

IN THE SUPREME COURT OF THE STATE OF DELAWARE

WALTER HANCOCK and LINDA HANCOCK,	§	
	§	
	§	No. 311, 2004
Defendants Below,	§	
Appellants,	§	Court Below: Superior Court of
	§	The State of Delaware in and for
v.	§	New Castle County
	§	
CITIFINANCIAL, INC. f/k/a	§	C. A. No. 01L-06-083
COMMERCIAL CREDIT	§	
CORPORATION, a Maryland	§	
corporation,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: April 6, 2005

Decided: July 6, 2005

Before **STEELE**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

ORDER

This 6th day of July 2005, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Walter R. and Linda M. Hancock, defendants below (the “Hancocks”), appeal from a June 25, 2004 order of the Superior Court in a mortgage foreclosure action, granting plaintiff below, Citifinancial, Inc., formerly known as Commercial Credit Corporation (“Citifinancial”): (i) a joint and several judgment against the defendants, *in personam*, for \$245,887.03, plus post-judgment interest on a lesser amount thereof from December 16, 2003; and (ii) a judgment *in rem* against the

Hancocks' home, which was subject to a mortgage that secured the debt which underlay the *in personam* judgment. The Hancocks claim that the Superior Court order must be reversed and set aside because: (i) the mortgages and notes that were the subject of the action were not legal and binding, as no attorney was involved in those transactions, with the result that Citifinancial was engaged in the unauthorized practice of law; and (ii) the judgment was improperly granted against Linda Hancock on a satisfied mortgage and note and without a sufficient basis in evidence.

2. The underlying facts are as follows: On August 21, 1998, the Hancocks executed a mortgage in favor of Citifinancial in the amount of \$218,532.34. The note was signed by Walter Hancock, and it also bore what appeared to be the signature of Leroy Smith. Four months later, on November 24, 1998, the Hancocks refinanced the August transaction, by executing a new mortgage in the amount of \$220,518.59, but with a lower interest rate and monthly payment than the August mortgage. The November 1998 note was (again) signed by Mr. Hancock and Mr. Smith as obligors. As part of the November refinancing, the August 1998 mortgage was marked satisfied. Thereafter, the Hancocks began making payments in the new, lower amount. Although Mrs. Hancock was not an obligor on the November 1998 note, she acknowledged, by her signature at the bottom of the note, that she was bound by the other conditions, including

specifically “the right and power of the Lender to repossess and sell the Property”

3. The Hancocks’ payment record was irregular, their last payment on the mortgage being in March 2001. Citifinancial later filed this foreclosure action in the Superior Court. In January 2003, the case was tried to the Superior Court, which ordered post-trial briefing. Because Citifinancial failed to file its answering brief in accordance with a stipulated briefing schedule, the trial court issued a letter order deeming Citifinancial as having waived its answering brief.

4. By letter opinion and order issued on June 27, 2003, the Superior Court concluded that the conflicting paperwork and testimony made it difficult to determine who had borrowed what and when, and to determine the extent of Citifinancial’s status as a secured creditor. The trial court further concluded that Citifinancial’s failure to file its brief was a tacit recognition by Citifinancial that its claim of secured creditor status was untenable, and that without the aid of a brief, the trial court was “unable and unwilling to sort out the complicated record and address [Citifinancial’s] arguments.” In addition, the trial court found that although Citifinancial had, in effect, abandoned foreclosure as a remedy, it appeared from the record that loans had been made and not repaid, and that as a result, Citifinancial may have unsecured claims against the Hancocks. But, because the Hancocks “deny the loan on which [Citifinancial] sued . . . [a]nd the

court will not sort it all out on its own” the Superior Court entered judgment in favor of the Hancocks and against Citifinancial.

5. Citifinancial then filed a timely motion for reargument, which the Superior Court granted. Treating Citifinancial’s reargument motion as its overdue post-trial brief, the Superior Court re-addressed the merits, and concluded that: (i) Citifinancial had not shown, to the Superior Court’s satisfaction, that the November 1998 mortgage transaction was valid; (ii) despite the gaps in the record, Citifinancial established that it had loaned at least \$215,367.18 to the Hancocks in the August transaction—a fact the Hancocks “virtually admit[ted] . . . in their Affidavit of Defense;” and (iii) although Linda Hancock did not sign the August 1998 note, she was estopped from denying her liability as a co-obligor of the August 1998 debt because she had signed the mortgage, received the loan proceeds, and participated in the repayment of the loan until default. As a consequence, the Superior Court found both Mr. and Mrs. Hancock personally liable for the August 1998 debt, and further found that that debt had been secured by a valid mortgage on their home. Accordingly, the Superior Court entered judgment “in rem . . . in favor of the Plaintiff, Citifinancial, Inc. and against the Defendants, Walter R. Hancock and Linda M. Hancock, jointly and severally. . . .”

