

STATE OF NORTH CAROLINA
WAKE COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
NO. 07 CVS 009006

STATE OF NORTH CAROLINA ex rel.)
ROY COOPER, Attorney General,)
)
Plaintiff,)
)
vs.)
)
PEERLESS REAL ESTATE SERVICES, INC.,)
VILLAGE OF PENLAND, L.L.C., MFSL)
LANDHOLDINGS, L.L.C., COMMUNITIES OF)
PENLAND, L.L.C., COP LAND HOLDINGS,)
L.L.C., PG CAPITAL HOLDINGS, L.L.C.,)
WEST SIDE DEVELOPMENT, L.L.C.,)
ANTHONY PORTER, FRANK AMELUNG,)
RICHARD AMELUNG, J. KEVIN FOSTER,)
NEIL O'ROURKE, MICHAEL YEOMANS,)
A. GREG ANDERSON, OCEANS)
INVESTMENTS, L.L.C., THE PENLAND)
RESERVE TRACT, L.L.C., COP)
PRESERVATION PARTNERS, L.L.C., RIVER)
POINTE, INC., AND F.W.,INC.)
)
Defendants.)

CONSENT JUDGMENT AT TO
J. KEVIN FOSTER

FILED
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WAKE COUNTY, C.S.C.

This cause coming on to be heard and being heard before the undersigned Superior Court Judge in Wake County for entry of a Consent Judgment at the joint request of plaintiff State of North Carolina, by and through Attorney General Roy Cooper, defendant J. Kevin Foster and Joseph W. Grier, III, the court-appointed Receiver in this action ("the Receiver"), the Court, with the consent of plaintiff, Foster, and the Receiver, makes the following:

FINDINGS OF FACT

1. Plaintiff is the State of North Carolina, acting on the relation of Roy Cooper, Attorney General, pursuant to authority granted in Chapters 75 and 114 of the General Statutes of

North Carolina.

2. Defendant J. Kevin Foster is a resident of Georgia and, along with other individual defendants in this matter (the “Peerless Group”), managed, controlled, and was involved with the operations of the corporate defendants that sold parcels of real property in a development in Mitchell County, North Carolina, and assisted the purchasers in applying for financing.

3. The Receiver was appointed by order of this Court entered on June 6, 2007, (“Receivership Order”) to serve as Receiver for Peerless Real Estate Services, Inc., Village of Penland, LLC, MFSL Landholdings, LLC, Communities of Penland, LLC, COP Land Holdings, LLC, PG Capital Holdings, LLC, and West Side Development, LLC. On November 9, 2009, the Receiver as appointed by order of this Court to serve as Receiver for the Penland Reserve Tract, L.L.C., COP Preservation Partners, L.L.C., River Pointe, Inc., and F.W., Inc. Although not a party to this action, the Receiver has determined that it is in the best interest of the Receivership for the Receiver to enter into this Consent Judgment with defendant J. Kevin Foster.

4. Plaintiff alleges the following:

(a) Around 2002, the Peerless Group began developing a project known as the Village of Penland on a 1200 to 1400 acre tract of real property in Mitchell County, North Carolina. Additional property was added to the development over time, and the property was subdivided into more than 2000 residential lots;

(b) The Peerless Group organized the lots within the Village of Penland into multiple smaller subdivisions, each purportedly operated by a different corporate entity but under a common promotional plan. The Peerless Group never registered the development with the

United States Department of Housing and Urban Development pursuant to the requirements of the Interstate Land Sales Full Disclosure Act, 15 U.S.C. § 1701, *et seq.*, and consequently, purchasers did not receive the property report (15 U.S.C. § 1707) nor the right of cancellation (15 U.S.C. § 1703(b)) required by the Interstate Land Sales Full Disclosure Act;

(c) Prior to engaging in sales to the public, the Peerless Group conducted bogus sales to insiders at inflated prices, enabling one or more appraisers to use the insider sales as comparables to support subsequent appraisals at the inflated prices;

(d) Consumers were told that the Peerless Group would use the funds obtained from the consumer's loans to develop the Village of Penland project. Consumers also were typically told, among other things, that:

