

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION  
at LEXINGTON

CIVIL ACTION NO. 5:09-380-KKC

MW MAPLELEAF PARTNERS, LLC,

PLAINTIFF

v.

**OPINION AND ORDER**

FIFTH THIRD BANK, INC.,

DEFENDANT  
AND COUNTER CLAIMANT

v.

TED J. MIMS, JERRY A. WOODALL,  
EBBETS DEVELOPMENT, LLC,  
WOODALL AND SONS DEVELOPMENT, LLC  
and MW MAPLELEAF PARTNERS, LLC,

COUNTER DEFENDANTS

\* \* \* \* \*

This matter is before the Court on Fifth Third Bank, Inc.’s Motion to Enforce Settlement Agreement, to Shorten the Response Time, and for Expedited Confidential Proceedings (DE 47). This Court referred the motion to Magistrate Judge Robert E. Wier to conduct a hearing and to issue a Report and Recommendation.

Neither the Plaintiff nor the Counter-Defendants (the “Mapleleaf Parties”) filed any response to Fifth Third’s motion despite two orders from Judge Wier ordering them to do so. Judge Wier specifically informed the parties that he would deem their failure to respond to the motion as a statement of no opposition to the motion. (DE 49, 52). Judge Wier conducted a hearing on the motion but the Mapleleaf Parties did not appear at the hearing. Judge Wier then entered his Report and Recommendation.

The Mapleleaf Parties now object to Judge Wier's recommendation. By failing to respond to the motion and by failing to appear at the hearing, however, they waived any objections to the motion and, thus, the recommendation.

Further, the Court has reviewed the recommendation and finds it sound. The Court has also reviewed the objections and finds them without merit. Nothing in the settlement agreement indicates that delivery of the Deed is Fifth Third's sole and exclusive remedy for breach of the agreement. Further, pursuant to Paragraph 24 of the agreement, Fifth Third is entitled to recover the attorney's fees it incurred in seeking to enforce the terms of the agreement.

Accordingly, the Court hereby ORDERS as follows:

- 1) the Report and Recommendation is ADOPTED as the opinion of the Court;
- 2) Fifth Third's motion (DE 47) is GRANTED;
- 3) the Mapleleaf Parties are ORDERED to:
  - a) replace the Letters of Credit and to otherwise comply with ¶ 4 of the settlement agreement;
  - b) pay Fifth Third \$2,583 which represents the attorney's fees incurred by Fifth Third to enforce the terms of the settlement agreement; and
  - c) maintain the prospective confidentiality of the settlement terms as required by the settlement agreement; and
- 4) the Clerk of the Court SHALL RELEASE to Fifth Third the executed Deed currently in the Clerk's possession.



**Signed By:**

**Karen K. Caldwell**

Handwritten signature of Karen K. Caldwell in black ink.

**United States District Judge**