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October 7, 1993

I HEREBY CERTIFY THAT THE ATTACHE IS AN EXACT AND TRUE COPY OF THE INTERLOCUTORY JUDGMENT, ISSUED BY THE CIRCUIT COURT FOR SHELBY COUNTY, ALABAMA.

DONE THIS THE 7th DAY OF October, 1993

Sharon King

Notary Public 03-14-1997

Inst # 1996-18896

06/11/1996-18896
10:37 AM CERTIFIED
SHELBY COUNTY JUDGE OF PROBATE
006 MCD 21.00

GLORIA J. COCKERHAM and
JAMES A. COCKERHAM,

PLAINTIFFS,

VS.

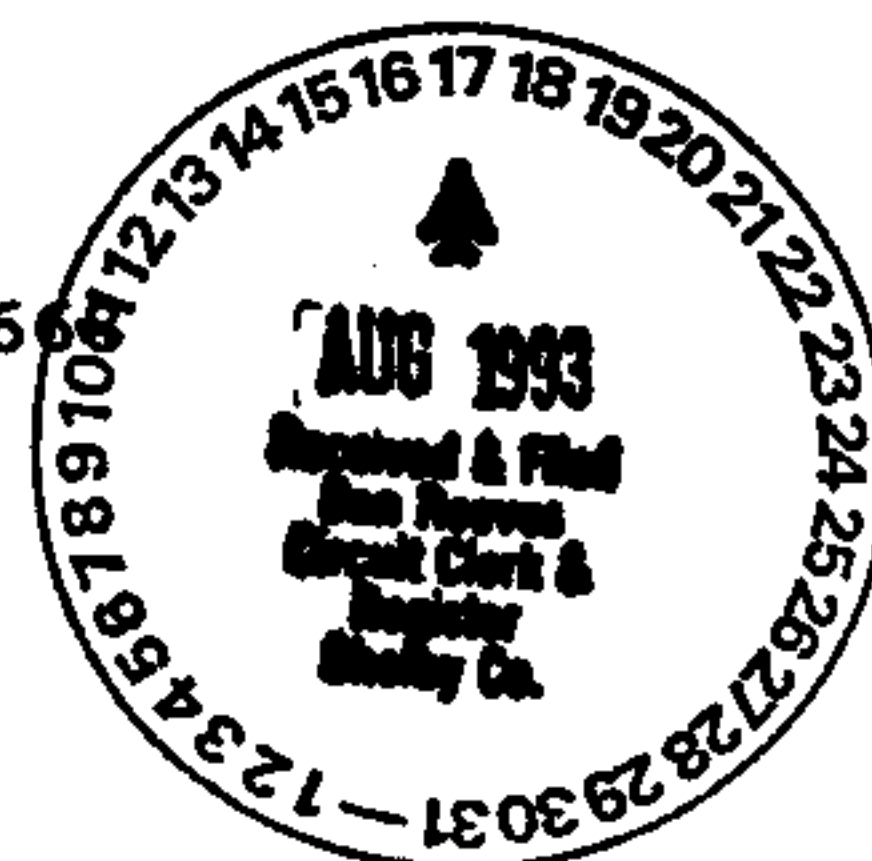
SECURITY SAVINGS AND LOAN
ASSOCIATION and BAILEY
MORTGAGE COMPANY,

DEFENDANTS.

IN THE CIRCUIT COURT FOR

SHELBY COUNTY, ALABAMA

CV-92-66



INTERLOCUTORY JUDGMENT

This case was submitted upon the pleadings and proof, including ore tenus testimony heard by the Court, exhibits which were received into evidence, stipulations of the parties, and post-trial submissions by the attorneys for the parties, and upon consideration thereof, the Court **FINDS, ORDERS, ADJUDGES, and DECREES** as follows:

1. The plaintiffs' (the plaintiffs are hereinafter referred to as "Cockerham") real estate mortgage encumbering their residence home was foreclosed, after acceleration of all of the unpaid indebtedness, by the defendant Security Savings and Loan Association (hereinafter referred to as "Security Savings"), the assignee of said mortgage, on August 10, 1992. Security Savings was the purchaser at the foreclosure sale, and its Foreclosure Deed is recorded as Instrument No. 1992-17275 in the Office of the Judge of Probate of Shelby County, Alabama.

Said mortgage which was foreclosed, in Paragraph No. 19 thereof, provides that, prior to acceleration, the Lender is required to give the Borrower notice as follows:

"The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 19, including, but not limited to, reasonable attorney's fees and costs of title evidence.

If Lender invokes the power of sale, Lender shall give a copy of a notice to Borrower in the manner provided in paragraph 14... ."

Cockerham contends that the "notice" provisions of the mortgage were not complied with prior to the foreclosure, and that, hence, the foreclosure and the Foreclosure Deed should be set aside; the defendants contend that proper notice was given.

