

IN THE CIRCUIT COURT OF SHELBY COUNTY, ALABAMA

SUPERIOR BANK,

Plaintiff,

v.

J. ELLIOT CORP., *et al.*,

Defendants.

)
)
) Case No. CV 2010-900304
) Case No. CV 2010-900305
) Case No. CV 2010-900306
) Case No. CV 2010-900307
) Case No. CV 2010-900308
) Case No. CV 2010-900309
)
)

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SHELBY COUNTY, ALABAMA
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RULE 54(B) FINAL JUDGMENT

The above-styled cases were consolidated pursuant to orders entered on March 14, 2012 (in Case Nos. CV 2010-900304, CV 2010-900305, CV 2010-900306, CV 2010-900307 & CV 2010-900309) and on April 3, 2012 (in Case No. CV 2010-900308).

Superior Bank, a federal savings bank ("Superior Bank"), initiated each of the above-styled cases on April 8, 2010, by filing separate complaints for judicial foreclosure and to quiet title and for declaratory relief (collectively, the "Complaints"). Each of the Complaints seek to judicially foreclose a separate parcel of residential real estate situated in Shelby County, Alabama, as more particularly described in the Complaints (collectively, the "Properties").

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FINDINGS OF FACT

The cases all arise from similar facts:

(i) The Bank, an Alabama banking corporation ("The Bank"), made loans to J. Elliot Corp. (the "Builder") for the acquisition of the Properties and the construction of townhomes on the Properties. James W. Elliot, an individual, is the principal of the Builder and the guarantor of the Builder's obligations to The Bank.

(ii) The Builder sold the Properties to individual purchasers (collectively, the "Purchasers"). Each of the Purchasers executed a promissory note and mortgage in favor of the

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Builder in exchange for their deeds to the Properties (collectively, the "Purchasers' Notes and Mortgages").

(iii) The Bank provided the financing to the Builder for its sale of each of the Properties to the Purchasers, on a parcel-by-parcel basis (collectively, the "Financing Loans"). As security for the Financing Loans, the Builder executed assignments to The Bank of the Purchasers' Notes and Mortgages (collectively, the "Assignments"). The Assignments were duly recorded in the Office of the Judge of Probate of Shelby County, Alabama, resulting in liens on the Properties in favor of The Bank.

(iv) The Purchasers made monthly payments to the Builder under the Purchasers' Notes and Mortgages, and the Builder made its monthly payments to The Bank under the Financing Loans.

(v) The Bank merged into The Bank, a federal savings bank, which subsequently changed its name to Superior Bank, the plaintiff that filed the Complaints.

(vi) The Purchasers named in the Complaints either refinanced their loans or sold their Properties to other parties, wherein the Builder received full payment of the amount owed under the Purchasers' Notes and Mortgages. In exchange for payment, the Builder executed releases of the Purchasers' Notes and Mortgages. However, the Builder did not pay its Financing Loans, and The Bank did not release its recorded Assignments.

(vii) Several of the defendants allege that The Bank and/or Superior Bank held the Builder out as a "loan servicer", by allowing the Builder to collect the payments owed under the Purchasers' Notes and Mortgages, despite the fact that those loans had been assigned to The Bank as security for the Financing Loans. Therefore, according to the allegations of several of the defendants, the Purchasers' Notes and Mortgages were satisfied when the Builder received

payment, despite the fact that the Financing Loans owed by the Builder to The Bank were not paid and The Bank did not release its recorded Assignments which secure the Financing Loans.

(viii) The Bank and/or Superior Bank has maintained that under Alabama law, the recorded Assignments (i) established a first priority lien on the Properties, and (ii) put all parties on notice of those liens.

(ix) On April 15, 2011, the Federal Deposit Insurance Corporation (the "FDIC") became the receiver of Superior Bank.

(x) Superior Bank, National Association, a national banking association ("Superior National") entered into a certain Purchase and Assumption Agreement dated as of April 15, 2011, whereby Superior National purchased certain assets from the FDIC, as receiver of Superior Bank, including but not limited to the loan documents made the subject of this lawsuit.

