IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 25, 2014 Session

FIRST TENNESSEE BANK NATIONAL ASSOCIATION v. SHELBY VILLAGE MOBILE HOME PARK, LLC, ET AL.

Appeal from the Chancery Court for Sumner County
No. 2010C154 Tom E. Gray, Chancellor

No. M2012-02267-COA-R3-CV - Filed August 26, 2014

This appeal arises from the trial court's grant of summary judgment and imposition of discovery sanctions. A bank sued holders of an assumption agreement for default, and the holders of the assumption agreement filed a counter-claim against the bank requesting rescission of the assumption agreement due to the bank's alleged negligent misrepresentation of the existence of flood insurance on the property as well as a misrepresentation regarding the value of the property. The trial court granted summary judgment in favor of the bank and imposed discovery sanctions against the holders of the assumption agreement. Finding no genuine issues of material fact, we affirm the trial court's grant of summary judgment. In addition, we have reviewed the record and cannot say the trial court abused its discretion in awarding discovery sanctions in this matter. The judgment of the trial court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed

VANESSA AGEE JACKSON, SP. J., delivered the opinion of the court, in which FRANK G. CLEMENT, JR., P.J., M.S., and ANDY D. BENNETT, J., joined.

W. Kennerly Burger, Murfreesboro, Tennessee, for the appellant, Thomas E. Moorhead and Robert S. Moore.

Dominic J. Leonardo, Nashville, Tennessee, for the appellees, Joseph Claybon, Barbara Claybon, David W. Vandenbergh, and Heather Vandenbergh.

Thomas W. Lawless, Nashville, Tennessee and Frank H. Reeves, Lebanon, Tennessee, for the appellee, First Tennessee Bank National Association.

OPINION

FACTUAL AND PROCEDURAL HISTORY

This appeal arises from a loan made by First Tennessee Bank National Association ("FTB") to Shelby Village Mobile Home Park, LLC ("Shelby Village") and assumed by Thomas E. Moorhead and Robert S. Moore. On March 31, 2006, FTB made a $500,000 loan to Shelby Village. The loan from FTB was secured by property Shelby Village owned in Carthage, Tennessee ("the property") and rental income derived from the mobile home park located thereon.[1] Shelby Village's members, Barbara and Joseph Claybon and Heather and David Vandenbergh (collectively referred to as "the Guarantors"), executed commercial guaranty agreements guaranteeing the loan from FTB to Shelby Village. Thereafter, Thomas Moorhead and Robert Moore expressed an interest in purchasing the property. On September 28, 2006, Shelby Village and FTB executed a Change in Terms Agreement, which modified the March 31, 2006 promissory note by increasing the loan amount to $565,000.00. On that same day, Moorhead and Moore executed an assumption agreement under which they assumed Shelby Village's debt to FTB and purchased the property.

Moorhead and Moore paid in accordance with the terms of the Assumption Agreement until October 2009. On October 20, 2009, Moorhead and Moore sent letters to a Senior Vice President of FTB in which they expressed a willingness to litigate the validity of their obligation unless FTB agreed to reduce the principal loan amount. On March 12, 2010, FTB demanded payment of the accelerated loan balance in full. In May 2010, the property was flooded and the mobile homes located on the property were destroyed.

On July 28, 2010, FTB filed suit against Shelby Village, the Guarantors, Moorhead, and Moore. All defendants answered and filed counterclaims against FTB.[2] Moorhead and Moore's counterclaim sought rescission of the assumption agreement based upon a mutual mistake of fact, negligent misrepresentation, and fraud. Moorhead and Moore filed a cross-claim against the Guarantors, and the Guarantors filed a cross-claim against Moorhead and Moore alleging an additional cause of action for breach of a promissory note in the amount of $60,000.00.

The parties entered into an agreed scheduling order which provided that all written discovery must be completed by June 1, 2012. On June 12, 2012, the trial court entered a show cause order requiring Moorhead and Moore to personally appear and show cause why they should not be held in contempt for their failure to answer written discovery and provide

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[1] The promissory note described the collateral for the loan as follows: "(A) a Deed of Trust dated March 31, 2006, to a trustee in favor of Lender on real property located in Smith County, State of Tennessee (B) an Assignment of All Rents to Lender on real property located in Smith County, State of Tennessee."

