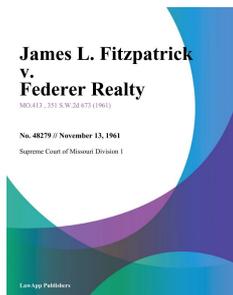


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## JAMES L FITZPATRICK V FEDERER REALTY EBOOKS 2019



Author: Supreme Court of Missouri

Release Date: Expected @@expectedReleaseDate@@

The plaintiffs were formerly the owners of a 100-acre tract of land located on Baxter Road in the western part of St. Louis County. There were valuable improvements thereon which will be hereinafter briefly described. On April 5, 1957, the property was sold to defendant Elmer A. Sander at a foreclosure sale held pursuant to a second deed of trust plaintiffs had executed. Defendant Lester A. Liebmann was an employee of Federer Realty Company and was the trustee in the deed of trust, and defendant Peter Bouckaert was the payee in the \$24,000 note secured by said trust deed. William A. Federer and Federer Realty Company, defendants herein, had at one time been agents for plaintiffs in an effort to sell the property and William had acted as agent for Bouckaert in arranging the loan heretofore mentioned. This suit was filed on April 20, 1957. In the original petition plaintiffs sought to set aside the foreclosure sale and to obtain a declaration that they had a right to redeem; they also prayed damages. They alleged that defendants fraudulently conspired and agreed not to bid against each other, and to divide the profit they intended to make by purchasing the property at a low price and reselling at a higher price. The court sustained defendants' motions to dismiss plaintiffs' petition on the ground that it failed to state a claim upon which relief could be granted. Upon appeal to this court we held that the petition stated a claim for relief and the judgment was reversed and cause remanded. Fitzpatrick v. Federer, Mo. Sup., 315 S.W.2d 826. Thereafter, plaintiffs filed a third amended petition in three counts. The first count was entitled ""Action at Law"" and sought damages for wrongful foreclosure. The second count entitled ""Breach of Contract"" prayed for damages based upon the failure of defendants to carry out an oral agreement to withdraw the foreclosure sale and to sell the property privately. Count III entitled ""Action in Equity"" sought to cancel the foreclosure sale and also prayed damages.

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