2. The parties stipulated that the only notification of default applicable in this case is a computer print-out addressed to Mrs. Cockerham dated July 8, 1991, which was received into evidence as Plaintiff's Exhibit #3. Said document alleges past due

payments, and that:

"THE TOTAL AMOUNT REQUIRED TO CURE THE DEFAULT AS OF 07/08/91 IS \$2,586.48. IF THE AMOUNT DUE IS PAID AFTER THE LAST DAY OF THIS MONTH, YOU MUST INCLUDE AN ADDITIONAL MONTHLY PAYMENT. ANY PAYMENT MUST BE CERTIFIED FUNDS.

THIS DEFAULT PERMITS THE LENDER TO IMMEDIATELY DECLARE THE LOAN BALANCE DUE AND PAYABLE (ACCELERATE) IF THE DEFAULT IS NOT CURED WITHIN THIRTY (30) DAYS OF THE DATE OF THIS LETTER. YOU MUST PAY THE ENTIRE AMOUNT IN ONE PAYMENT TO PREVENT ACCELERATION AND CURE THE DEFAULT.

IF YOU FAIL TO CURE THE DEFAULT WITHIN THIRTY (30) DAYS AND THE INVESTOR ACCELERATES THE NOTE, YOU MAY NEVERTHELESS REINSTATE THE LOAN PRIOR TO THE TRUSTEE'S SALE BY:

1. PAYING ALL SUMS WHICH WOULD THEN BE DUE IF NOT ACCELERATION HAD OCCURRED.
2. PAYING REASONABLE EXPENSES OF THE FORECLOSURE PROCEEDINGS INCLUDING TRUSTEE AND ATTORNEY FEES.
3. CURING ANY OTHER BREACH OR DEFAULT IN THE MORTGAGE AGREEMENT.

IF YOU BELIEVE THE ABOVE SPECIFIED BREACH OR DEFAULT HAS NOT IN FACT OCCURRED, YOU HAVE THE RIGHT TO CONTEST THE BREACH OR DEFAULT AND RAISE ANY DEFENSE TO WHICH YOU ARE ENTITLED TO PREVENT SALE OR ACCELERATION OF THE PROPERTY.

TO PREVENT FURTHER ACTION BY THE LENDER, YOU SHOULD GIVE THIS DEMAND NOTICE YOUR IMMEDIATE ATTENTION.

!!!!!!!!!!!!!!!!!!!!!!TIME IS OF THE ESSENCE!!!!!!!!!!!!!!!!!!!!!!".

3. Mrs. Cockerham, after receipt of the notice, contacted Security Savings, negotiated additional time, made additional payments, and signed a written Forbearance Agreement dated December 6, 1991, agreeing to pay Security Savings \$8,450.42, representing all past due indebtedness, including late charges, attorney's fees, publication costs, etc., in exchange for cancellation of the

proposed foreclosure sale, which had been scheduled for December 30, 1991.

Mrs. Cockerham paid, and Security Savings accepted, relatively substantial payments in December, 1991, in January and February, 1992, she tendered payments in May and July, 1992, and Security Savings took no further steps to foreclose the mortgage until July 15, 1992, when it sent Mrs. Cockerham a copy of a foreclosure notice and notified her that it had scheduled foreclosure for August 10, 1992.

4. The Court FINDS that Security Savings did not give Cockerham notice to which they were entitled pursuant to Paragraph No. 19 of the mortgage which was foreclosed, and that, consequently, the mortgage foreclosure and the Mortgage Foreclosure Deed of August 10, 1992, are not valid and are due to be canceled and set aside, and it is the judgment of the Court that said mortgage foreclosure of August 10, 1992, and the Mortgage Foreclosure Deed of that same date executed pursuant thereto, which is recorded as Instrument No. 1992-17275, be, and they are each, hereby set aside and held for naught.

5. The mortgage foreclosure sale having been declared invalid, and Security Savings's Mortgage Foreclosure Deed having been set aside, the counter-plaintiffs are DENIED relief, as requested in their Counterclaim.


6. The parties agreed and stipulated at the trial that, should the Court determine that the mortgage foreclosure was not valid, the parties will be allowed to submit an accounting, for the Court to determine the amounts which were and are due under the terms of the mortgage and to declare the respective rights and duties of the parties.

The Court has now determined said mortgage foreclosure to be invalid, and sets all remaining matters which are at issue for trial on October 14, 1993, at 1:30 P.M.

The attorneys for the parties are DIRECTED to confer with each other prior to the trial date and to attempt to stipulate facts which are not in controversy and define those remaining issues for determination by the Court.

7. All other questions are RESERVED.

DONE and ORDERED this 16th day of August, 1993.



Oliver P. Head
Circuit Judge

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