

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-92-668

FINAL JUDGMENT

Pursuant to the agreement of the parties and the order of this Court dated October 14, 1993, this case was submitted for final judgment upon the pleadings and proof, and upon the written Stipulation filed by the parties in open Court on said date and the briefs of the attorneys for the parties which were submitted thereafter, and upon consideration thereof, the Court **FINDS, ORDERS, ADJUDGES, and DECREES** as follows:

1. The Cockerhams allowed their monthly home mortgage payments to become in default, and on August 10, 1992, the assignee of the mortgagee, Security Savings, concluded foreclosure proceedings and received a foreclosure deed as the purchaser of the property at the mortgage foreclosure sale. The Cockerhams never denied that they were in default, either when first notified of the default, or later after they negotiated a Forbearance Agreement and failed to make the payments which they agreed to make as set forth in said Forbearance Agreement; their position in this litigation was that Security Savings' attempted foreclosure was invalid because Security Savings did not give them proper notice of the proposed foreclosure, as required in their mortgage document, prior to the foreclosure which was accomplished on August 10, 1992.

Inst # 1996-20648

James & Gloria Cockerham
2516 Statesville Avenue
Charlotte, North Carolina 28206

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2. This Court, in its Interlocutory Judgment which is dated August 16, 1993, found that proper notice was not given, as contended by the Cockerhams, and ordered the mortgage foreclosure and mortgage foreclosure deed of August 10, 1992, set aside and held for naught.

3. The Cockerhams have never relinquished possession of their home property and have neither paid nor tendered any amount on their mortgage indebtedness since July, 1992, until the present time.

4. The parties have now stipulated as follows:

"STIPULATION

Comes now the plaintiff and defendant by and through their respective counsel and stipulate the following facts and questions to this Honorable Court for resolution of the remaining issues in this case:

1. The parties stipulate that the amount to reinstate or pay off the mortgage as of the date of foreclosure, to-wit: August 14, 1992, after all credits due to the Cockerhams are as follows:

Payoff:	\$132,524.12
Reinstatement:	\$ 3,252.66.

2. The parties stipulate that if amounts coming due after the date of foreclosure are allowed the amounts to reinstate and payoff the mortgage are as follows after allowing all credits due the Cockerhams (through 10/14/93):

Payoff:	\$146,631.32
Reinstatement:	\$ 20,444.66.

3. The parties request this Honorable Court to rule on the issue of whether reinstatement or payoff should be allowed at the amounts due at the time of foreclosure, to-wit: August 14, 1992, or at the amount calculated by the defendant, Security Savings and Loan Association, as of the date of trial, to-wit: October 14, 1993.

Respectfully submitted, . . ."

5. The attorneys for the parties, in their briefs, indicate that the critical issue for the Court to decide now is whether or not the Cockerhams are obligated to pay accrued interest on the amount they owed on the foreclosure date, i.e., August 10, 1992, through the date of their Stipulation, i.e., October 14, 1993.

6. The fact that the attempted foreclosure by Security Savings was technically incorrect does not excuse the Cockerhams from paying or tendering payment obligations which were in default and payment obligations which subsequently became due. The effect of this Court's finding and order, as set forth in the Interlocutory order of August 16, 1993, was that the mortgage remained unforeclosed, since the foreclosure was not legally effectuated.

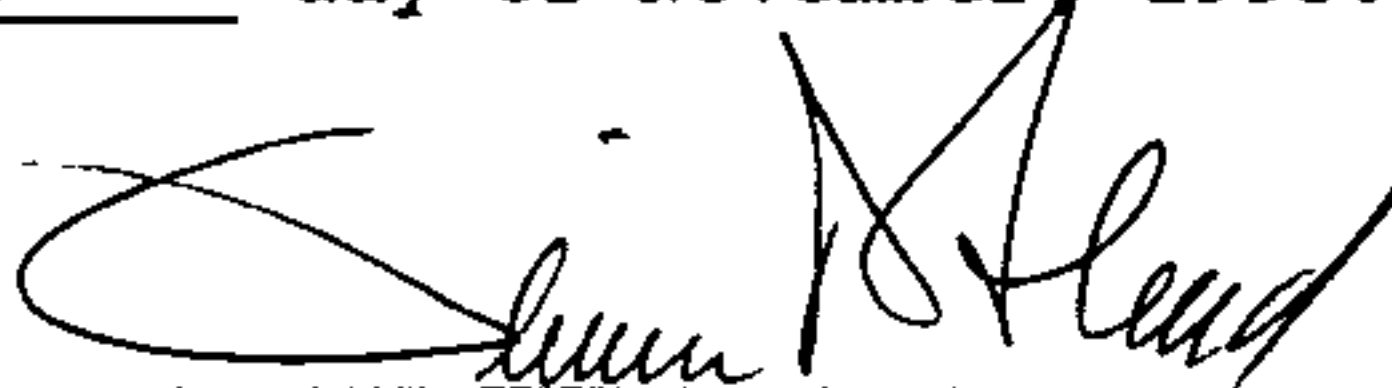
7. The Cockerhams contend that, at the time of the attempted mortgage foreclosure, they did not know the exact amount of their default. . .but they were in default and were obligated to cure their default. They did not tender any amount. They might have paid, or tendered, the entire balance due, and there would have been no further interest. . .or, they might have paid or tendered the amount necessary to cure the default, and thereafter, they might have paid or tendered the monthly payments as they subsequently became due, and thereby, kept additional interest from accruing. Security Savings is entitled to receive interest on its capital which the Cockerhams have used and enjoyed during the period from August 10, 1992 (or from August 14, 1992, which is the date which the attorneys stipulated as being the date of the foreclosure) until October 14, 1993.

8. The Court **FINDS** the issues in favor of the defendants and **ORDERS** that the amounts to pay off and to reinstate the mortgage through October 14, 1993, are as follows:

Payoff: \$146,631.32;
Reinstatement: \$ 20,444.66.

9. Costs of Court are taxed one-half to the plaintiffs and one-half to the defendants.

DONE and ORDERED this 18th day of November 1993.



Oliver P. Head
Circuit Judge

Certified a true and complete copy

Dan Reeves 5/3/96
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