

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

J. TIMOTHY SMITH and
LAURA W. SMITH,

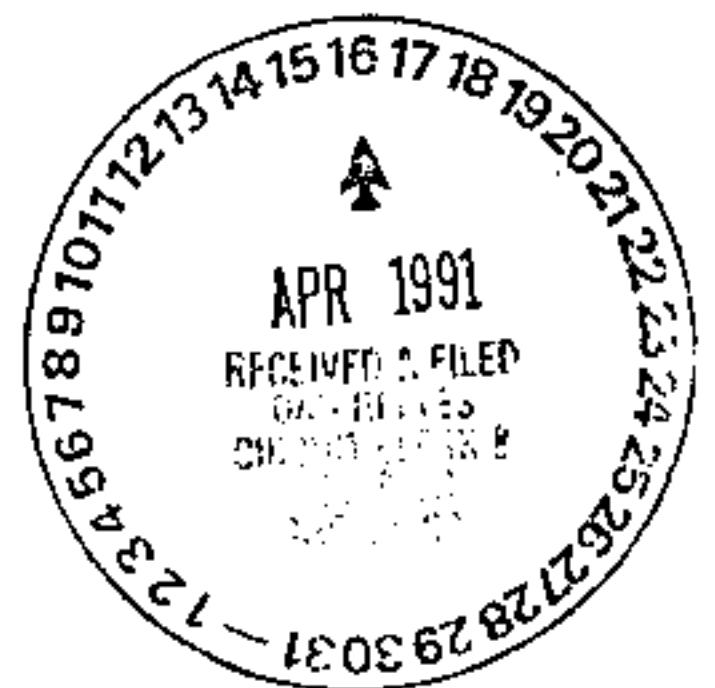
Plaintiffs,

v.

CARTERET SAVINGS BANK, FA

Defendant.

CIVIL ACTION NO.
CV-91-142-NJ



ORDER ON PLAINTIFF'S MOTION FOR DEFAULT JUDGEMENT

The above cause coming on to be heard on April 9, 1991, was submitted to the Court with oral testimony together with the entry of default previously executed by the Clerk of this Court, and after due consideration, the Court finds as follows:

1. The Plaintiffs contracted with Numerica Financial Services in February of 1987 to receive a fifteen (15) year fixed rate loan at eight and a half percent which was assumable.

2. The court finds that J. Timothy Smith spoke with Priscilla Johnson of Numerica Financial Services at the time of contracting for the loan who stated to him that the loan was assumable upon payment of a \$45.00 transfer fee.

3. That an agreement was reached and a fifteen (15) year eight and a half percent assumable loan was made to the Smiths.

4. That in March 1989, Numerica Financial Services sold the Plaintiff's loan to Carteret Savings Bank, FA.

5. The Court finds that the Plaintiff, J. Timothy Smith, has made several efforts for contact Carteret Savings Bank concerning conditions of this assumption.

BOOK 340 PAGE 764

Thompson & Driffis

6. The Court finds there may be a possible ambiguity between the Federal Truth and Lending Disclosure Statement and the mortgage in subject loan.

The Court finds that in the case at Bar, it will follow the long standing rule in Alabama law that a contract which is ambiguous will be construed most strongly against the party preparing it.

BOOK 340 PAGE 765
THEREFORE, the Court finds that the note and mortgage on the Smith's home located at 942 5th Avenue North West, in Alabaster, Alabama is hereby declared to be assumable by any subsequent purchaser of the home upon the payment of a \$45.00 transfer fee to the creditor.

7. Court cost taxed to the Defendant.



OLIVER P. HEAD
CIRCUIT COURT JUDGE

FILED
CLERK OF COURT
91 MAY -1 AM 10:03
JUDGE OF PROBATE

500
300
100

900