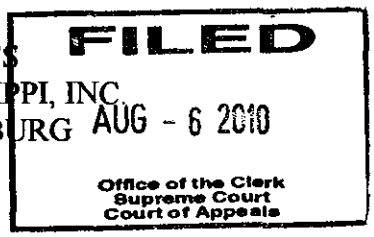
IN THE SUPREME COURT OF MISSISSIPPI

HARRY STUDDARD and
JEAN SUDDARD — APPELLANTS

VS. — NO. 2009-CA-01436

WILLIAM ROBERT "BOB" PITTS
and TOWER LOAN OF MISSISSIPPI, INC.
d/b/a TOWER LOAN OF VICKSBURG — APPELLEES



APPELLANTS' REPLY BRIEF

CIVIL APPEAL FROM THE CHANCERY COURT
OF WARREN COUNTY, MISSISSIPPI
HON. MARIE WILSON, CHANCERY JUDGE

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I. RESPONSE TO BRIEF OF APPELLEE WILLIAM ROBERT "BOB" PITTS

The case cited by Appellee Bob Pitts refers to a waiver of homestead exemption. In the case of T.L. Henderson v. E.H. Still, 61 Miss. 391 (Miss. 1883) cited by Appellee, the Plaintiff did not assert his homestead in the chancery proceeding. This case has no relevance to the case before the Court (Appellee's Brief, page 5). The Henderson case involved an action for ejectment where all parties were before the court, their rights were addressed, and the parties did not claim their homestead. Both Appellants were never in court together in the instant case with the exception to the case that is now before this court, which originated in the chancery court of Warren County.

In the eviction suit in Justice Court, Harry Studdard claimed his homestead exemption. In U.S. Bankruptcy court, the Judge recognized Appellant Harry Studdard's homestead exemption rights. The court entered an order avoiding the lien on the Appellant's homestead. This order is on file in the office of the chancery and circuit clerk of Warren County. Appellant Harry Studdard never received actual notice of the sheriff's sale until he was given notice to come to justice court to vacate his home.

Appellee Bob Pitts argues that a promissory note is not an encumbrance. The agreement made by Studdard was an encumbrance but it could not defeat the Appellants' homestead rights after it was reduced to a judgement. As previously argued by Appellants, the agreement made by Appellant Harry Studdard when not signed by his wife, Jean Studdard, and where she was not a party to the transaction could not be reduced to a judgement that would defeat the homestead rights of the Appellants. This

agreement or encumbrance when reduced to a judgment was not in the category to operate to defeat the Appellants' homestead. In circuit court, only the rights of Harry Studdard were adjudicated in granting the judgment. In justice court, only Harry Studdard was given notice of eviction. Harry and Jean Studdard both have homestead rights and both parties are necessary parties in any action to defeat their homestead rights.

Appellee's arguments on res judicata is without merit. The elements of res judicata are not present to defeat the Appellant's homestead rights,(Appellant's Brief, page 7-9). The elements of res judicata must be present in order for it to be applicable. State of Mississippi vs. John Ellis, Jr., No. 2000, CA-001-10 COA..

Harry Studdard participated in an agreement with John Barnes because Mr. Barnes was relying on Mr. Studdard's expertise as a builder. Appellants Harry and Jean Studdard. never had any property but their homestead where they lived and they never did anything to abandon their homestead rights. Appellants have discussed the elements of res judicata in their brief, and these elements are not present in the case before the court. The sheriff's sale of Appellants home has caused them great hardship.

II. RESPONSE TO APPELLEE TOWER LOAN OF MISSISSIPPI, INC.

The Appellee, Tower Loan, did not file a brief. The company relied on the written stipulation of facts by the parties that Tower Loan has a first lien on the subject property and that no party would seek or obtain relief contrary to Tower Loan's interest in

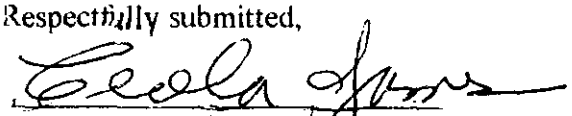
this cause. (See paragraph 3- Tower Loan's Response to Clerk's Show Cause Notice)

The Appellants disagree with the statements in paragraph 3 of Tower Loan's Response to Clerk's Show Cause Notice in that Tower Loan's lien was an issue in all of the lower court proceedings as well as an issue on appeal. Tower Loan was under a duty to preserve its first lien in order to prevent a hardship for the Appellants. By remaining silent, Tower Loan's first lien was ignored in that Tower Loan was not given notice of the sheriff's sale and Tower Loan was never paid as a first lien holder. If Tower Loan had come forward and asserted its first lien after Tower Loan received actual notice of the sheriff sale, the sheriff's deed would probably have been set aside by agreement. This case has been in several courts since 2005 and the Appellants are indigent and unable to pursue unecessary litigation.

CONCLUSION

For the reasons set forth above, the sheriff's deed should be vacated and set aside and title in the real property should be confirmed in the name of the Appellants as is set forth in the Appellant's Brief.

Respectfully submitted,



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