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IN THE CIRCUIT COURT OF SHELBY COUNTY

RESOLUTION TRUST CORPORATION,
AS RECEIVER AND CONSERVATOR
FOR ALTUS BANK, A Federal
Savings Bank,

Plaintiff,

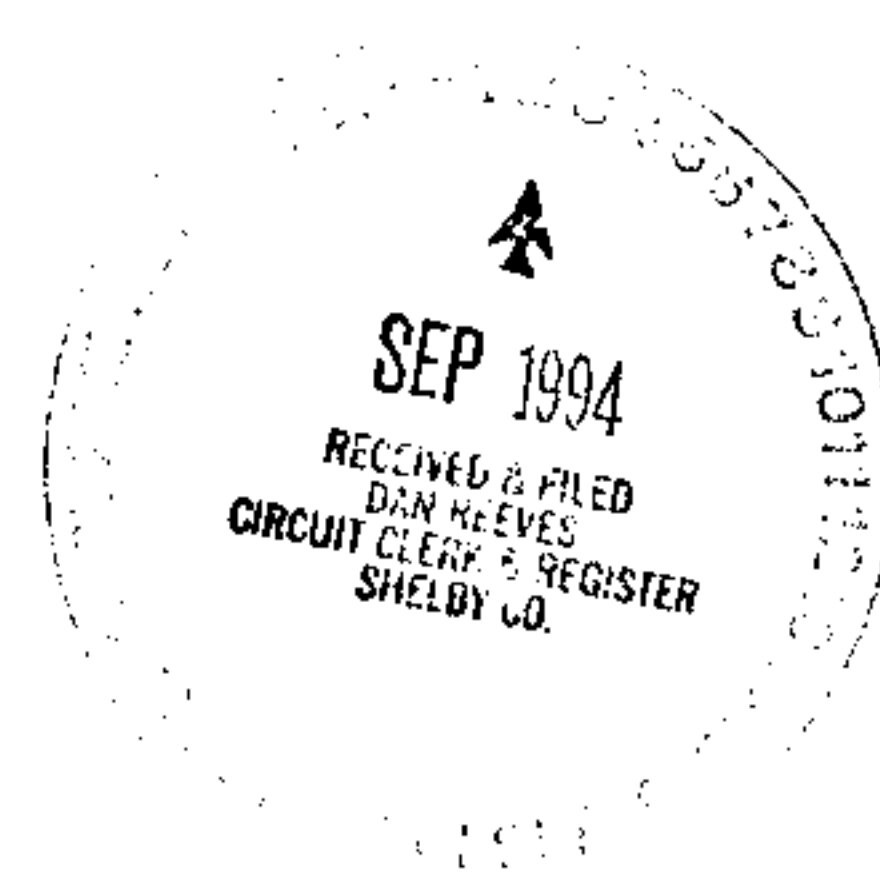
vs.

JAMES A. PALMER and
LOIS PALMER,

Defendants.

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* Civil Action Number
* CV 91-417



1994-34138

ORDER

This case came before the Court for a trial on the merits on August 8, 1994. The matter was tried to a jury which rendered a verdict on the evidence presented.

The remaining issue in this matter presents a question of law as to the note in question. The counterclaim filed by James and Lois Palmer alleged that the note in question did not contain the cautionary statement required by Section 5-19-6 of the Mini-Code. The Palmers sought injunctive and declaratory relief which, inter alia, would set aside the foreclosure and result in a declaration that the note at issue is void and unenforceable as a matter of law. See Jackson vs. CIT Group/Sales Financing, Inc., ____ So.2d ____ 1993, WL 341149 (Ala. 1993); Derico vs. Duncan, 410 So.2d 27 (Ala. 1982). The evidence presented was undisputed that the note covering the subject property, i.e. the home of the Palmers, located at 3040 Brookhill Drive in Birmingham, Alabama, did not

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contain the required cautionary statement at the time they signed it.

Having heard the evidence presented at the trial of this case, the Court hereby **ORDERS, DECREES, AND ADJUDGES** as follows on motion of the defendants, without objection by the plaintiff:

1. The note signed by James Palmer and Lois Palmer on April 12, 1988 in the amount of \$29,000 in favor of First Capital Mortgage Corporation is due to be and hereby is **SET ASIDE** and is declared to be **NULL, VOID AND UNENFORCEABLE** as a matter of law. The law in this state is that a contract made in violation of the Mini-Code as to the cautionary statement requirement is void and unenforceable as a matter of law. See Johnson, supra; Derico, supra.

2. The foreclosure of the subject property is due to be and hereby is **SET ASIDE** and declared to be of no force and effect. The property in question is located at 3040 Brookhill Drive in Birmingham, Alabama and is more particularly described as follows:

Lot 59, according to the Survey of Meadow Brook, 17th Sector, as recorded in Map Book 9, Page 158 A&B, in the Probate Office of Shelby County.

The original mortgage was recorded at Volume 180, Page 990 in the office of the Judge of Probate of Shelby County, Alabama.

3. The Clerk of the Court is hereby **DIRECTED** to file a copy of this order in the Office of the Judge of Probate. Similarly, the Resolution Trust Corporation, as conservator of Altus Bank is hereby **DIRECTED** and **INSTRUCTED** to quitclaim any and all interest in the subject property to James and Lois Palmer.

DONE AND ORDERED this 2nd day of September, 1994.



Oliver P. Head
Circuit Court Judge-Shelby County

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