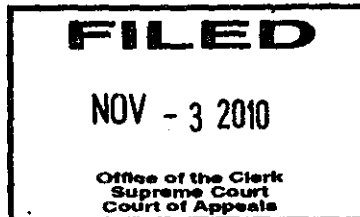


IN THE COURT OF APPEALS FOR THE STATE OF MISSISSIPPI

2009-CA-01932

(CO)

CHARLES DAVIS AND VERA DAVIS



APPELLANTS

COUNTRYWIDE HOME LOANS, INC.

APPELLEES

EMILY COURTEAU, SUBSTITUTED TRUSTEE

APPELLANT'S REPLY BRIEF

SHARON HENDERSON MS [REDACTED]

4680 MCWILLIE DRIVE

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COMBINED REPLY BY APPELLANT

Appellants request that the Court strike any documents submitted by the Appellee which were not part of the record submitted to the Court. Such submission of other court filings and other documents serve only to confuse and allow presentation of misplaced arguments by the Appellee. Specifically, Appellee argues that the issues involving foreclosure and the property description are res judicata based on an arbitration and District Court proceedings between the parties. A review of all the arbitration issues would show that while the property description was a relevant matter, the gravamen of the complaint was for money damages for lost land sales which the appellant attributed to Countrywide as a result of their incorrect property description in a foreclosure ad. Significantly, Countrywide erroneously ran a foreclosure notice on land which the appellant had for sale and caused cancellation of the sale. The bulk of the arbitration proceeding was testimony from witnesses regarding other lost land sales.

The arbitrator ultimately held that proof was not sufficient to prove that Countrywide was responsible for the lost contracts. Accordingly, the issue of the foreclosure itself was not part of the arbitration, as the deed of trust which specified the criteria for arbitration specifically excluded matters of foreclosure. Therefore, Appellee's argument of res judicata is misplaced. Similarly, while the problems with the property description were part of the discussion at every level, the District Court proceeding regarding the easement was relief sought by Countrywide because Countrywide had failed to include an easement(brought to their attention by the Appellant) in the land it was seeking to foreclose and had no access to it. The District

Court granted an easement, but this had no bearing on subsequent foreclosures which were introduced into evidence in the instant matter before the Court.

In fact, the record shows that the subsequent foreclosures could not be res judicata because the dates reflect that they had not occurred at the time of the arbitration. The record at hand shows that the subsequent foreclosures complained of by Appellant and the incorrect property descriptions occurred after the arbitration and the District Court case.

Appellant states that other documents and proceedings which are not part of the immediate case before the court be stricken, as it is not appropriate for the Court to be presented with Appellee's misplaced version of other proceedings outside the immediate case without an independent transcript, etc. of those proceedings, which were also not offered into evidence by Appellee at the hearing. Appellee's argue that Appellant attempted to appeal all prior matters against Countrywide in any arbitration or prior proceeding. Such is not the case. Appellant seeks review of those matters requested and any other matters the Court, sua sponte, would consider.

One thing is clear from the record, there still exists a problem with the property description which must be resolved. This land is real and at some point, the descriptions need to be corrected. Because Appellant has never ceased to point out that the property descriptions are in error, regardless of whether the matter was about an easement or lost contract sales, Appelles would make each case out to be the same. Unfortunately, Appelles never sought to make a title insurance claim to clear up the title problems and property discrepancies which Appellant has sought at every level to have addressed, in spite of the fact that Appellants purchased the insurance.

In reply to the issues regarding newly discovered evidence, appellant submits that the testimony and transcript of Charles Davis, appellant, indicates that the discovery of a property line error became known, only because of other land being surveyed on the property. Appellant's testimony supports that he did not seek a survey for the purpose of the instant litigation.

Finally, jurisdiction is always relevant and challengeable. The transcript, county court docket, notice of hearing and supporting exhibits, all part of the instant record, reflect that an eviction proceeding was scheduled in the County Court and was scheduled to be heard at the time the instant chancery proceeding ordered an eviction. the Hinds County Court already had jurisdiction of the eviction proceeding and the record supports that the jurisdiction on that matter was never transferred to Chancery Court. Appellant respectfully requests that the Court remedy the untenable dilemma with the property discrepancies and reverse and/or remand this matter for further proceedings .

Respectfully Submitted,

Charles Davis and Vera Davis

By:


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SUPREME COURT OF THE STATE OF MISSISSIPPI
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CHARLES DAVIS and
VERA DAVIS

APPELLANT

V.

COUNTRYWIDE HOME LOANS INC.
EMILY KAYE COURTEAU, SUBSTITUTED TRUSTEE

APPELLEE

CERTIFICATE OF SERVICE

The undersigned counsel of record certifies that the following persons at the addresses below have been hand delivered or mailed a copy of the Appellant's Reply Brief: James Renfroe, Perilloux & Associates, 648 Lakeland East Drive Ste A, Flowood, MS 39232; Michael Jedynak, 2309 Oliver Road, Monroe, LA 71201; Hon William Singletary, P.O.Box 686, Jackson, MS 39205.

Respectfully Submitted on November 3, 2010

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