

190
IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA

SOUTHERN DIVISION

(corrected mailing 2-14-84),
lps

DATE February 7, 1984

TO; Mr. Allen J. Barkin, P. O. Box 8, Bay Minette, Ala. 36502
Mr. Joseph E. Carr, IV, 103 Dauphin St., Suite 605, Mobile, Ala. 36602
Mr. Johnny Hardwick, 434 Sayre St., Montgomery, Ala. 36104
Mr. Thomas H. Figures, P. O. Drawer E, Mobile, Ala. 36601
Wade H. Morton, Jr., Esq., P. O. Box 1227, Columbiana, Al., 35051-1227
Mr. Danny L. Burnett, 124 Brown Circle, Alabaster, Al., 35007
Ms. Debra J. Burnett, P. O. Box 1035, Alabaster, Al., 35007

RE: CIVIL ACTION NO. 80-0836-H

GABRIEL JOHNSON

VS.

U. S. DEPT. OF AGRICULTURE, ET AL

You are advised that on the 3rd day of February 1984 the following action was taken in the above styled cause by the Honorable D.A.BAGWELL, United States Magistrate.

Application of Danny L. and Debra J. Burnett to be excluded from this class action filed on January 18, 1984 is GRANTED.

JOHN W. O'BRIEN, CLERK
BY: *Debra J. Burnett*
Deputy Clerk

Wade Morton

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

GABRIEL JOHNSON, individually
and on behalf of all others
similarly situated,

Plaintiff,

vs.

THE UNITED STATES DEPARTMENT
OF AGRICULTURE, et al.,

Defendants.

GRANTED

DATE: 2/3/84

CIVIL ACTION NO. 80-0836-H

VERIFIED APPLICATION TO BE EXCLUDED FROM CLASS

The undersigned DANNY L. BURNETT and DEBRA J. BURNETT, acting individually and upon their own behalf, petition the Court to be excluded as members of the Plaintiff class and to exclude from this class action any interest in the following described residential property situated in the City of Calera, Shelby County, Alabama:

Lots 1 and 2 in Block 94, according to J. H. Dunstan's Map of the Town of Calera, Alabama, which map is on file in the Probate Office of Shelby County, Alabama.

As a basis for their request, the undersigned Danny L. Burnett and Debra J. Burnett state, under oath, the following facts and circumstances of which they have personal knowledge:

1. That, while they were married to one another and jointly owned the above described property, they applied for and obtained a housing loan through Farmers Home Administration (FmHA) in the principal amount of \$22,200.00. This loan was completed on January 24, 1977 on which date they executed a real estate mortgage conveying this property to FmHA to secure their loan.

2. They resided on this property as their marital residence until their divorce, and on January 18, 1980 Danny L. Burnett executed a deed to Debra J. Burnett conveying to her all of his interest in this property, a true and correct copy of which is annexed as Appendix A.

3. They acknowledge that they were in default on their FmHA loan and were aware that FmHA foreclosed against this property, and they voluntarily surrendered possession of it to FmHA. Since that time each of the undersigned have established separate residences. Neither of the undersigned has any desire to again occupy this residential property, even if the same were made available to them at no cost other than resumption of the regular installments on the unpaid principal balance due at the time they defaulted on their housing loan from FmHA.

4. They are aware that after foreclosure by and delivery of possession to FmHA, this property was purchased from FmHA by Billy K. Graham, Jr. and

BOOK 55 PAGE 430

wife, Johnnie F. Graham. Both of the undersigned are acquainted with Mr. and Mrs. Graham. They know that Mr. and Mrs. Graham are in the process of selling this property and are represented in that sale by Wade H. Morton, Jr., Attorney at Law, Columbiana, Alabama. They understand that Mr. and Mrs. Graham are being prevented from selling this property because of the inclusion of the undersigned in this class action, which resulted in a Lis Pendens notice being filed in the Probate Office of Shelby County, Alabama involving the title to the above described property.

5. Prior to this time no one has directly made either of the undersigned aware that they could be excluded as members of the Plaintiff's class in this class action. They do want to be excluded because (a) they do not wish to recover their former residential property, (b) they want Mr. and Mrs. Graham to be able to complete sale of this property without further delay, (c) they have no desire to nullify and render void the foreclosure of said lands by FmHA, (d) they do not want to be included in the any class action suit involving the foreclosure of said lands, and (e) they want all Lis Pendens notices and any other clouds on title to be immediately removed from the above described property.

6. Each of the undersigned welcome the opportunity to further explain their desires to be excluded as a member of this class to any representative of the Court, including Plaintiffs' counsel. The undersigned Danny L. Burnett can best be contacted by mail or telephone at his place of employment, namely, c/o Triangle Industries, P. O. Box 8002, Alabaster, Alabama or at his residence: 124 Brown Circle, Alabaster, AL 35007. 35144 (telephone: 663-7821)/ The undersigned Debra J. Burnett can best be contacted by mail at her mailing address of P. O. Box 1035, Alabaster, Alabama 35007 or by telephone at her place of employment 663-3836.

7. The undersigned request that Wade H. Morton, Jr., Attorney at Law, Columbiana, Alabama, as the attorney for Mr. and Mrs. Billy K. Graham, Jr., assist them for the specific purpose of presenting their Verified Application to the Court for the requested order, and serving a copy of it upon the attorneys involved in this class action.

WITNESS our hands on this the 10th day of January, 1984.