[2] The dispute between the Guarantors and FTB is not the subject of this appeal.

late-filed exhibits to depositions. Moorhead and Moore failed to appear for the show cause hearing and, on August 1, 2012, the trial court held Moorhead and Moore in contempt, fined them each $50.00 for their willful refusal to obey the court's orders, and required them to provide discovery answers and exhibits to opposing counsel by July 31, 2012. On August 21, 2012, the Guarantors filed a motion to strike Moorhead and Moore's cross-complaint for failure to comply with the court's orders.

On August 21, 2012, FTB filed a statement of material facts and a motion for summary judgment against Moorhead and Moore requesting a judgment for damages equal to the unpaid balance of the obligation Moorhead and Moore assumed, plus interest. FTB's motion was supported by the affidavits of Chris Rippy, Jr., the Regional President of FTB, and of Brady M. Gardner, Vice President of the Special Assets Group of FTB. FTB also submitted the depositions of Moorhead and Moore in support of their summary judgment motion. Moorhead and Moore opposed the motion for summary judgment and asserted that a mutual mistake of fact existed regarding the "material terms of the assumption," the existence of flood insurance on the property, and whether the lots transferred were usable for commercial purposes. Moorhead and Moore supported their motion with affidavits of Moore and of Allen Silcox, Building Inspector for the City of Carthage.

A hearing was held on FTB's motion for summary judgment and the Guarantors' motion to strike on September 5, 2012. By order entered September 13, 2012, the trial court granted FTB's motion for summary judgment finding FTB was entitled to judgment as a matter of law because there was no genuine dispute of material facts. In particular, the court held that FTB "did not represent to Moorhead and Moore that the property securing [FTB's] loan to [Shelby Village], which Moorhead and Moore assumed, was covered by Federally required flood insurance." The court awarded FTB a judgment against Moorhead and Moore for $589,718.45, dismissed Moorhead and Moore's counterclaim, and reserved the issue of attorneys' fees.

On October 4, 2012, the trial court entered an order granting Shelby Village's and the Guarantors' motion to strike. The court dismissed Moorhead and Moore's cross-claim against the Guarantors, required Moorhead and Moore to comply with the request for documents, and held, pursuant to Tenn. R. Civ. P. 37.02(c), that the Guarantors were entitled to a default judgment in the amount of $60,000.

Moorhead and Moore filed their notice of appeal on October 10, 2012; however, this Court remanded the case for entry of final judgment in compliance with Tenn. R. Civ. P. 54.02. The trial court entered an Agreed Order for Final Judgment on July 1, 2013. Moorhead and Moore appeal asserting that the trial court erred in granting summary judgment and awarding discovery sanctions against them.

STANDARD OF REVIEW

The grant or denial of a motion for summary judgment is a question of law, which we review de novo without a presumption of correctness. *Gossett v. Tractor Supply Co.*, 320 S.W.3d 777, 780 (Tenn. 2004); *BellSouth Adver. & Publ'g Co. v. Johnson*, 100 S.W.3d 202, 205 (Tenn. 2003). When reviewing the evidence presented in support of, and in opposition to, a motion for summary judgment, we view "the evidence and all reasonable inferences therefrom in the light most favorable to the non-moving party." *Giggers v. Memphis Hous. Auth.*, 277 S.W.3d 359, 364 (Tenn. 2009).

A motion for summary judgment should be granted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04. To obtain summary judgment, the moving party must negate an essential element of the non-moving party's claim or show by undisputed evidence that the non-moving party cannot prove an essential element of the claim at trial. *Hannan v. Alltel Publ'g Co.*, 270 S.W.3d 1, 8-9 (Tenn. 2008).[3] If there are disputed facts, we must determine whether the fact is material to the claim or defense upon which the summary judgment is predicated and whether the disputed fact creates a genuine issue for trial. *Rutherford v. Polar Tank Trailer, Inc.*, 978 S.W.2d 102, 104 (Tenn. Ct. App.1998); *Byrd v. Hall*, 847 S.W.2d 208, 211 (Tenn.1993). The trial court should grant summary judgment only when a reasonable person could reach but one conclusion based on undisputed facts and the inferences drawn from those facts. *Gossett*, 320 S.W.3d at 784 (citing *Staples v. CBL & Assocs., Inc.*, 15 S.W.3d 83, 89 (Tenn. 2002)).