- i. they could buy multiple lots, usually somewhere between 2 and 20;
- ii. they would not have to pay any of their own money in the purchase;
- iii. an employee of the Peerless Group would assist the consumers in applying for mortgage loans;
- iv. the Peerless Group would provide the consumer with an option contract requiring the Peerless Group to repurchase each lot within a certain period of time, guaranteeing the consumers a profit; and
- v. the option contracts would be secured by personal guarantees from defendant Porter and other members of the Peerless Group;

(e) To further convince consumers that their investments were safe, members of the Peerless Group gave consumers copies of what was reported to be their United States

income tax returns and financial statements that overstated the net worth of such members of the Peerless Group;

(f) The lots, some of which were only .14 acre in size, had no water or sewer on site at the time of the sale and many were too small to sustain septic tank systems. The selling price generally was \$125,000 per lot, regardless of the size or whether, due to topography, a home could reasonably be built on the lot;

(g) The Peerless Group had the majority of consumers complete multiple loan applications and told the consumers that the employees would “shop” the applications around with several lenders to obtain the best rates for the consumers. The applications did not disclose that consumers were, in the same time period, applying for and receiving loans from other lenders to purchase additional lots. The consumers almost never dealt directly with the lenders because the Peerless Group generally handled contact with the lenders;

(h) The closings on the lot purchases were primarily handled by an attorney who worked exclusively or almost exclusively for the Peerless Group. Some consumers gave a power of attorney to the closing attorney so he could sign the documents on behalf of the consumer. Most consumers never met the attorney in person;

(i) The HUD-1 Closing Statements for these transactions reflected purported earnest money deposits and/or down payments, but such earnest money deposits and/or down payments were not paid by the consumers and were illusory;

(j) For the most part, the money the Peerless Group received from consumers was not used to develop the project, as promised, but was instead used for other unrelated purposes. Eventually, the Peerless Group notified consumers that they would be unable to fulfill

their obligations to consumers, leaving consumers with mortgages on property that was in many instances unbuildable and in all instances worth only a fraction of the purchase price; and

(k) Defendant Foster's alleged unfair or deceptive business practices as part of the Peerless Group were in or affecting commerce in North Carolina.

5. Defendant Foster neither admits nor denies the plaintiff's allegations in Paragraph 4. Defendant Foster does not object to the entry of this Consent Judgment.

6. Defendant Foster has provided financial information to plaintiff and the Receiver and warrants that the financial information, including values, he provided is true and accurate and fully and fairly reflects his financial condition as of the date reflected on the financial information.

CONCLUSIONS OF LAW

1. The court has jurisdiction over the parties and the subject matter.

2. Entry of this Judgment is just and proper.

3. The complaint states a cause of action against defendant Foster pursuant to N.C.G.S. § 75-1.1 in connection with his control and management of the development, marketing, and sale of real property in North Carolina, and the Court finds good and sufficient cause to adopt the agreement of the parties and these findings of fact and conclusions of law as its determination of their respective rights and obligations and for the entry of this Consent Judgment.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. Defendant Foster is permanently enjoined from engaging, either directly or indirectly through agents, representatives, or assigns, in the development, marketing, and sale of

real property in North Carolina in which:

- (a) any appraisal intended to deceive prospective lenders or purchasers, or any appraisal that is prepared in a manner that does not conform to the Uniform Standards of Professional Appraisal Practice is provided to a prospective lender or purchaser;
- (b) insider sales are used to artificially inflate the value of the real property and such values are used to support appraisals performed on the real property sold;
- (c) the seller or any related entity provides second mortgages or promissory notes to purchasers in connection with the sale of real property;
- (d) the down payment for the purchase of real property is not accurately disclosed on the HUD-1 Closing Statement;
- (e) any subdivision, if required by law, is not registered with the United States Department of Housing and Urban Development pursuant to the requirements of the Interstate Land Sales Full Disclosure Act, 15 U.S.C. § 1701, *et seq.*;
- (f) sales incentives with a value of more than \$100 are offered to purchasers; provided, however, that this provision does not apply to payment by the seller of closing costs as long as that fact is fully disclosed to any lender extending credit on the sale and on the HUD-1 Closing Statement;
- (g) purchasers are offered sale-leaseback or option contracts for the lease or repurchase of the property by the seller or the seller's agent;
- (h) the seller or any individual or entity related to the seller or the seller's agent offers the purchaser the opportunity to postpone one or more mortgage or promissory

note payments on the property;

- (i) the seller or any individual or entity related to the seller or the seller's agent agrees to make one or more mortgage or promissory note payments for the purchaser;
and
- (j) the seller or any individual or entity related to the seller or the seller's agent loans the purchaser any portion of the down payment on the purchase.

