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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2019-2020

1180122

Deutsche Bank National Trust Company as Trustee in Trust for
the Registered Holders of Ameriquest Mortgage Securities,
Inc., Asset-Backed Pass-Through Certificates Series 2003-11

v.

Regina Greene

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Deutsche Bank National Trust Company as Trustee in Trust for
the Registered Holders of Ameriquest Mortgage Securities,
Inc., Asset-Backed Pass-Through Certificates Series 2003-11

v.

Regina Greene

**Appeals from Mobile Circuit Court
(CV-08-901538)**

SHAW, Justice.

1180122--AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a)(2)(F), Ala. R. App. P.

1180267--AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a)(2)(F), Ala. R. App. P.

Wise, Bryan, and Mendheim, JJ., and Harwood, Special Justice,¹ concur.

Parker, C.J., and Bolin, Sellers, and Mitchell, JJ., dissent.

Stewart, J., recuses herself.

¹Retired Associate Justice Robert Bernard Harwood, Jr., was appointed September 5, 2019, to serve as a Special Justice in regard to these appeals. See § 12-2-14, Ala. Code 1975.

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SELLERS, Justice (dissenting).

I respectfully dissent.

In these consolidated appeals, Deutsche Bank National Trust Company as Trustee in Trust for the Registered Holders of Ameriquest Mortgage Securities, Inc., Asset-Backed Pass-Through Certificates Series 2003-11 ("Deutsche Bank"), the plaintiff/counterclaim defendant in an ejectment action, appeals from orders of the Mobile Circuit Court enforcing a purported settlement agreement reached by the parties (appeal no. 1180122) and awarding attorney fees as related sanctions (appeal no. 1180267).

In September 2003, Regina Greene and her then husband, Henry Greene, executed a \$116,000 mortgage in favor of Ameriquest Mortgage Company in connection with the purchase of a house in Mobile. The note and mortgage were subsequently assigned to Deutsche Bank.

The Greenes routinely remained in arrears on the note payments. They divorced in 2005, and Regina received the house in the divorce settlement. When the arrearage on the mortgage reached approximately \$40,000, the note was accelerated and foreclosure proceedings began. In August

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2008, Deutsche Bank purchased the property at the ensuing foreclosure sale.

According to Deutsche Bank, Regina refused to vacate the property, and, in September 2008, Deutsche Bank filed an ejectment action seeking immediate possession of the property.² Regina asserted counterclaims alleging invalidity of the mortgage assignment and the foreclosure, as well as negligence, wantonness, slander of title, trespass, abuse of process, wrongful foreclosure, "unconscionability," civil conspiracy, and "joint venture liability."

At some point, Regina became a plaintiff in an unrelated personal-injury action. The trial court in the ejectment action continued the ejectment action to allow Deutsche Bank and Regina to engage in "good-faith discussions" regarding a potential agreement pursuant to which the proceeds from Regina's personal-injury action would be used to satisfy the mortgage debt.

On May 22, 2015, counsel for Deutsche Bank sent Regina's counsel a proposed settlement agreement stating that Deutsche

²Deutsche Bank named both Regina and Henry as defendants in the ejectment action but later dismissed the action as to Henry.

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Bank would give Regina a quitclaim deed to the property in exchange for \$112,500. The agreement also stated that no warranties had been made as to whether the property was free and clear of liens and encumbrances and that Regina would be "solely responsible for any and all taxes, interest and penalties due and owing" as a consequence of the settlement. Deutsche Bank's counsel stated in correspondence accompanying the settlement agreement that a "quitclaim deed ... will be provided to [Regina]," and he requested that counsel have Regina sign the agreement. Deutsche Bank's counsel provided a copy of the deed that would be delivered after Regina signed the agreement and paid the settlement funds. He also stated that he had informed cocounsel for Deutsche Bank that "the case has resolved" and that the trial court should be informed that the parties were "finalizing the settlement papers." There were no signatures on the agreement or the deed sent to Regina's counsel.

