

2594

IN RE:)	IN THE UNITED STATES BANKRUPTCY
HARRY A. FROHOFF, JR. &)	
BRENDA GAYLE FROHOFF, aka)	COURT FOR THE NORTHERN DISTRICT
BRENDA GAIL FROHOFF,)	
)	OF ALABAMA, SOUTHERN DIVISION
Debtors/Plaintiffs,)	
)	
vs.)	CASE NO. 85-04057
)	(Chapter 7)
GUARANTY FEDERAL SAVINGS)	
& LOAN ASSOCIATION, fka)	A.P. NO. 86-0553
GUARANTY SAVINGS & LOAN)	
ASSOCIATION; THOMAS N.)	
CLAYTON, aka NEAL CLAYTON;)	
and JOHN P. WHITTINGTON,)	
TRUSTEE,)	
)	
Defendants.)	

ORDER UPON COMPLAINT TO SET ASIDE MORTGAGE FORECLOSURE
AND CONFIRMATION OF SALE OF REAL ESTATE

BOOK 107 PAGE 924

This matter is before the Court for a hearing in connection with a Complaint filed by the Debtors/Plaintiffs, Harry A. Frohoff, Jr. and Brenda Gayle Frohoff, aka Brenda Gail Frohoff, seeking to have the Court find that a mortgage foreclosure conducted by Guaranty Federal Savings & Loan Association, fka Guaranty Savings & Loan Association, upon real property which is the residence of the Debtors, should be set aside as a fraudulent conveyance under the prior ruling of Durrett v. Washington National Insurance Company, 621 F.2d 201; and a Motion For The Confirmation of Sale of Real Estate to Gordon L. Smith and wife, Irene C. Smith for the sum of \$54,000.00, which said real property is described as follows:

Lot 2, Block 4, according to the map of Navajo Hills, Sector 2, as recorded in the Probate Office of Shelby County, Alabama, in Map Book 5, Page 24.

Appearing before the Court in connection with the hearing upon this matter were Mitchell A. Spears, Attorney for Debtors/Plaintiffs; Carlos E. Heaps, Attorney for Guaranty Federal Savings & Loan Association, Defendant/Mortgagee; Jack McEniry,

✓ Mitchell Spears
Attorney At Law
P. O. Box 91
Montevallo, AL 35115

Attorney for Thomas N. Clayton, aka Neal Clayton, Defendant/Purchaser at February 21, 1986 foreclosure; and Clark R. Hammond for John P. Whittington, Interim Trustee.

The facts are not disputed. Guaranty Federal Savings & Loan Association foreclosed its mortgage upon the real estate described above on February 21, 1986, whereby said property was sold to Thomas N. Clayton for the sum of \$32,400.00, pursuant to Foreclosure Deed which was duly recorded at Real Book 061, Page 741 in the Office of the Probate Judge, Shelby County, Alabama. The sale price obtained upon said sale represented only approximately 60% of the real market value of said property, as evidenced by the subsequent sale price obtained from Gordon L. Smith and wife, Irene C. Smith, to-wit, \$54,000.00, pursuant to Real Estate Contract dated November 23, 1986. Upon agreement of all parties before the Court, the Court finds that said sale violated the rule of Durrett v. Washington National Insurance Company, it is, therefore,

ORDERED, ADJUDGED and DECREED as follows:

1. The foreclosure sale conducted by Guaranty Federal Savings & Loan Association on May 17, 1985, which is evidenced by Foreclosure Deed whereby Guaranty Federal Savings & Loan Association purchased the interest in said property, and recorded its Foreclosure Deed at Real Book 027, Page 863 in the Office of the Probate Judge, Shelby County, Alabama, was declared to be null and void and set aside and held for naught by order of this Court dated September 4, 1985, as executed by the Honorable William E. Johnson, Jr., Bankruptcy Judge; therefore, it is hereby ordered and declared that Guaranty Federal Savings & Loan Association has no right, title or interest in said realty pursuant to said Foreclosure Deed.

2. That the foreclosure sale conducted by Guaranty Federal Savings & Loan Association on February 21, 1986, which is evidenced by Foreclosure Deed whereby Thomas N. Clayton purchased the interest therein, upon said realty, and recorded said Foreclosure Deed at Real Book 061, Page 741, in the Office of the Probate Judge, Shelby County, Alabama, is hereby declared to be null and void and it is ordered set aside and held for naught.

3. All right, title and interest in and to the above described real estate is hereby vested in the Debtors/Plaintiffs, Harry A. Frohoff, Jr. and Brenda Gayle Frohoff, aka Brenda Gail Frohoff, free of any and all encumbrances resulting from said Debtors'/Plaintiffs' proceedings in Bankruptcy, or the mortgage foreclosures designated herein; and this Court specifically orders that the recorded mortgage from Ronald F. Walton and wife, Wanda C. Walton to Guaranty Savings & Loan Association (presently known as Guaranty Federal Savings & Loan Association), dated June 27, 1975, and recorded in Mortgage Book 346, Page 786, in the Office of the Probate Judge, Shelby County, Alabama, be, and the same is hereby released and held for naught by virtue of Thomas N. Clayton having previously paid Guaranty Federal Savings & Loan Association \$32,400.00 as satisfaction of same, and said Thomas N. Clayton shall receive \$35,829.00 of the proceeds of the present sale of the subject real estate, as ordered herein, as reimbursement of the purchase price paid by him on February 21, 1986, and reasonable expenses related thereto, and no further encumbrance shall remain upon said property, pursuant thereto.

4. The Court hereby confirms and authorizes the sale of the above described real estate by the Debtors/Plaintiffs, Harry A. Frohoff, Jr. and Brenda Gayle Frohoff, free from the aforementioned encumbrances, to Gordon L. Smith and wife, Irene C. Smith for the consideration of \$54,000.00.

5. Mitchell A. Spears, Attorney for Debtors/Plaintiffs, shall be responsible for the disbursement of said sum, to-wit, \$54,000.00, and shall conclude said sale and disburse said funds as follows:

\$54,000.00

\$35,829.00

9,085.50

3,780.00

466.98

310.00

300.00

12.50

4,216.02

\$54,000.00

Sale Price

Thomas N. Clayton

Debtors' Homestead Exemption

Howard & Associates - Sales Commission

Shelby County Tax Assessor

Shelby County Abstract & Title Co., Inc.

Closing Attorney - Mitchell A. Spears

Filing Fees

Trustee

Total Disbursements

STATE OF ALA. SHELBY CO.
I CERTIFY THIS
INSTRUMENT WAS FILED

1986 DEC 31 AM 12:54

Thomas N. Clayton, Jr.
JUDGE OF PROBATE

Done this 21 day of December, 1986.

Henry D. Day
Bankruptcy Judge