(xi) On November 11, 2011, Superior National merged into Cadence Bank, N.A., a national banking association.

RULE 54(B) FINAL JUDGMENT

This Court, having considered the arguments made in the pleadings of record and the legal positions of counsel made at the April 18, 2012 status conference:

It is hereby ORDERED, ADJUDGED and DECREED as follows:

1. In Case No. CV 2010-900304:

- a. Cadence Bank, N.A., a national banking association, as successor by way of merger to Superior Bank, National Association, a national banking association, as purchaser and assignee from the Federal Deposit Insurance Corporation (as receiver of Superior Bank, a federal savings bank, formerly known as The Bank, a federal savings bank, successor by way of merger to The Bank, an Alabama banking corporation), pursuant to that



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certain Purchase and Assumption Agreement dated as of April 15, 2011
(the "Plaintiff") has no remaining lien or claim to the following described
real property ("Lot 19");

Lot 19, according to the Final Plat of Wynfield Parc, Phase
Two, as recorded in Map Book 29, Page 128, in the Probate
Office of Shelby County, Alabama.

- b. That certain Mortgage dated December 6, 2004, executed by Mary A. Dickens, a single woman, in favor of J. Elliot Corp. (the "Dickens Mortgage"), recorded in Instrument Number 20050111000016400 in the Office of the Judge of Probate of Shelby County, Alabama (the "Probate Court"), and that certain Assignment of Mortgage dated December 6, 2004, executed by J. Elliot Corp. in favor of The Bank (the "Dickens Assignment"), recorded in Instrument Number 20050111000016410 in the Probate Court are hereby declared null, void and without further effect, to the same extent as if they had been satisfied in full of record.
- c. This Rule 54(b) Final Judgment may be recorded in the Probate Court to clear title to Lot 19.
- d. All counterclaims against the Plaintiff, including but not limited to the counterclaims of defendants Bank of America, N.A., Mortgage Electronic Registration Systems, Inc., as Nominee for Bank of America, N.A. and Mary A. Dickens are hereby dismissed without prejudice, with each party to bear their own costs.
- e. The indebtedness of Mary A. Dickens to J. Elliot Corp. evidenced by the Dickens Mortgage is hereby declared to have been paid in full. The

indebtedness of J. Elliot Corp. to the Plaintiff which was secured by the Dickens Assignment remains unpaid and outstanding.

- f. The Plaintiff is granted leave to file an amended complaint against J. Elliot Corp. and/or James W. Elliot for any and all damages arising under the Financing Loans.

2. In Case No. CV 2010-900305:

- a. The Plaintiff has no remaining lien or claim to the following described real property ("Lot 36"):

Lot 36, according to the Amended Map of Final Plat,
Wynfield Parc, Phase One, as recorded in Map Book 27,
Page 51, in the Probate Office of Shelby County, Alabama.

- b. That certain Mortgage dated September 19, 2003, executed by David M. Coile and wife, Charlotte H. Coile in favor of J. Elliot Corp. (the "Coile Mortgage"), recorded in Instrument Number 20030926000648770 in the Probate Court, and that certain Assignment of Mortgage dated September 19, 2003, executed by J. Elliot Corp. in favor of The Bank (the "Coile Assignment"), recorded in Instrument Number 20030926000648780 in the Probate Court are hereby declared null, void and without further effect, to the same extent as if they had been satisfied in full of record.
- c. That certain Assignment of Mortgage dated July 13, 2004, executed by J. Elliot Corp. in favor of Fred Johnson, recorded in Instrument Number 20040803000429680 in the Probate Court is hereby declared to have been executed subsequent to the Coile Assignment and therefore is hereby

declared null, void and without further effect, to the same extent as if it had been satisfied in full of record.