This case also requires us to consider the propriety of the trial court's discovery sanction. Trial courts have wide discretion when determining the appropriate discovery sanction to be imposed. *Mercer v. Vanderbilt Univ., Inc.*, 134 S.W.3d 121, 133 (Tenn. 2004) (citing *Strickland v. Strickland*, 618 S.W.2d 496, 501 (Tenn. Ct. App. 1981)). Thus, we review a trial court's decisions regarding sanctions under the deferential abuse of discretion standard. *Amanns v. Grissom*, 333 S.W.3d 90, 97 (Tenn. Ct. App. 2010). "Appellate courts should allow discretionary decisions to stand even though reasonable minds can differ concerning their soundness." *Mercer*, 134 S.W.3d at 133.

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[3] Tennessee Code Annotated section 20-16-101 (2011), a provision that is intended to replace the summary judgment standard adopted in *Hannan,* is inapplicable to this case. *See Sykes v. Chattanooga Hous. Auth.*, 343 S.W.3d 18, 25 n.2 (Tenn. 2011) (noting that section 20-16-101 is only applicable to actions filed on or after July 1, 2011). FTB initiated this action in July 2010.

ANALYSIS

Summary Judgment

Moorhead and Moore contend the trial court erred in granting summary judgment in favor of FTB because genuine issues of material fact exist regarding FTB's alleged obligation to provide flood insurance on the property. In support of their contention that FTB had a duty to provide flood insurance, Moorhead and Moore extensively cite 42 U.S.C. § 4001, *et seq.*, the National Flood Insurance Act of 1968 ("NFIA").[4] As an initial matter, we note that other courts have uniformly held that the NFIA does not create an implied private right of action on behalf of the borrower against the lender. *See, e.g.*, *Mid-Am. Nat. Bank of Chicago v. First Sav. & Loan Ass'n of S. Holland*, 737 F.2d 638, 642 (7th Cir. 1984) ("Our analysis of these provisions as well as the entire statutory scheme of the Flood Program reveals no indicia of legislative intent to create an implied federal cause of action . . . ."); *Arvai v. First Fed. Savs. and Loan Ass'n*, 539 F. Supp. 921, 924 (D.S.C. 1982) ("It is the opinion of this Court that the purpose of the Act, its legislative history, its language and structure, and the circumstances surrounding its enactment point to a lack of Congressional intent to create a private cause of action against a lender . . . ."); *Bigler v. Centerbank Mortg. Co.*, No. CV930348772S, 1994 WL 711168, at *1 (Conn. Super. Ct. Dec. 12, 1994).

Moorhead and Moore acknowledge the foregoing authority and instead argue for rescission of the contract on the basis that FTB "negligently misrepresented" that the property was subject to an existing policy for flood insurance and that this misrepresentation induced them to sign the contract. A party pursuing a claim of negligent misrepresentation "must prove by a preponderance of the evidence that the defendant supplied the information to the plaintiff; the information was false; the defendant did not exercise reasonable care in obtaining or communicating the information; and the plaintiff justifiably relied on the information." *Hill v. John Banks Buick, Inc.*, 875 S.W.2d 667, 670 (Tenn. Ct. App. 1993) (citations omitted). The tort of negligent misrepresentation is most often recognized "in connection with business or professional persons who carelessly or negligently supply false information for the guidance of others in their business transactions." *Houghland v. Sec. Alarms & Servs., Inc.*, 755 S.W.2d 769, 774 (Tenn. 1988). Our Supreme Court has recognized, however, that, "[t]his theory of law . . . does not convert every breached promise or contractual undertaking into a basis for the rescission of otherwise valid contracts and the abrogation of their terms." *Id.*

In granting summary judgment, the trial court stated:

Moorhead and Moore's claim that First Tennessee represented to them that

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[4] The NFIA was enacted "to provide previously unavailable flood insurance protection to property owners in flood prone areas." *U.S. v. St. Bernard Parish*, 756 F.2d 1116, 1120 (5th Cir. 1985).