After Regina's counsel received the unsigned settlement agreement and deed, he discovered that property taxes had not been paid on the property since the foreclosure sale, that the property had actually been sold at a tax sale in 2009, and

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that Regina and Deutsche Bank had been named as defendants in a declaratory-judgment and ejectment action brought by the holder of the tax deed ("the declaratory-judgment action"). Regina's counsel sent an e-mail to Deutsche Bank's counsel on May 27, 2015, stating:

"My client will not go forward with any proposed settlement unless and until this issue with the lawsuit over the back taxes is dealt with. Apparently a lawsuit has been filed by someone to quiet title and claims they are true owner of the property and that your client has no right to sale [sic] the property to my client. My client has been named in the lawsuit as well. Your client was made aware of this issue several years ago and representations were made to me that this has been resolved. Apparently it was not, and the owner due to the tax sale is now claiming in excess of \$50,000.00 is owed to redeem from the tax sale. Their lawyer has also advised me that he has made [counsel for Deutsche Bank] aware of this issue repeatedly since 2012 and that he was assured that your client would pay the back taxes and take care of [sic] but nothing has ever been done. As previously stated, my client will not consider any proposed settlement until this is resolved by your client. Furthermore, I don't see how a trial can move forward [in Deutsche Bank's ejectment action] given that a lawsuit has been filed by another party that claim[s] you have no interest in the property at the present time. Please let me know your intentions."

On June 2, 2015, Regina filed a motion to continue Deutsche Bank's ejectment action, stating that "the parties were close to finalizing a proposed settlement in this matter"

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but that the tax-sale issue had "complicated the settlement of the case." Regina stated that more time was needed "to address the issues raised in [the declaratory-judgment action] before a final settlement can be reached" and that "[b]oth parties expect that the issue can be resolved and that a settlement can be accomplished in this case." The trial court granted the motion to continue.

Counsel for Deutsche Bank responded to the above-quoted e-mail from Regina's counsel, stating that he was "open to suggestions" about how to resolve the tax problem but that "any resolution will require [Regina's] participation." He invited Regina's counsel to telephone him to discuss the issue. In response, Regina's counsel sent another e-mail, which stated:

"My client will not buy the property if the tax sale issue is not resolved period. You can let me know but that is her position and I don't see it changing. This is your client's fault. It was suppose[d] to have been addressed and taken care of before you became involved in the case. The representations were made by [a law firm representing Deutsche Bank in connection with the foreclosure] 2 years ago. I did not think I would have to go back and check on things since I believed that [the attorneys representing Deutsche Bank in connection with the foreclosure] did what they said they would do. It is especially disappointing that you nor the folks at [the law firm representing

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Deutsche Bank in connection with the foreclosure] saw fit to mention this especially since your [sic] were in active discussion with the other party's attorney. It is obvious to me that you and the others involved were simply trying to take advantage of the situation. Nonetheless, we are aware of the issue now and it is not going to happen. I am holding in my trust account the amount we discussed if you want to settle the case. However your client will have to deal with the tax sale issue first. Let me know how you want to proceed."

The record contains no response from Deutsche Bank to this last e-mail.

The declaratory-judgment action was consolidated with Deutsche Bank's ejectment action. On May 23, 2017, Deutsche Bank filed a notice with the trial court stating that Deutsche Bank and the plaintiff in the declaratory-judgment action had "reached agreement to settle," that the settlement "will remove a cloud on the title of the property and is therefore of benefit to [Regina]," that Deutsche Bank and Regina had "resumed settlement discussions," and that they needed "additional time to attempt resolution."

In January 2018, Deutsche Bank filed a motion for a summary judgment on its ejectment claim and Regina's counterclaims.³ Thereafter, Regina filed a "motion for

³The trial court had already denied three previous summary-judgment motions filed by Deutsche Bank.

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enforcement and motion for sanctions," in which she asserted that Deutsche Bank had breached an alleged settlement agreement. She also moved to strike an affidavit submitted by Deutsche Bank in support of its motion for a summary judgment.

