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RECEIVED 11-19-85
DAVIDSON COUNTY
CHANCERY COURT

IN PART II, CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

ORDER FILED & ENTERED 6-25-85
MINUTE BOOK 133 PAGE 406

NATHAL M. TERRELL, ET AL.,

Plaintiffs,

v.

HOME FEDERAL SAVINGS & LOAN ASSOCIATION, ET AL.,

Defendants.

NO. 82-1436-II

JAN 31 | 11 AM '86
FELIX Z. HALDOUT II REGISTER
DAVIDSON COUNTY, TN

IDENTIFICATION REFERENCE

7.30080

JUDGMENT ORDER

This cause came on to be heard on June 4, 1985, upon statements and argument of counsel, testimony in open Court, and the entire record, before the Honorable C. Allen High, Chancellor of the Chancery Court of the 20th Chancery Division, Davidson County, Part II. Following this hearing on June 11, 1985, the Court made various findings of fact and conclusions of law which are expressly incorporated herein verbatim by reference and in which findings of fact and conclusions of law the Court was of the opinion that relief should be granted to Plaintiffs as prayed to declare null and void the Deed of Trust from Alvin W. Terrell, Trustee, to Home Federal Savings & Loan Association of Nashville of record in Book 5433, Page 910, Register's Office of Davidson County, Tennessee and further that the Plaintiff Nathal Terrell should be appointed as Successor Trustee for the Trust and further that the Court should reserve for further hearing allowance of fees for Plaintiffs' attorney and further that all costs should be taxed equally against the Defendants.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Memorandum of June 11, 1985, a copy of which is attached hereto as Exhibit 1, be fully incorporated herein verbatim and be made the final order of this Court in all respects contained therein and that the Deed of Trust on the subject property from Alvin W. Terrell, Trustee, to Home Federal Savings & Loan Association of Nashville, recorded in Book 5433, Page 910, Davidson County Register's Office, should be declared null and void and of no force and effect, and further that Nathal Terrell should be appointed as the Successor Trustee to the Trust, and further that at a future hearing an allowance for the fees of Plaintiffs' attorney should be determined, and finally that all costs are assessed equally against the Defendants, for which execution may issue if necessary.

I hereby certify that this is a true copy
of original instrument filed in my office.
This 31 day of January 1986
CHRISTINA NORRIS, Clerk & Master
By

ENTERED this _____ day of June, 1985.

C. Allen High

Chancellor C. Allen High

APPROVED FOR ENTRY:

TUNE, ENTREKIN & WHITE

By: _____

Ben C. Fordham
21st Floor, First American Center
Nashville, TN 37238
615-244-2770

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Judgment Order has been mailed to Mr. Joel Leeman, 3rd Floor, Metropolitan Federal Building, 230 Fourth Avenue North, Nashville, TN 37219-0757 and to Mr. George Cate, Jr., 1101 Stahlman Building, Nashville, TN 37201 this 20th day of June, 1985.

_____

NATHAL M. TERRELL, ET AL)
)
VS. NO. 82-1436-II)
)
HOME FEDERAL SAVINGS & LOAN)
ASSOCIATION, ET AL)

IN THE CHANCERY COURT FOR
THE STATE OF TENNESSEE,
TWENTIETH CHANCERY DIVISION,
DAVIDSON COUNTY, PART II

MEMORANDUM

This is an action seeking to have declared null and void a deed executed by a trustee as security for a loan.

Alternatively, plaintiffs' seek to recover damages from the trustee and those acting with him for breach of duty.

FINDINGS OF FACT

Alvin Terrell was named trustee for his three minor grandchildren and their mother in a trust agreement dated March 17, 1976. (Ex. 1).

The corpus of the trust was the beneficiaries' home at 5021 Temple Road in Nashville. The stated purpose of the trust was to provide a residence for the beneficiaries.

A second trust was created for the purpose of

EXHIBIT 1

producing income for the beneficiaries. (Ex. 4).

On March 15, 1977, Alvin Terrell made application to Home Federal for a $50,000.00 loan and offered as security the Temple Road property. (Ex. 10). The loan application was partially completed.

At the time the loan application was made, Home Federal had in its file a copy of the trust agreement. (Ex. 13). The bank had Mr. Terrell execute a "certificate" that held them harmless if any of the money was used for non-trust benefits or purposes. (Ex. 15).

The loan was approved on a form that stated it was a "refinance" type of loan. (Ex. 11). Home Federal's requested for appraisal that stated this was a "refinance" loan. (Ex. 12).

At the time of the loan application, Alvin Terrell and his companies had a number of loans at Home Federal secured by various parcels of real property. (Ex. 9). These properties were delinquent in the payment of property taxes and four separate suits were pending to sell them for taxes. (Collective Ex. 5).

Home Federal deducted $5,195.20 from the $50,000.00 loan and paid the back taxes directly to the Clerk & Master and Trustee. (Exs. 16 & 25). The balance of the loan

amounting to $44,805.80 was deposited by the trustee in his personal account. (Ex. 8). None of this money was used for the trust or its beneficiaries.

The deed of trust was signed by Alvin Terrell and his wife and recorded in Book 5125, page 137, Davidson County Register's Office. (Ex. 7). A note was also signed by Alvin Terrell. (Ex. 14).

On April 11, 1979, the trustee entered into an agreement to swap 5 acres of the trust property for a tract of land containing 3.6 acres. Home Federal joined in and approved the swap arrangement. (Ex. 17 & 20). An amended deed of trust was executed by the parties substituting the swapped piece of trust property and was recorded in Book 5433, page 910, Davidson County Register's Office.

The trustee transferred the swapped property to his son, Burnie Terrell, who mortgaged it to Home Federal where it was lost by foreclosure. (Ex. 22 - Tract II).

The trust received no benefit from this swap of property.

CONCLUSIONS OF LAW

1. The trustee breached his duty to the beneficiaries

by engaging in self dealing when he mortgaged the trust property for his own benefit.

2. Home Federal Savings & Loan Association was charged with actual and constructive knowledge of the proposed misapplication by the trustee and participated and aided in the breach of trust by taking the trust property as collateral for a loan to the trustee personally.

JUDGMENT

Plaintiffs' attorney should prepare a judgment as follows:

1. Declare null and void the trust deed from Alvin W. Terrell, trustee, to Home Federal Savings & Loan Association of Nashville, recorded in Book 5433, page 910, Davidson County Register's Office;

2. Appoint Nathal Terrell as successor trustee;

3. Reserve for future hearing allowance of fees for plaintiffs' attorney;

4. Assess costs against the defendants.

C. ALLEN HIGH, CHANCELLOR

June 11, 1985

cc: Ben Fordham
Joel Leeman
George Cate, Jr.