
CAUSE NO. 2008-CA-02067

IN THE SUPREME COURT OF MISSISSIPPI
REGIONS BANK AND J. CLIFFORD HARRISON, TRUSTEE

Appellants

v.

MISSISSIPPI TRANSPORTATION COMMISSION

Appellee

REPLY BRIEF OF APPELLANTS

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**REGIONS BANK AND J. CLIFFORD HARRISON,
TRUSTEE**

APPELLANTS

V.

CAUSE NO. 2008-CA-02067

MISSISSIPPI TRANSPORTATION COMMISSION

APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of this Court may evaluate possible disqualifications or recusal.

1. Regions Bank, Appellant
2. Jeffrey D. Rawlings, Attorney for Appellant
3. Rawlings & MacInnis, P.A., Attorneys for Appellant
4. J. Clifford Harrison, Trustee, Appellant
5. Mississippi Transportation Commission, Appellee

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IN THE SUPREME COURT OF MISSISSIPPI

MISSISSIPPI TRANSPORTATION COMMISSION

PLAINTIFF

VS.

CAUSE NO. 2008-CA-02067

SHERRY BELINDA MANN, ET. AL.

DEFENDANTS

REPLY BRIEF OF APPELLANTS

I. WHETHER THE EMINENT DOMAIN COURT ERRED IN ENTERING A JUDGMENT AGAINST BANK AND TRUSTEE WHO WERE NOT PARTIES TO THE REMOVAL OF FUNDS DEPOSITED BY MTC WITH THE COURT AND WHERE THE PARTIES WERE NOT PROPERLY NOTIFIED.

MTC argues that it is obvious and unquestionable that MTC is entitled to a refund pursuant to the jury's determination and pursuant to certain provisions of the eminent domain statutes. In other words, MTC would have this Court find that Bank and the Trustee should have assumed that MTC would stealthily attempt to get a Judgment for refund relief that MTC never requested. In the nearly ten (10) years that MTC's case was pending, MTC never requested a refund in the event a jury awarded less value to Mann than that of the court ordered appraiser's value. Instead of properly requesting the relief, MTC chose to present a Judgment containing the un-requested relief as an afterthought in a proposed unilateral judgment following the trial. The impromptu relief obtained against Bank and the Trustee by MTC is absolutely improper because evidence in the record supports that Mann, through her attorney, was the only party who took part in the removal of funds from the Court.

While MTC admits that "facts are left to speculation" as to what authority the bank teller may have had, it is not disputed by MTC that Mann took the check to a branch of the Bank in Eupora and had the funds applied to a loan. This was a voluntary act of Mann. A teller's

endorsement would not serve to put Bank on notice that funds were removed from the Eminent Domain Court. Bank and the Trustee had no idea that the funds had been withdrawn. The withdrawal was made without notice or an opportunity for interested parties to be heard regarding the withdrawal of funds. Further, MTC cannot dispute that the Trustee did not endorse the check and that the Bank in its capacity as a party, nor the Bank's counsel of record, had anything to do with the alleged endorsement. Neither the Bank nor the Trustee took part in the removal of the funds. This is evidenced by the record in the clerk's notations made on November 2, 1999 and by the back of the check. See Record Excerpt 1 Trial Docket and Vol. II, R. 244, 284. Despite MTC's assumptions to the contrary, there is no evidence that Bank had any control over what Mann did with the funds. There is absolutely no evidence that Bank or the Trustee took part in or had any control over the withdrawal of the funds or that Bank had any control over what Mann did with the funds after she took the funds from the Eminent Domain Court.

The trial judge made an erroneous and inappropriate finding of fact in stating, "this court finds that the Bank and Harrison were in fact parties to the withdrawal of funds" (Vol. II, R. 285). This was a question of fact for jury determination. Even if the Eminent Domain Court had authority to make additional factual findings after the trial, those findings are clearly erroneous based on the record. MTC even admits that the "facts are left to speculation" as to whether or not the teller had authority to endorse the check. Under MTC's theory, a bank teller would have the authority to settle and compromise lawsuits for the Bank. MTC erroneously states that Bank and the Trustee did not argue whether a teller has authority to endorse a check. MTC completely fails to address that the fact that the Trustee did not endorse the check and that the check was never endorsed by the Bank in its capacity as a party in this action or the fact that Bank's counsel

was never involved in the check process. See Page 4 of Brief of Appellants. In the Eminent Domain Court's *Order Denying Motion to Amend Judgment or Alternatively for Relief from Judgment* (unilaterally presented by MTC), the Eminent Domain Court improperly and erroneously found that Bank and the Trustee took part in the removal of funds. MTC failed to plead any issues or to submit any questions to the jury related to any relief against Bank and the Trustee. Therefore, it was improper for the Eminent Domain Court to provide any relief to MTC against Bank and the Trustee where there was no request by MTC. Since no such request was ever made by MTC or noticed by MTC to Bank and the Trustee, Bank and the Trustee were never afforded the opportunity to appropriately address the matter or assert their rights.