2. Prior to the entry of this Consent Judgment, defendant Foster shall pay to the Receiver \$ 100,000. The Receiver may put these funds to such uses allowed by the Receivership Order or as approved by this Court.

3. To the extent that defendant Foster, directly in his name or by a trustee in trust for him or in the name of another on his behalf, holds funds in either domestic or foreign bank accounts or owns other property not previously disclosed in writing to the State or to the Receiver at the time of the entry of this Consent Judgment, defendant Foster assigns any right he may have to these funds or other property to the Receiver, and without further order of this Court, the Receiver shall be substituted in place of defendant Foster as the owner or beneficiary of such funds or other property and shall have ownership of and control over the funds or other property. To the extent that any of the non-disclosed funds or other property are held by defendant Foster jointly with others, the Receiver shall have ownership and control of all funds in the account deposited directly or on behalf of defendant Foster and any interest attributable to those funds and of the interest of defendant Foster in any other non-disclosed property.

4. Notwithstanding any other provision of this Consent Judgment, consistent with the Uniform Fraudulent Transfer Act, N.C.G.S. § 39-23 *et seq.*, the Receiver remains a creditor,

as defined in N.C.G.S. § 39-23.1(4), and retains all remedies afforded a creditor pursuant to N.C.G.S. § 39-23.7, or similar law in other jurisdictions, in connection with any transfers made by defendant Foster, or any entities managed, controlled, or owned in part or in whole by defendant Foster, prior to the entry of this Consent Judgment.

5. This Consent Judgment shall not affect the rights of any private party to pursue any remedy or remedies allowed pursuant to the laws of the State of North Carolina.

6. This Consent Judgment Agreement shall not bind any other offices, boards, commissions, or agencies of the State of North Carolina.

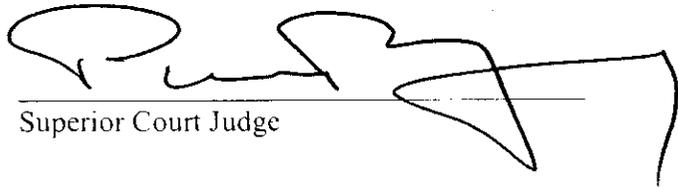
7. Defendant Foster shall cooperate with plaintiff and the Receiver by providing any information plaintiff or the Receiver requests to assist in the investigation or litigation of plaintiff's and the Receiver's claims in this matter as to the other defendants.

IT IS FURTHER ORDERED THAT

8. If any part of the financial information or tax returns provided to plaintiff and the Receiver by defendant Foster is false, unfair, deceptive, misleading, or inaccurate in any material respect, plaintiff, in its sole discretion, may:

- (a) move the Court to impose sanctions;
- (b) move the court to rescind this Consent Judgment and proceed on its original complaint; and
- (c) seek any other remedy or relief afforded by law or equity.

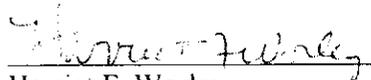
This the 8 day of March, 2010.



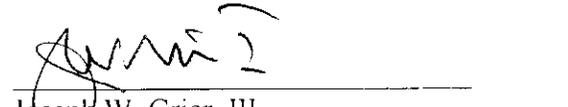
Superior Court Judge

WE CONSENT:

STATE OF NORTH CAROLINA
ex rel. ROY COOPER,
Attorney General



Harriet F. Worley
Assistant Attorney General



Joseph W. Grier, III,
Receiver of Peerless Real Estate Services,
Inc., Village of Penland, LLC, MFSL
Landholdings, LLC, Communities of
Penland, LLC, COP Land Holdings, LLC,
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Development, LLC, Penland Reserve Tract,
L.L.C., COP Preservation Partners, L.L.C.,
River Pointe, Inc., and F.W., Inc.



J. Kevin Foster



Brandon Newman
Counsel for J. Kevin Foster