> flood insurance covering the property was in effect, also has no real support in the record. In ¶ 7 of his Affidavit, Moore states that he "definitely and specifically relied upon the written assurance by First Tennessee Bank that it had procured flood insurance for the life of the loan, and that flood insurance remained in effect. That document is attached as an exhibit to my affidavit with the pertinent wording highlighted." But the attached document is a Standard Flood Hazard Determination issued by the Federal Flood Certification Corporation to First Tennessee stating that the property is in a flood hazard area and that Federal flood insurance is available. It contains no representation or assurance at all by First Tennessee. The Court finds and concludes that this Standard Flood Hazard Determination is not a misrepresentation as to flood insurance coverage by First Tennessee, and Moorhead and Moore have cited no other alleged misrepresentation by First Tennessee on this issue.

In Moore's affidavit, he states that he was provided a document from FTB "confirming the existence of flood insurance which would guarantee the payment of the loan in the event the park was destroyed by a flood during the life of the loan." He attached the document on which he allegedly relied to his affidavit with the "pertinent wording highlighted." The document is entitled "Federal Emergency Management Agency Standard Flood Hazard Determination." The document states that flood insurance is required on the property because the property is in a "special flood hazard area." In the "comments" section, the document states, "This flood determination is provided to the lender pursuant to the Flood Disaster Protection Act. It should not be used for any other purpose." We have reviewed the document and agree with the trial court that the document does not confirm the existence of flood insurance as Moore suggests. Moreover, the document was issued by the Federal Flood Certification Corporation, not FTB, and does not constitute a representation by FTB regarding flood insurance on the property. Because this document is not a representation by FTB regarding flood insurance, and Moorhead and Moore have not pointed to any other documents to sustain their allegation that FTB represented that the property was covered by flood insurance, FTB has negated an essential element of Moorhead and Moore's claim. *See Hannan*, 270 S.W.3d at 8-9. Therefore, the trial court did not err in granting summary judgment on this issue.

Moorhead and Moore also contend summary judgment was improper because a factual dispute exists regarding FTB's alleged negligent misrepresentation of the value of the property as well as the number of usable mobile home lots on the property. In their brief, Moorhead and Moore state, "none of the parties had any idea that many of the 'concrete pads' were totally useless as mobile home lots, and that the unavailability of those lots render the contracted fair market value as an erroneous 'mistake' . . . ."

When reviewing the evidence on this issue, the trial court held:

Moorhead and Moore claim that the facts set forth in ¶¶ 12 and 20[5] are disputed, but in each case they have failed to buttress their claim by specific citation to a document in the record that supports their position, as Tenn. R. Civ. P. 36.03 requires. With respect to ¶ 12, the Loan Discussion Sheets provided by First Tennessee to Moore contain no representation as to the appraised or market value of the Shelby Village real estate. With respect to ¶ 20, stating that First Tennessee did not misrepresent the number of usable lots on the property, the Defendants cite ¶ 9[6] of Moore's Affidavit in support of their denial, but this paragraph makes no mention of any representation at all

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[5] In their responses to FTB's Statements of Undisputed Material Facts, Moorhead and Moore responded as follows regarding FTB's alleged negligent misrepresentation of the market value of the property:

> 12. At no time during any discussions concerning the sale of Shelby Village or its property or Moorhead and Moore's assumption of liability on the Shelby Village debt to FTB did FTB make any representation, intentional or otherwise, to Moorhead, Moore, or anyone else as to the appraised or market value of the Shelby Village real estate. [7-31-12 Rippy Affidavit, ¶ 5.]
>
> RESPONSE: Denied. Affidavit of Robert S. Moore, ¶ 6 & ¶ 13, and "loan discussion sheets" prepared for Moore by the Bank (& Rippy affidavit attachments)
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> 20. FTB did not misrepresent the number of usable lots on the Property. [Thomas Moorhead Deposition, P. 273.]
>
> RESPONSE: Denied. Rob Moore aff. Par. 9.