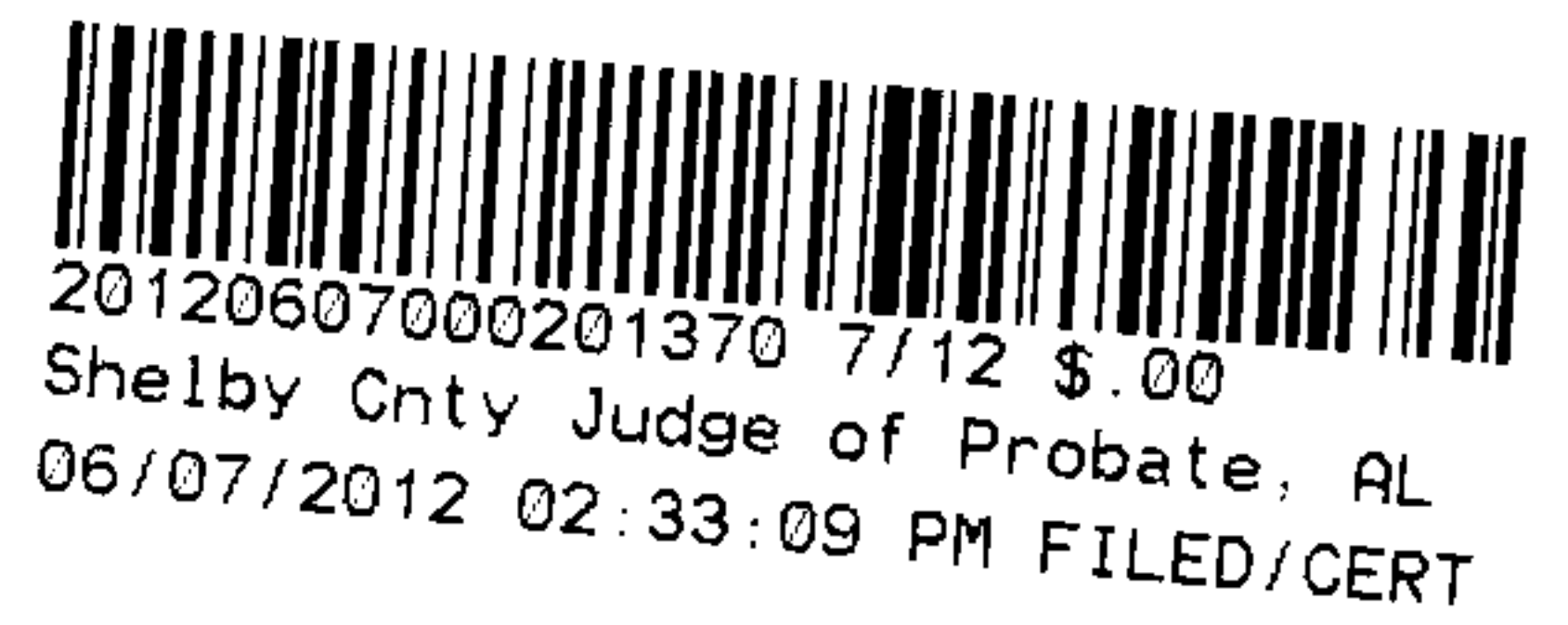
- d. This Rule 54(b) Final Judgment may be recorded in the Probate Court to clear title to Lot 36.
- e. The indebtedness of David M. Coile and Charlotte H. Coile to J. Elliot Corp. evidenced by the Coile Mortgage is hereby declared to have been paid in full. The indebtedness of J. Elliot Corp. to the Plaintiff which was secured by the Coile Assignment remains unpaid and outstanding.
- f. The Plaintiff is granted leave to file an amended complaint against J. Elliot Corp. and/or James W. Elliot for any and all damages arising under the Financing Loans.

3. In Case No. CV 2010-900306:

- a. The Plaintiff has no remaining lien or claim to the following described real property ("Lot 43"):

Lot 43, according to the Final Plat, Wynfield Parc, Phase One, as recorded in Map Book 27, Page 51, in the Probate Office of Shelby County, Alabama.

