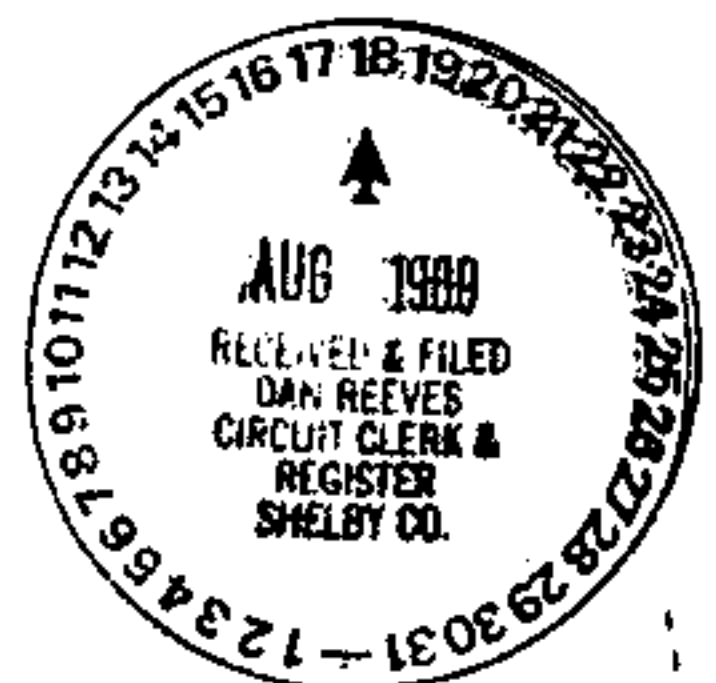


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IN THE CIRCUIT COURT  
OF SHELBY COUNTY, ALABAMA



CITICORP PERSON-TO-PERSON  
FINANCIAL CENTER, and CITICORP  
MORTGAGE, INC., as successor  
in interest to Citicorp Person-  
to-Person Financial Center,

Plaintiffs,

v.

Case No.: CV 89-203

JOHN EPHERIAM WILLIAMS and  
ODESSA WILLIAMS, et al.,

Defendants.

ORDER

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This cause came on to be heard on the Motion for Summary Judgment filed by Plaintiff, Citicorp Person-to-Person Financial Center, and Citicorp Mortgage, Inc., as successor in interest to Citicorp Person-to-Person Financial Center ("Citicorp"). Upon consideration of the Motion for Summary Judgment, the pleadings and affidavits given in support thereof, the Court is of the opinion that the relief requested by Citicorp in its Complaint and Amendment to Complaint is due to be granted.

The undisputed facts of this case reveal the following:

1. On or about August 2, 1978, the Defendants, John Epheriam Williams and Odessa Williams (the "Williams"), obtained a purchase money mortgage loan from Citicorp. In connection with said loan, the Williams executed a mortgage to Citicorp which was recorded in Book 381, Page 439, in the

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Office of the Judge of Probate of Shelby County, Alabama.

2. Unknown to Citicorp or the Williams at the time the mortgage was executed, the legal description of the property contained in the mortgage incorrectly described the real property on which the Williams' house was located and which the parties intended to be covered by the mortgage. The Affidavit of Joseph Leahy, a Staff Vice President of Citicorp, states that at the time Citicorp made the loan to the Williams, it was for the purpose of enabling the Williams to purchase the house in which they currently reside and it was the intention of Citicorp to obtain a mortgage on the house and the real property on which it is located.

3. The Affidavit of Robert Farmer, a Registered Land Surveyor in the State of Alabama, states that the legal description actually contained in the mortgage given by the Williams to Citicorp does not describe the real property on which the house is located but rather, describes property located nearby the Williams' property. According to Mr. Farmer, the problem with the misdescription resulted from an apparent mistake by another surveyor, who, several years earlier, surveyed the Williams' property and other property owned by Cheney Lime & Cement Co. and other persons in the vicinity. It appears that the first surveyor started at the wrong corner and therefore, each survey he performed of each property along the roadway was incorrect and resulted in the misdescription of the property contained in the deed to the property conveying title to the Williams, and in turn, the