[6] Paragraph nine of Moore's affidavit states as follows:

> In about February or March 2007, I had aggressively pursued attempts to put additional trailers into the park in anticipation of using the mobile home park to its maximum, commercially successful potential. Moving a mobile home onto the property required that I obtain a building permit from the City of Carthage. I met on the property with the Carthage City Inspector to review the area where the new mobile home installation would occur. I was immediately advised by the building inspector (Mr. Allen Silcox) that it was clearly obvious that it would be impossible to meet the zoning requirements with regard to installing a mobile home on several of the lots. Apparently without the need for precise measurements, Mr. Silcox indicated that it appears necessary to elevate a mobile home's floor to at least one foot above the flood stage, could not exceed 80 inches. With that standard in mind, it was obvious, even by a casual observation that several of the lots could not possibly meet that requirement, and were useless to me for any commercial value as a mobile home lot. Mr. Silcox and I immediately and readily identified 25 of the lots as being so far below the flood stage that it would be impossible to meet the ADH pier limitation. To a casual observer, it would be obvious that the issue was not a close one. The clearly marked "base flood elevation" is 485.00 feet, and, according to Mr. Silcox (whose affidavit is also submitted), the City of Carthage would require the finished floor to be one foot above that, or 486.00 feet. Obviously, we were all mistaken about that important fact.

by First Tennessee.

The document cited by Moore, entitled "Loan Discussion Sheet Prepared for Thomas Moorhead and Rob Moore," is dated September 1, 2006, and states, "The following is intended to create a baseline for discussion that will hopefully culminate in the issuance of a formal loan commitment to make a loan." In the section entitled "Amount," the document states, "The lesser of seventy-five percent (75%) of the accepted appraised value of the Project or cost . . . cost being $750,000 so a max. $567,500 loan is projected." We have reviewed the statements of Moore and the document cited for the proposition that FTB negligently misrepresented the value of the property, and we agree with the trial court that neither Moore's affidavit nor the Loan Discussion Sheet support this position. The Loan Discussion sheet is not intended to provide an appraisal of the property; rather, it provides a "baseline for a discussion that will hopefully culminate in the issuance of a formal loan commitment."[7] Moreover, Moore states in paragraph five of his affidavit that:

> In my July 2006 discussions with Joe Claybon, Mr. Claybon advised me that the property was appraised for over $800,000, assuming the placement of mobile homes on all of the 73 lots, and receipt of the rent for all of those lots. We negotiated a purchase price of $750,000. My father and I were to assume the Shelby Village Mobile Home Park, LLC loan with First Tennessee Bank in the amount of $562,00.50, and we agreed that Mr. Claybon and Mr. Vandenbergh would hold a second lien . . . .

Any representations made by Mr. Claybon regarding the value of the property or the condition of the lots may not be imputed to FTB as the basis of a claim for negligent misrepresentation because there are no allegations that Mr. Claybon was a representative of FTB. Therefore, we affirm the trial court's grant of summary judgment to FTB.

Discovery Sanctions

Moorhead and Moore argue that there is no factual basis upon which the trial court could enter discovery sanctions or a finding of civil contempt against them for failure to respond to discovery. The Guarantors argue it was within the trial court's discretion to enter a default judgment as a sanction for Moorhead and Moore's failure to comply with court orders.

We review a trial court's decision to impose sanctions and its determination of the appropriate sanction under an abuse of discretion standard. *Lyle v. Exxon Corp.*, 746 S.W.2d

[7] In their responses to FTB's statement of undisputed facts, Moorhead and Moore admitted that they "never looked at or requested an appraisal of the Property before the purchase transaction was closed," and also admitted that, "FTB never charged [them] for an appraisal of the Property."

694, 699 (Tenn. 1988). "'A trial court abuses its discretion only when it applies an incorrect legal standard, or reaches a decision which is against logic or reasoning that causes an injustice to the party complaining.'" *Caldwell v. Hill*, 250 S.W.3d 865, 869 (Tenn. Ct. App. 2007) (quoting *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001)). The abuse of discretion standard does not permit an appellate court to substitute its judgment for that of the trial court. *Id.* Thus, under this standard, we give great deference to the trial court's decision. *Henry v. Goins*, 104 S.W.3d 475, 479 (Tenn. 2003).

