

System

# CASE ACTION SUMMARY CONTINUATION

Case Number

CV-91-417

ID YR Number

Altus Bank vs. James Palmer

Page Number \_\_\_\_ of \_\_\_\_ Pages

DATE	ACTIONS, JUDGMENTS, CASE NOTES
8/1/94	This case was called for trial, a jury was duly selected and impaneled, and by
	agreement of the parties, the jury was put in recess, the trial of this case
	to begin on August 8, 1994, at 9:00 A.M. <i>Oliver Head</i>
8/8/94	Motion for Directed Verdict by Plaintiff filed in open court. s/ Oliver Head, Judge
8/8/94	This case went to trial before a jury on this date. Jury Verdict Form #1 and
	Jury Verdict Form #4 filed in open Court. <i>Oliver Head</i>
8/8/94	Pursuant to jury verdicts returned on this date, judgment is entered in favor of
	the counterplaintiffs (defendants) James A. Palmer and Lois Palmer, and against
	the counterdefendant (plaintiff), Resolution Trust Corporation, as receiver and
	conservator for Altus Bank, a federal savings bank, in the amount of \$10,317.00.
	Costs of court are taxed to said counterdefendant.
	<i>Oliver Head</i>

Inst # 1995-02628

01/30/1995-02628  
04:20 PM CERTIFIED  
SHELBY COUNTY JUDGE OF PROBATE  
004 MCD 16.00

Certified a true and complete copy

*Dan Reems* 11/30/94  
Register of Circuit Court

Najjar Denaburg  
2125 Morris Ave  
B'ham AL 35203

IN THE CIRCUIT COURT OF SHELBY COUNTY

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

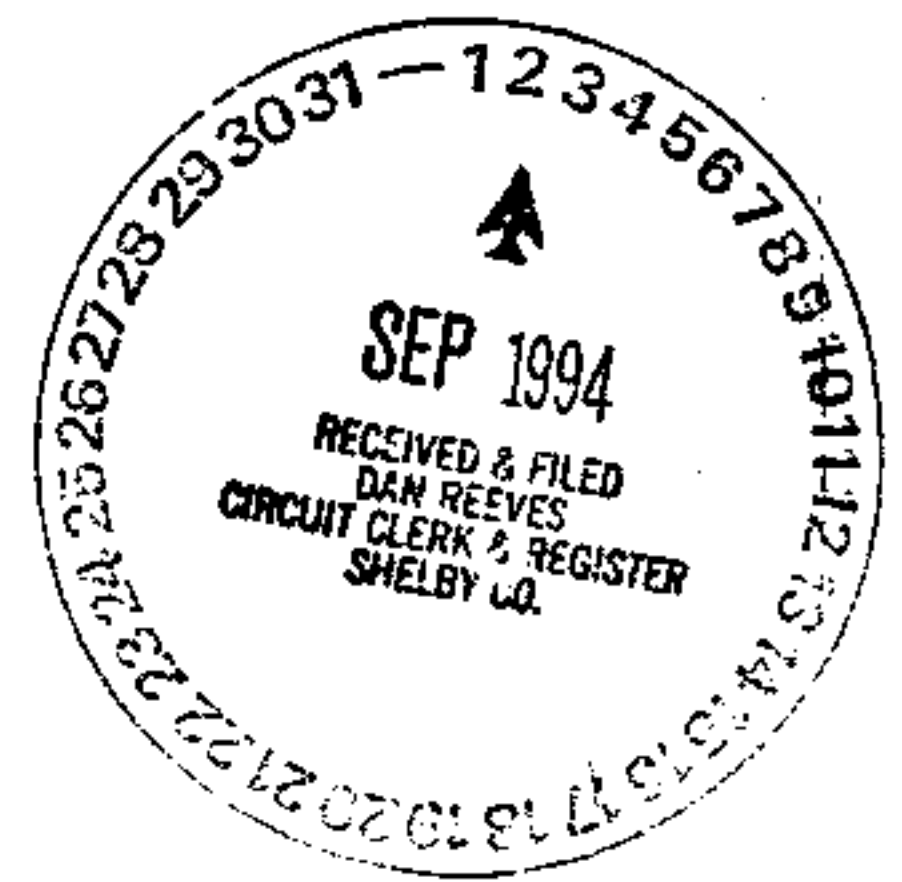
Plaintiff,

vs.

JAMES A. PALMER and  
LOIS PALMER,

Defendants.

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\* Civil Action Number  
\* CV 91-417  
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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

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

Certified a true and complete copy

Dan Reeves 11-30-94  
Register of Circuit Court

Inst # 1995-02628

01/30/1995-02628  
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