- b. That certain Mortgage dated May 17, 2001, executed by Ronald W. Frisbee and Laurette D. Frisbee, husband and wife, in favor of J. Elliot Corp. (the "Frisbee Mortgage"), recorded in Instrument Number 2001-32828 in the Probate Court, and that certain Assignment of Mortgage dated May 17, 2001, executed by J. Elliot Corp. in favor of The Bank (the "Frisbee Assignment"), recorded in Instrument Number 2001-41589 in the



Probate Court are hereby declared null, void and without further effect, to the same extent as if they had been satisfied in full of record.

- c. That certain Assignment of Mortgage dated August 29, 2003, executed by J. Elliot Corp. in favor of Eric Harden and wife, Ocyce Harden, recorded in Instrument Number 20030908000601390 in the Probate Court is hereby declared to have been executed subsequent to the Frisbee Assignment and therefore is hereby declared null, void and without further effect, to the same extent as if it had been satisfied in full of record.
- d. This Rule 54(b) Final Judgment may be recorded in the Probate Court to clear title to Lot 43.
- e. All counterclaims against the Plaintiff, including but not limited to the counterclaims of defendant Ronald W. Frisbee are hereby dismissed without prejudice, with each party to bear their own costs.
- f. The indebtedness of Ronald W. Frisbee and Laurette D. Frisbee to J. Elliot Corp. evidenced by the Frisbee Mortgage is hereby declared to have been paid in full. The indebtedness of J. Elliot Corp. to the Plaintiff which was secured by the Frisbee Assignment remains unpaid and outstanding.
- g. The Plaintiff is granted leave to file an amended complaint against J. Elliot Corp. and/or James W. Elliot for any and all damages arising under the Financing Loans.

4. In Case No. CV 2010-900307:

- a. The Plaintiff has no remaining lien or claim to the following described real property ("Lot 3"):

Lot 3, according to the Amended Final Plat, Wynfield Parc, Phase One, as recorded in Map Book 27, Page 51, in the Probate Office of Shelby County, Alabama.

- b. That certain Mortgage dated October 8, 2002, executed by Richard T. DeFoor, unmarried, in favor of J. Elliot Corp. (the "DeFoor Mortgage"), recorded in Instrument Number 20021011000498440 in the Probate Court, and that certain Assignment of Mortgage dated October 8, 2002, executed by J. Elliot Corp. in favor of The Bank (the "DeFoor Assignment"), recorded in Instrument Number 20021011000498450 in the Probate Court are hereby declared null, void and without further effect, to the same extent as if they had been satisfied in full of record.
- c. That certain Assignment of Mortgage dated August 29, 2003, executed by J. Elliot Corp. in favor of Eric Harden and wife, Ocyce Harden, recorded in Instrument Number 20030908000601450 in the Probate Court is hereby declared to have been executed subsequent to the DeFoor Assignment and therefore is hereby declared null, void and without further effect, to the same extent as if it had been satisfied in full of record.
- d. This Rule 54(b) Final Judgment may be recorded in the Probate Court to clear title to Lot 3.
- e. The indebtedness of Richard T. DeFoor to J. Elliot Corp. evidenced by the DeFoor Mortgage is hereby declared to have been paid in full. The indebtedness of J. Elliot Corp. to the Plaintiff which was secured by the DeFoor Assignment remains unpaid and outstanding.



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- f. The Plaintiff is granted leave to file an amended complaint against J. Elliot Corp. and/or James W. Elliot for any and all damages arising under the Financing Loans.

5. In Case No. CV 2010-900308:

- a. The Plaintiff has no remaining lien or claim to the following described real property ("Lot 4"):

Lot 4, according to the Amended Final Plat, Wynfield Parc, Phase One, as recorded in Map Book 27, Page 51, in the Probate Office of Shelby County, Alabama.

