

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RANDOLPH ABNER,

Plaintiffs,

vs.

Case No. 10-CV-11006
HON. GEORGE CARAM STEEH

KAYE FINANCIAL CORP.
AND FIDELITY BANK,

Defendants.

ORDER DENYING PLAINTIFF'S MOTION TO VACATE FORECLOSURE (# 38)

This matter comes before the court on plaintiff Randolph Abner's motion to vacate the foreclosure and sheriff's deed on mortgage sale of 19969 Trinity, Detroit, MI 48219. Plaintiff originally filed his complaint in this case following his default on his mortgage, which resulted in the scheduling of a sheriff's sale. The court dismissed plaintiff's case after granting both defendants' motions to dismiss. Plaintiff filed a notice of appeal, and his appeal is currently pending before the Sixth Circuit Court of Appeals.

According to plaintiff's current motion to vacate foreclosure, defendant Fidelity Bank foreclosed on his property on March 3, 2011. Plaintiff objects that the foreclosure was improperly executed by advertisement under Michigan statute.

This court lacks jurisdiction over the above-captioned matter due to the fact that it is now pending before the Sixth Circuit Court of Appeals. In addition, plaintiff's motion to

vacate foreclosure raises issues not before the court in the original complaint. If plaintiff wants to pursue the matter raised in the present motion, he must file a new case with the Wayne County Circuit Court.

So ordered.

Dated: June 30, 2011

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on June 30, 2011, by electronic and/or ordinary mail and also to Randolph Abner, 19969 Trinity, Detroit, MI 48219.

s/Josephine Chaffee
Deputy Clerk