Danny L. Burnett
Danny L. Burnett

Debra J. Burnett
Debra J. Burnett

STATE OF ALABAMA)
SHELBY COUNTY)

Before me the undersigned Notary Public in and for said County and State personally appeared Danny L. Burnett, who, after being by me first duly sworn to speak the truth, deposes and says as follows: That the facts and circumstances stated in his above and foregoing Verified Application are true and correct.

Danny L. Burnett
Danny L. Burnett, Affiant

Sworn to and subscribed before me on this 10th day of ~~November, 1983~~
JANUARY, 1984

[Signature]
Notary Public

STATE OF ALABAMA)
SHELBY COUNTY)

Before me, the undersigned Notary Public in and for said County and State personally appeared Debra J. Burnett, who, after being by me first duly sworn to speak the truth, deposes and says as follows: That the facts and circumstances stated in her above and foregoing Verified Application are true and correct.

Debra J. Burnett
Debra J. Burnett, Affiant

Sworn to and subscribed before me on this 11th day of November, 1983.

[Signature]
Notary Public

CERTIFICATE OF SERVICE

This is to certify that the undersigned Wade H. Morton, Jr., Attorney at Law, Columbiana, Alabama, acting for and on behalf of the above named Danny L. Burnett and Debra J. Burnett for this specific purpose has on this date (1) forwarded the original of the above and foregoing Verified Application to the Clerk of this Court for filing and presentation to the Court for entry of an order excluding the above named individuals and the above described real estate from this class action, and (2) served a copy of the above and foregoing Verified Application by first class United States mail, postage prepaid, upon the following attorneys involved in this class action: Alan J. Barkin, as Attorney for Plaintiffs, at his mailing address of P. O. Box 8, Bay Minette, Alabama 36507; Joseph E. Carr, IV, as Attorney for Plaintiffs, at his mailing address of 103 Dauphin Street, Suite 601, Mobile, Alabama 36602; and, Thomas Figures, Assistant United States Attorney, as Attorney for Defendants, at his mailing address of U. S. Courthouse, St. Joseph & St. Louis Streets, Mobile, Alabama 36602.

DONE this the 16th day of January, 1984.

WADE H. MORTON, JR.
ATTORNEY AT LAW
SOUTH MAIN STREET
POST OFFICE BOX 1227
COLUMBIANA, ALABAMA 35051-1227
TELEPHONE: 205/669-4147

WADE H. MORTON, JR.

Wade H. Morton, Jr.
Acting on behalf of Danny L. Burnett
and Debra J. Burnett

CERTIFIED A TRUE COPY

JOHN V. O'BRYEN, CLERK

[Signature]
Deputy Clerk

This instrument prepared by

(Name) John N. Ferree, Jr., Attorney at Law

(Address) P. O. Box 1007, Alabaster, Al 35007

Form 1-1-75 Rev. 1-68

WARRANTY DEED—Lawyers Title Insurance Corporation, Birmingham, Alabama

STATE OF ALABAMA
SHELBY COUNTY

KNOW ALL MEN BY THESE PRESENTS:

That in consideration of One Thousand Five Hundred and No/100 (\$1,500.00) DOLLARS

to the undersigned grantor (whether one or more), in hand paid by the grantee herein, the receipt whereof is acknowledged, I or we, Danny L. Burnett and Debra J. Burnett, formerly husband and wife, now both single

(herein referred to as grantor, whether one or more), grant, bargain, sell and convey unto

Debra J. Burnett, a single woman

(herein referred to as grantee, whether one or more), the following described real estate, situated in Shelby County, Alabama, to-wit:

Lots 1 and 2, Block 94, J. H. Dunstan's Map of the Town of Calera, Alabama, which map is on file in the Probate Office of Shelby County, Alabama; situated in Shelby County, Alabama.

Subject to Restrictive Covenants recorded in Deed Book 217, Page 360, in the Probate Office of Shelby County, Alabama.

BOOK 325 PAGE 84

55 PAGE 433

BOOK

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED
1984 MAR -5 AM 10:20
JUDGE OF PROBATE

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED
1984 MAR -5 AM 10:20
JUDGE OF PROBATE

Rec. 7.50
Jud. 1.00
8.50

Rec 7.50
Jud 1.00
8.50

TO HAVE AND TO HOLD to the said grantee, his, her or their heirs and assigns forever.

And K(we) do for ~~XXXX~~ (ourselves) and for ~~our~~ heirs, executors, and administrators covenant with the said GRANTEES, their heirs and assigns, that ~~XXX~~ (we are) lawfully seized in fee simple of said premises; that they are free from all encumbrances, unless otherwise noted above; that K(we) have a good right to sell and convey the same as aforesaid; that ~~X~~ (we) will and ~~our~~ (our) heirs, executors and administrators shall warrant and defend the same to the said GRANTEES, their heirs and assigns forever, against the lawful claims of all persons.

IN WITNESS WHEREOF, WE have hereunto set OUR hands(s) and seal(s), this 18th day of January 80

1980 FEB. 25 AM 9:35

Danny L. Burnett (Seal)
Debra J. Burnett (Seal)

STATE OF ALABAMA
SHELBY COUNTY

General Acknowledgment

I, the undersigned

hereby certify that Danny L. Burnett and Debra J. Burnett, formerly husband and wife, now both single, whose names are signed to the foregoing conveyance, and who are known to me, acknowledged before me on this day, that, being informed of the contents of the conveyance they executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this 18th day of January

John N. Ferree, Jr.

Appendix A

January 80