- b. That certain Mortgage dated October 8, 2002, executed by Jon Thomas Upton and Serena Rawls Upton, husband and wife, in favor of J. Elliot Corp. the "Upton Mortgage"), recorded in Instrument Number 20021011000498410 in the Probate Court, and that certain Assignment of Mortgage dated October 8, 2002, executed by J. Elliot Corp. in favor of The Bank (the "Upton Assignment"), recorded in Instrument Number 20021011000498420 in the Probate Court are hereby declared null, void and without further effect, to the same extent as if they had been satisfied in full of record.
- c. That certain Assignment of Mortgage dated August 29, 2003, executed by J. Elliot Corp. in favor of Eric Harden and wife, Ocyce Harden, recorded in Instrument Number 20030908000601460 in the Probate Court is hereby declared to have been executed subsequent to the Upton Assignment and therefore is hereby declared null, void and without further effect, to the same extent as if it had been satisfied in full of record.

- d. This Rule 54(b) Final Judgment may be recorded in the Probate Court to clear title to Lot 4.
- e. The indebtedness of Jon Thomas Upton and Serena Rawls Upton to J. Elliot Corp. evidenced by the Upton Mortgage is hereby declared to have been paid in full. The indebtedness of J. Elliot Corp. to the Plaintiff which was secured by the Upton Assignment remains unpaid and outstanding.
- f. The Plaintiff is granted leave to file an amended complaint against J. Elliot Corp. and/or James W. Elliot for any and all damages arising under the Financing Loans.

6. In Case No. CV 2010-900309:

- a. The Plaintiff has no remaining lien or claim to the following described real property ("Lot 8");

Lot 8, according to the Amended Final Plat Wynfield Parc, Phase One, as recorded in Map Book 27, Page 51, in the Probate Office of Shelby County, Alabama.

- b. That certain Mortgage dated November 28, 2003, executed by Ronald Shane Brothers, a single man, in favor of J. Elliot Corp. (the "Brothers Mortgage"), recorded in Instrument Number 20031203000784840 in the Probate Court, and that certain Assignment of Mortgage dated November 28, 2003, executed by J. Elliot Corp. in favor of The Bank (the "Brothers Assignment"), recorded in Instrument Number 20031203000784850 in the Probate Court are hereby declared null, void and without further effect, to the same extent as if they had been satisfied in full of record.

- c. That certain Assignment of Mortgage dated July 13, 2004, executed by J. Elliot Corp. in favor of Eric Harden and wife, Ocyne Harden, recorded in Instrument Number 20040803000429730 in the Probate Court is hereby declared to have been executed subsequent to the Brothers Assignment and therefore is hereby declared null, void and without further effect, to the same extent as if it had been satisfied in full of record.
 - d. This Rule 54(b) Final Judgment may be recorded in the Probate Court to clear title to Lot 8.
 - e. All counterclaims against the Plaintiff, including but not limited to the counterclaims of defendant Michelle L. Glenn are hereby dismissed without prejudice, with each party to bear their own costs.
 - f. The third-party claims of defendant Michelle L. Glenn against Jay M. Glass, LLC are hereby dismissed without prejudice, with each party to bear their own costs.
 - g. The indebtedness of Ronald Shane Brothers to J. Elliot Corp. evidenced by the Brothers Mortgage is hereby declared to have been paid in full. The indebtedness of J. Elliot Corp. to the Plaintiff which was secured by the Brothers Assignment remains unpaid and outstanding.
 - h. The Plaintiff is granted leave to file an amended complaint against J. Elliot Corp. and/or James W. Elliot for any and all damages arising under the Financing Loans.
7. Nothing in this Rule 54(b) Final Judgment impacts or impairs any of the other loans and obligations of J. Elliot Corp. and James W. Elliot acquired by the



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Plaintiff under the Purchase and Assumption Agreement with the FDIC which are not recited in the Complaints.

8. This Rule 54(b) Final Judgment disposes of all pending claims and issues in the above-referenced cases, except for the claims of the Plaintiff against J. Elliot Corp. and/or James W. Elliot for monetary damages.

DONE and ORDERED this the 10th day of June, 2012.


CIRCUIT JUDGE