6. On their appeal from the judgment, the Hancocks first argue that the August 1998 loan and mortgage were not legally binding or valid, because the

settlement on that transaction was not conducted by a Delaware attorney. The only authority cited to support this claim is *In re Mid-Atlantic Settlement Serv.*,¹ an order upholding a decision of the Board on the Unauthorized Practice of Law. In that case, the Board held that real estate settlements constituted the practice of law and, therefore, required the involvement of a Delaware attorney. Neither that Board decision nor our order upholding it helps the Hancocks, because neither decision determined that the absence of Delaware counsel operates to invalidate, or to render unenforceable, the underlying transaction against the mortgagors who receive the benefit of the loan. Nor do the facts at bar provide any reason to so determine. The Hancocks received the benefit of the loans and do not dispute that they failed to repay them. The Hancocks were not prejudiced by the non-participation of an attorney at the settlement. No evidence was presented at the trial showing that the Hancocks did not understand the nature of the transactions or their resultant obligations. The opposite is far more probable, because Mrs. Hancock was herself a mortgage broker.

7. The Hancock's second claim is that the Superior Court erred in granting an *in personam* judgment against them based on the August 1998 note and mortgage, because the August 1998 loan obligation and mortgage were satisfied in the November 1998 mortgage refinancing. Citifinancial does not dispute that the

¹ No. 102, 2000, 2000 Del. LEXIS 243 at *42 (Del. May 31, 2000).

August 1998 mortgage was satisfied. Moreover, Citifinancial represented to the Superior Court, and to this Court on appeal, that it was not seeking an *in personam* judgment against the Hancocks, but only an *in rem* judgment against the mortgaged property.² By entering a judgment *in personam* against the Hancocks based on the August 1998 note, therefore, the Superior Court granted relief Citifinancial was not asking for, and enforced a legal obligation previously satisfied in the November 1998 refinancing. Accordingly, the Superior Court judgment, to the extent that it operates *in personam*, was erroneously granted.

8. To the extent that the Superior Court judgment operates *in rem* against the mortgaged property, however, it is legally valid. The November 1998 mortgage bore the signatures of Mr. and Mrs. Hancock. Although both defendants denied having signed that mortgage, they conceded in their Affidavit of Defense, and the trial judge found, that they owed Citifinancial money, that they had a mortgage with Citifinancial, and that the payments made after the November refinancing were for the new, lower amount specified in the November transaction documents. Although the trial court questioned the validity of the November 1998 transaction because Citifinancial's record keeping was not sufficiently reliable, the trial court made no finding that the November 1998 mortgage was invalid. Although the Superior Court entered judgment *in personam* on the August 1998

² Citifinancial Answering Brief at 8; A125-126.

note and *in rem* on the August 1998 mortgage, presumably it did so because there was no dispute that both Mr. and Mrs. Hancock had signed the August 1998 mortgage document, and Mr. Hancock had signed the August 1998 note. The trial court then proceeded to find Mrs. Hancock liable on the August 1998 note as well, on the basis that in the circumstances she was estopped to deny its validity.

9. The entry of judgment on the August 1998 note and mortgage was erroneous, because the rights and obligations created by those instruments had been extinguished and superseded by the rights and obligations created in the November 1998 refinancing. As noted, despite the Superior Court's concerns about the November 1998 documents, it made no finding that the November 1998 mortgage was invalid. Indeed, the trial court found that the Hancocks were unable to explain why their the post-November 1998 payments were in the amounts called for by the November 1998 note and mortgage—instruments whose legal validity they were denying. Finally, the interest awarded on the Superior Court judgment runs from January 1, 1999, *i.e.*, from and after settlement on the November 1998 transaction.

10. We conclude, for those reasons, that the Superior Court determined—in our view correctly—that the November 1998 mortgage was valid and enforceable, and that the amount of the underlying principal obligation (which because of the flawed record keeping had to be determined from extrinsic evidence) was the

\$215,367.18 that the Hancocks admitted having borrowed in August 1998, less all payments made by them, plus interest on the balance and attorney's fees.

NOW, THEREFORE, IT IS ORDERED, that the judgment of the Superior Court is **AFFIRMED** to the extent it operates *in rem*; is **REVERSED** to the extent that it operates *in personam* and recites that it is based on the August 1998 note and mortgage; and the case is **REMANDED** to the Superior Court to modify and correct the judgment consistent with the rulings made herein.

BY THE COURT:

/s/ Jack B. Jacobs
Justice