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mortgage which the Williams gave to Citicorp. Mr. Farmer states that he was involved in litigation commenced by Cheney Lime & Cement Co. in Shelby County to correct the misdescriptions in the properties. For some reason, Citicorp was not named as a party in that action. In order to resolve that litigation, Cheney Lime & Cement Co. conveyed a parcel of property, .7 acres in size, to the Williams, on which the house is actually located. Mr. Farmer prepared a survey of the .7 acre tract on which the house is actually located and attached same as Exhibit A to his affidavit. Attached as Exhibit B to Mr. Farmer's affidavit is a copy of the deed from Cheney Lime & Cement Co. conveying the property to the Williams based upon the corrected legal description and survey prepared by Mr. Farmer. That deed is recorded in Book 163, Page 287, of the Office of the Judge of Probate of Shelby County, Alabama.

4. Although Citicorp was the mortgagee of record at the time the separate action was filed by Cheney Lime & Cement Co., Citicorp was not named as a party in that litigation. Therefore, Citicorp was never advised of the problem with the legal description or the action taken to correct same.

5. Unaware of the problem with the legal description, Citicorp commenced a foreclosure of its mortgage on account of a default by the Williams in the payment of the indebtedness owed to Citicorp which was secured by the mortgage. Citicorp foreclosed the mortgage under the power

of sale contained in the mortgage and thereafter filed an ejectment action with this Court seeking to oust the Williams from possession. That action was filed under Civil Action No. CV-88-370. In that action another Judge in this Court entered an Order declaring that Citicorp was entitled to recover possession of the property and thereafter, entered an Order directing the Sheriff to deliver possession of the property to the Williams. It was at that time the problem with respect to the legal description was first discovered by Citicorp. Thereafter, Citicorp commenced this action for declaratory judgment requesting that the Court reform the mortgage so that the true and correct legal description of the Williams' property on which the house is actually located would be inserted in lieu of the incorrect legal description now contained in the mortgage.

6. Citicorp has now filed an Amendment to its Complaint adding an additional count requesting that the Court upon reforming the mortgage, order the mortgage re-foreclosed in a judicial foreclosure proceeding.

Having considered the pleadings, the affidavits and the argument of counsel for Citicorp in support of its Motion for Summary Judgment, the Court is of the opinion that the relief prayed for is due to be granted.

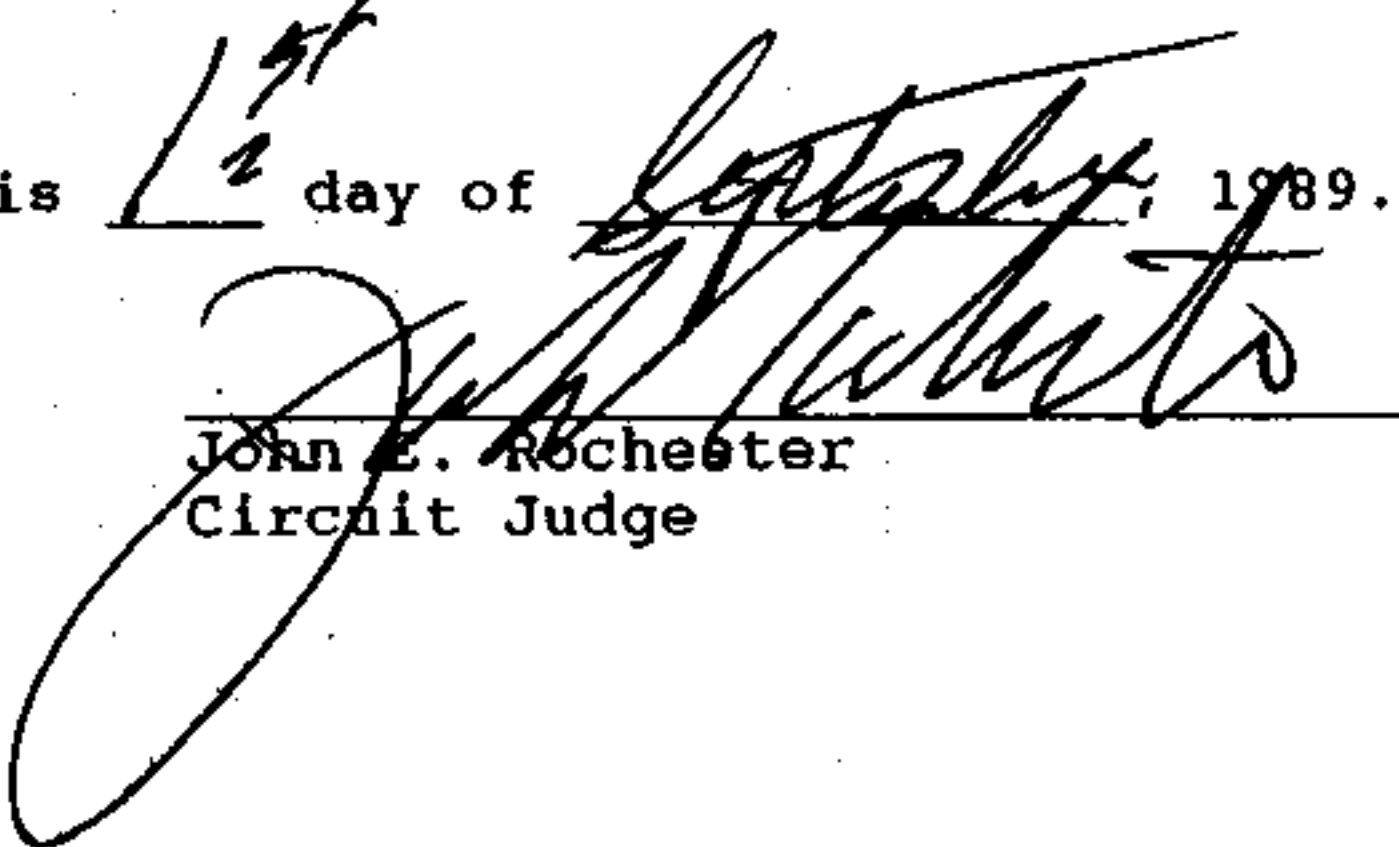
It is therefore, ORDERED, ADJUDGED and DECREED that the mortgage given by the Williams to Citicorp recorded in Book 381, Page 439, in the Office of the Judge of Probate of Shelby County, Alabama, is hereby reformed to correct the

