

270
52

BOOK 5 PAGE 449

23983

IN THE MISSISSIPPI SUPREME COURT

HERB A. KELSO

APPELLANT

VS.

NO. 89-TS-532

DAVID K. MCGOWAN,
S. E. POLLACK,
SAL TODARO, AND
TRUSTMARK NATIONAL BANK

APPELLEES

LIS PENDENS NOTICE

I. DESCRIPTION OF REAL ESTATE.

A parcel of land being a part of Lots 10 and 11 of TOUGALOO ADDITION in the SE $\frac{1}{4}$ of Section 36, Township 7 North, Range 1 East, in Ridgeland, Madison County, Mississippi, a plat of said Addition being recorded in Land Deed Book AAA at page 138 thereof in the Chancery Clerk's Office for Madison County, Mississippi, reference to said plat being here made in aid of and as a part of this description, and which parcel of land is more particularly described as:

Begin at an iron pin marking the Northwest corner of Lot 10 of Tougaloo Addition and run thence South 87° 16' 14" East along the North line of Lots 10 and 11, a distance of 660.0 feet to the Northeast corner of Lot 11 of said Tougaloo Addition; thence run South along the East line of said Lot 11, a distance of 462.52 feet; thence run North 87° 16' 14" West, a distance of 660.0 feet to the West line of said Lot 10; thence run North along said West line, a distance of 462.52 feet to the point of beginning, containing 7.0 acres, more or less, and all lying and being situated in the City of Ridgeland, Madison County, Mississippi.

II. NAMES OF ALL PARTIES AND NATURE OF THE REAL PROPERTY INTEREST SOUGHT TO BE ENFORCED.

On February 19, 1988, Herb A. Kelso commenced Civil Action No. 28,861 on the docket of the Chancery Court of Madison County, Mississippi, and which action was styled "Herb A. Kelso, Plaintiff, vs. David K. McGowan, S. E. Pollack, Sal Todaro, and Trustmark National Bank, Defendants". By such action, plaintiff sought a preliminary and permanent injunction to enjoin and prohibit David K. McGowan, S. E. Pollack, and Sal Todaro from initiating or taking any action whatsoever to foreclose the following described deed of trust, to-wit:

Deed of Trust dated September 11, 1987, executed by Herb A. Kelso to David K. McGowan, trustee, for S. E.

SATISFIED AND CANCELED THIS 19 DAY OF March 90
AUTHORITY OF P/A RECORDED IN BOOK NO. 5 AT PAGE NO. 533

BILLY V. COOPER, CHANCERY CLERK

J Cole D.G.

Pollack and Sal Todaro, and which Deed of Trust is recorded in Deed of Trust Book 631 at page 90 in the office of the Chancery Clerk of Madison County, Mississippi.

for the purpose of enforcing the collection of (1) two \$10,000.00 checks, which were drawn by Herb A. Kelso, post-dated September 12, 1987, and made payable to the order of S. E. Pollack, and (2) one \$10,000.00 check, which was drawn by Herb A. Kelso, post-dated September 12, 1987, and made payable to the order of Sal Todaro, and which checks were claimed by David K. McGowan, S. E. Pollack and Sal Todaro to be secured under the dragnet or future advances clause of the above described deed of trust.

A preliminary injunction was granted by the Chancery Court of Madison County, Mississippi, but by Final Judgment dated August 18, 1988, the trial court dissolved the preliminary injunction and entered Judgment against Herb A. Kelso and in favor of defendants, David K. McGowan, S. E. Pollack and Sal Todaro in the total sum of \$15,000.00, being an attorney's fee of \$10,000.00 and a statutory penalty of \$5,000.00.

Herb A. Kelso has perfected an appeal to the Mississippi Supreme Court from such Final Judgment of the Chancery Court of Madison County, Mississippi. Herb A. Kelso strongly contends on appeal, as in the trial court, that there is no valid consideration for the three \$10,000.00 checks hereinabove described; and further that in no event is the payment of such checks secured under the dragnet or future advances clause of the above described deed of trust dated September 11, 1987, and recorded in Deed of Trust Book 631 at page 90 in the office of the Chancery Court of Madison County, Mississippi.

Herb A. Kelso attempted to obtain an injunction pending appeal from the Chancery Court of Madison County, Mississippi, and from the Supreme Court of Mississippi,

but his motions for such injunction pending appeal were denied by both courts.

Although the underlying indebtedness described in and secured by the above referenced deed of trust is not now due or payable and Herb A. Kelso is not now in default as to the repayment of such underlying indebtedness, nevertheless, David K. McGowan, as trustee, has scheduled a foreclosure sale of the above described deed of trust for July 12, 1989, at the South front door of the Madison County Courthouse at Canton, Mississippi, for the purpose of enforcing the collection of the above described disputed checks, which are claimed by the trustee and by the beneficiaries in said deed of trust to be secured under the dragnet or future advances clause of said deed of trust.

Notice is hereby given that should Herb A. Kelso prevail upon the merits of his appeal, then in such event Herb A. Kelso will promptly seek to set aside any foreclosure sale of the above described deed of trust.

Respectfully submitted,

Herb A. Kelso
HERB A. KELSO

J. M. Ritchey
J. M. RITCHIEY, Attorney for
Appellant

J. M. RITCHIEY
133 South Union Street
P. O. Box 286
Canton, MS 39046
Telephone: (601) 859-4141
State Bar No. 28080

STATE OF MISSISSIPPI, County of Madison:



I certify that the within instrument was filed for record in my office this 11 day of July, 1989, at 455 o'clock P M., and was duly recorded on the JUL 11 1989, Book No. 5, Page 449.

BILLY V. COOPER, CHANCERY CLERK BY: K Gregory D.C.