for over two (2) years. His excuse, he was separated from his wife.

Defendant's Motion is made under Civil Rule 60(B)(5) "any other reason justifying relief from judgment." The Rule provides, "the motion shall be made within a reasonable time and for reasons (1), (2), and (3), not more than one year after the judgment was entered." It has long been held one important tenant of American Jurisprudence is the finality of judgments. Defendant has offered NO reason justifying Relief from Judgment or that his motion is timely made.

Defendants Motion is OVERRULED.

**IT IS SO ORDERED.**

Copies to:

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0A018 - F46

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Collection Enforcement  
Columbus, OH 43215  
Counsel for Defendant Ohio State Department of Taxation

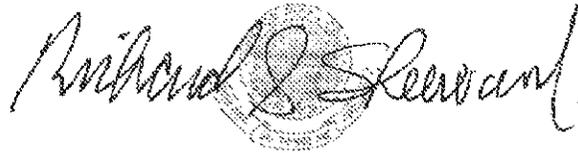
Jackie Berkowitz, DDS  
995 N. Hamilton Road  
Gahanna, OH 43230  
Defendant

0A018 - F47

Franklin County Court of Common Pleas

**Date:** 10-12-2011  
**Case Title:** ARLISS MORTGAGE COMPANY LLC -VS- CARL H  
WOODFORD  
**Case Number:** 09CV000165  
**Type:** NUNC PRO TUNC

It Is So Ordered.



Judge Richard S. Sheward