Pursuant to Rule 37.02(c) of the Tennessee Rules of Civil Procedure, a trial court is authorized to, *inter alia*, dismiss a case and render judgment by default against a party who fails to abide by discovery rules. Tennessee Rule of Civil Procedure 37.02 provides:

> **Failure to Comply with Order.**—If a deponent; a party; an officer, director, or managing agent of a party; or, a person designated under Rule 30.02(6) or 31.01 to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under Rule 37.01 or Rule 35, or if a party fails to obey an order entered under Rule 26.06, the court in which the action is pending may make such orders in regard to the failure as are just, and among others the following:
>
> (A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
>
> (B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;
>
> (C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering judgment by default against the disobedient party;
>
> (D) In lieu of any of the foregoing orders or in addition thereto, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination;
>
> (E) Where a party has failed to comply with an order under Rule 35.01 requiring the party to produce another for examination, such orders as are listed in paragraphs (A), (B), and (C) of this rule, unless the party failing to comply shows that he or she is unable to produce such person for examination.

> In lieu of any of the foregoing orders or in addition thereto, the court shall require the party failing to obey the order or the attorney advising the party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

Dismissal of a case pursuant to Tenn. R. Civ. P. 37.02 is a harsh sanction, however, this Court has recognized that:

> trial judges must be able to control their dockets and that to do so, they must have available the most severe spectrum of sanctions not merely to penalize those whose conduct warrants sanctions but also to deter others who might be tempted to engage in similar conduct if the sanction did not exist.

Kotil v. Hydra-Sports, Inc., No. 01-A-01-9305-CV00200, 1994 WL 535542, at *3 (Tenn. Ct. App. Oct. 5, 1994).

When ruling on this issue, the trial court held, in pertinent part, as follows:

> Defendants Moore and Moorhead have not complied with the Tennessee Rules of Civil Procedure as it pertains to discovery. The Court places even more weight on the fact that Defendants Moore and Moorhead have not complied with the Order issued on August 1st 2012 wherein they both were found in contempt. As of the date of this hearing, neither Defendant had paid the $50.00 fine for civil contempt or paid the attorney's fee awarded in the August 1st, 2012 order. The Court finds that the Defendants' motion shall be granted and that the cross claim filed by Defendants Moore and Moorhead against Defendants Shelby Village Mobile Home Park, LLC, Joseph Claybon a/k/a Joe Claybon, Barbara Claybon, David W. Vandenbergh and Heather Vandenbergh should be dismissed with prejudice. The Court further finds that the Defendants Moore and Moorhead have to comply with the request for documents and that failure to do so will result in further sanctions. The Court further finds that the previously issued sanctions for contempt and order for attorney's fees must be paid in full by September 20th, 2012. Pursuant to Rule 37.02(c) of the Tennessee Rules of Civil Procedure, Cross Plaintiffs, Shelby Village Mobile Home Park, LLC, Joseph Claybon a/k/a Joe Claybon, Barbara Claybon, David W. Vandenbergh and Heather Vandenbergh, are entitled to a default judgment in the amount of $60,000.00 against Defendants Moore and Moorhead as a result of their cross complaint being stricken.

As an initial matter, we note that the trial court imposed two separate sanctions against Moorhead and Moore for their failure to comply with the court's orders regarding discovery.

First, the court struck Moorhead and Moore's cross-claim against Shelby Village and the Guarantors. Second, the court granted Shelby Village and the Guarantors a default judgment on their cross-claim against Moorhead and Moore for an unpaid $60,000 promissory note. With that clarification noted, we have concluded that the record supports the trial court's decision. Moorhead and Moore missed several discovery deadlines, failed to file all of the exhibits to their depositions, and failed to pay the fine for contempt and attorneys' fees. Accordingly, we cannot say that the trial court abused its discretion by imposing sanctions in this matter.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed. Costs of appeal are assessed against the appellants, and execution may issue if necessary.

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VANESSA AGEE JACKSON, JUDGE