In its *Order Denying Motion to Amend Judgment or Alternatively for Relief from Judgment*, the Eminent Domain Court also improperly found that the "Bank and the Trustee were proper parties to this action and chose not to appear and defend their interests in the trial". MTC failed to provide Bank or the Trustee with any required notice of the trial. MTC completely misconstrues Bank's position that it was not properly notified. The Trustee had absolutely no prior knowledge or prior notice. The record is completely devoid of any trial notice to Bank or the Trustee. Undersigned counsel did not begin representing the Trustee until after this matter was appealed. While Bank did become aware prior to trial that Mann and MTC were proceeding with a trial, Bank was not properly noticed under the Mississippi Rules of Civil Procedure. Bank and the Trustee never had any notice that MTC would attempt to obtain unilateral post-trial relief against Bank and the Trustee. Further, MTC does not dispute that counsel for MTC was advised the day before the trial that Bank no longer had an interest due to satisfaction of its lien. (R. 302). MTC, on the other hand, never indicated in any form or fashion

that it was going to attempt to collect a money judgment against Bank and the Trustee. MTC was aware that Bank had no further interest in the outcome because its lien was extinguished. (R.

Due to the fact that the Eminent Domain Court partly based its decision to deny relief to Bank and the Trustee on a finding that "Bank and the Trustee were proper parties to this action and chose not to appear and defend their interests," the door was opened by the Eminent Domain Court on all subsequent issues before this Court, including the fact that required notice was not provided and the fact that allegations in the pleadings served upon the Bank and the Trustee completely failed to put Bank and the Trustee on notice that MTC sought to obtain monetary relief against Bank and the Trustee. Based on the foregoing, the Eminent Domain Court erroneously found that Bank and the Trustee were proper parties that chose not to appear and defend. The record simply does not support that Bank and the Trustee were properly notified of the trial or of any relief MTC purportedly sought other than a credit for any funds the jury awarded to Mann. Even the jury was hoodwinked by the instructions that they would only be "awarding some money to the Manns". See Trial Transcript Page 11, Lines 23-36.

Among the other erroneous statements in its brief, MTC states that Bank required as a price for its endorsement that the funds be applied to the loan. See Page 12 of MTC's brief. There is absolutely nothing in the record to support MTC's supposition. Bank never had any such requirement of Mann. Mann freely and voluntarily chose to apply the funds toward her indebtedness at Bank. MTC raises an issue of equity stating that equity requires that Bank and the Trustee make the funds available to reimburse; however, the only inequity is if the Bank and the Trustee are ordered to pay funds that it never removed and Bank is not able to revive its deeds of trust on the property. There was absolutely nothing in the record to support that Bank and the Trustee had anything to do with the *ex parte* removal of funds. None of the other issues

were before the Court because MTC failed to properly plead anything and chose to stealthily seek relief in a judgment ten (10) years later as an afterthought after the trial had concluded.

MTC simply never requested the relief that it received in the Judgment and never notified Bank or the Trustee that it sought relief against Bank and the Trustee. MTC improperly obtained relief against Bank and the Trustee for a refund of which it never requested. The record does not support the Eminent Domain Court's finding that the Bank and the Trustee took part in the withdrawal of any funds from the Eminent Domain Court. Further, the Bank and the Trustee had no knowledge that the funds were withdrawn. Based on the foregoing reasons, the Judgment and subsequent Order of the Eminent Domain Court must be reversed as to the Trustee and Bank.

CONCLUSION

Bank and the Trustee respectfully request that this Court reverse the Judgment of the Eminent Domain Court with instructions to vacate the Judgment as to the Bank and the Trustee.

This the 1st day of June, 2009.

Respectfully submitted,

**REGIONS BANK AND J. CLIFFORD
HARRISON, TRUSTEE**

By:



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CERTIFICATE OF SERVICE

I do hereby certify that I have this date mailed or delivered a true and correct copy of the above and foregoing *Reply Brief of Appellants* to the following:

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This the 15th day of June 2009.



John J. Mims