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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2009-2010

1080607

J. Gregory Kennedy

v.

Boles Investment, Inc., and Ian Boles

Appeal from Baldwin Circuit Court
(CV-05-788)

On Application for Rehearing

SMITH, Justice.

On March 12, 2010, this Court issued its opinion on original submission, affirming the November 3, 2008, judgment of the Baldwin Circuit Court in favor of defendants Boles Investment, Inc. ("BI"), and Ian Boles ("Boles"), the owner of

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BI. J. Gregory Kennedy, the plaintiff below, states in his application for rehearing that "[t]he Opinion's holding that the November 3, 2008, judgment is a final judgment is in error because this Court overlooked the injunction against foreclosure ordered after the first affirmance." Kennedy's rehearing application, at 12.

On April 11, 2008, after this Court on February 15, 2008, had affirmed, without an opinion, the trial court's January 30, 2006, judgment, which had been made final pursuant to Rule 54(b), Ala. R. Civ. P., BI and Boles filed a "Motion for Immediate Injunction Against Foreclosure" in the trial court requesting that the trial court "enjoin [Kennedy] from proceeding with any foreclosure at this time pending the outcome on the trial for damages against [Kennedy] currently pending and due to be set down during the first available jury term." (Emphasis added.) The trial court summarily granted BI and Boles's motion and issued the injunction on April 29, 2008.

On October 27 and 28, 2008, the trial court held a bench trial on all pending claims. On November 3, 2008, the trial court issued an order disposing of all pending claims and

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"award[ing] a judgment against [Kennedy] in the amount of \$3,650,000.00 plus costs of court." Because the November 3, 2008, judgment ruled upon the counterclaims against Kennedy, the judgment effectively dissolved the April 2008 injunction. Therefore, the April 2008 injunction does not render the November 3, 2008, judgment nonfinal.

The remaining issues raised by Kennedy having been thoroughly considered on original submission, the application for rehearing is overruled.

APPLICATION OVERRULED.

Cobb, C.J., and Lyons, Woodall, Stuart, Bolin, Parker, Murdock, and Shaw, JJ., concur.