The trial court granted Regina's motion to strike, denied Deutsche Bank's motion for a summary judgment, granted Regina's request to enforce the alleged settlement agreement, and levied sanctions against Deutsche Bank in the form of attorney fees and expenses incurred by Regina in her efforts to enforce the alleged settlement agreement. Deutsche Bank appealed.

I would reverse the trial court's judgment, which was based on a finding that the parties had entered into a settlement agreement. Settlement agreements are binding on parties, just like any other contract. Billy Barnes Enters., Inc. v. Williams, 982 So. 2d 494, 498 (Ala. 2007). As Regina points out, broadly speaking, attorneys have authority to bind their clients to settlement agreements in ongoing actions. See § 34-3-21, Ala. Code 1975. In order to create a binding contract, however, there must be an offer, an acceptance of that offer, consideration, and mutual assent to the essential

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terms of the agreement. Ex parte Grant, 711 So. 2d 464, 465 (Ala. 1997). "[S]ettlement agreements, like other agreements, are not valid when there has been no meeting of the minds with regard to the final terms of the agreement" Grayson v. Hanson, 843 So. 2d 146, 150 (Ala. 2002).

"It is well settled that whether parties have entered a contract is determined by reference to the reasonable meaning of the parties' external and objective actions.'" Cook's Pest Control, Inc. v. Rebar, 852 So. 2d 730, 738 (Ala. 2002) (quoting SGB Constr. Servs., Inc. v. Ray Sumlin Constr. Co., 644 So. 2d 892, 895 (Ala. 1994)). The correspondence between counsel for Deutsche Bank and counsel for Regina indicates that Deutsche Bank offered to settle the matter by giving Regina a quitclaim deed in exchange for \$112,500. The proposed settlement agreement purported to make Regina responsible for taxes. Regina's counsel rejected Deutsche Bank's offer when he learned that the property had been sold at a tax sale and that there would be additional costs to settle with the holder of the tax deed. He informed Deutsche Bank's counsel that Regina would buy the property only if Deutsche Bank paid those costs, and he stated that he was

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holding the purchase funds in trust if Deutsche Bank "want[ed] to settle." He also asked Deutsche Bank's counsel to "[l]et me know how you want to proceed." Statements made in filings to the trial court confirm that settlement negotiations were ongoing. Although Deutsche Bank did eventually settle the tax issue at its own cost, there is nothing indicating that Deutsche Bank agreed that it would do so and still sell Regina the property for the earlier quoted price.

I also note that Deutsche Bank includes an argument in its brief to this Court that the alleged settlement agreement, as a contract for the sale of land, is invalid under the Statute of Frauds because it is not signed by Deutsche Bank. See § 8-9-2(5), Ala. Code 1975. Nowhere in her response brief does Regina expressly argue that the Statute of Frauds is not implicated here.

Based on the foregoing, I respectfully dissent from the decision to affirm the trial court's judgment based on its finding that a binding settlement agreement exists. Because I would reverse the trial court's judgment on that issue, I would also reverse the trial court's award of sanctions, which

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was based on Deutsche Bank's failure to abide by the alleged settlement agreement.⁴

Parker, C.J., concurs.

⁴Deutsche Bank also asks the Court to reverse the trial court's ruling denying Deutsche Bank's summary-judgment motion. It is an oft-repeated principle that the denial of a summary-judgment motion is not an appealable order. Ex parte Kozlovski, 186 So. 3d 445, 448 (Ala. 2015). Deutsche Bank, which has the burden on appeal, has not demonstrated that an exception to that general principle applies to the somewhat unusual procedural posture of the present case. Thus, I express no opinion on the trial court's denial of Deutsche Bank's motion for a summary judgment. Likewise, Deutsche Bank has not demonstrated that, considering the circumstances presented by this case, the order striking the affidavit Deutsche Bank submitted in support of its summary-judgment motion is an appealable order.