legal description therein such that the legal description now contained in the mortgage is deleted and in place thereof, there shall be inserted the following legal description:

Commence at the NW Corner of the SE1/4 of the NW1/4, Section 12, Township 21 South, Range 3 West; thence easterly along said 1/4-1/4 line 449.60'; thence right 65°33' and run 138.0' to the Point of Beginning; thence continue along last described course 84.0'; thence right 92°23'51" and run 248.85'; thence right 88°59'09" and run 172.79'; thence right 113°04' and run 239.56'; thence left 24°27' and run 26.39' to the Point of Beginning, containing 0.7 acre, according to survey of Robert C. Farmer, Registered Land Surveyor, dated October 26, 1987.

The Court directs that a copy of this Order be filed with the Office of the Judge of Probate of Shelby County, Alabama. Further, the Court hereby grants the relief requested by Citicorp in its Amended Complaint, requesting a judicial foreclosure of this mortgage as reformed. The Court hereby orders the Clerk of the Court to cause a judicial foreclosure sale of the above-described mortgage as reformed to be advertised in a newspaper of general circulation in Shelby County, Alabama, for three consecutive weeks and thereafter, on the date set for said sale, to proceed to sale said property on the Courthouse steps, main entrance, during the legal hours of sale for the highest and best bid for said property in cash and thereafter, to file a report of said sale to this Court. The Court reserves jurisdiction of this matter for the purpose of confirming the sale and thereafter entering a deficiency judgment, if any, arising therefrom.

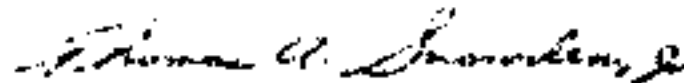
DONE and ORDERED this 1<sup>st</sup> day of September, 1989.

  
John E. Rochester  
Circuit Judge

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

89 SEP 13 AM 9:49

  
JUDGE OF PROBATE

1. Deed Tax -----	\$	_____
2. Mtg. Tax -----	\$	_____
3. Recording Fee -----	\$	<u>15.00</u>
4. Indexing Fee -----	\$	<u>3.00</u>
5. No Tax Fee -----	\$	_____
6. Certified Stamp Fee --	\$	<u>1.00</u>
Total -----	\$	<u>19.00</u>