IN THE COURT OF APPEALS OF TENNESSEE

EASTERN SECTION

FILED

March 28, 1996

Cecil Crowson, Jr.
Appellate Court Clerk

UNION PLANTERS NATIONAL BANK	)	KNOX COUNTY
	)	03A01-9510-CH-00342
Plaintiff-Appellee	)	
	)	
	)	
v.	)	HON. SHARON BELL,
	)	CHANCELLOR
	)	
RALPH A. TAYLOR AND	)	
THOMAS C. METCALFE, JR.	)	
	)	
Defendants-Appellants	)	REVERSED AND DISMISSED

JOE G. BAGWELL OF KNOXVILLE FOR APPELLANTS

STEPHEN W. GIBSON OF KNOXVILLE FOR APPELLEE AT TRIAL LEVEL;
UNREPRESENTED ON APPEAL

O P I N I O N

Goddard, P.J.

Ralph A. Taylor and Thomas C. Metcalfe, Jr., appeal a judgment rendered against them totaling $67,022.67 in favor of Union Planters National Bank, successor in interest to Fidelity Federal Bank, F.B.S.

The Defendants' appeal raises a number of issues. However, we believe issue one is dispositive:

> 1. Did the Court err in overruling Defendants' Motion for Summary Judgment on the grounds that the Plaintiff's predecessor bank had bid in the full amount of the Defendants' debt at the Trustee's foreclosure sale?

This controversy resulted from a line of credit in the amount of $37,600, granted to the Defendants by Fidelity Federal in June 1989.

The Chancellor's opinion found that the Defendants owed $37,600, which they had been advanced, plus interest, expenses and attorney fees on three separate theories: (1) breach of contract incident to the monies advanced, (2) negligent misrepresentation, and (3) unjust enrichment.

The Defendants were in the business of buying houses that needed repair, repairing them and thereafter selling them.

In furtherance of this endeavor they, as already noted, established a line of credit in the amount of $37,600 with First Federal in June 1989, which was secured by a deed of trust on a house and lot located at 6325 High Drive in the 5th District of Knox County.

As the Defendants made draws against their line of credit they represented to Fidelity Federal that the proceeds would be used to renovate that property.

The property was never renovated, principally due to the fact that Mr. Taylor's wife became seriously ill in November 1989 and later succumbed. As a result of this the project was virtually abandoned. The due date of the loan was extended three months, until September 15, 1990, and thereafter became in default, resulting in the trustee being directed to foreclose the trust deed.

By trustee's deed dated June 4, 1991, the property was sold to Fidelity Federal for the sum of $43,672.06, which, according to our understanding of the record, would include the $37,600 borrowed, plus accrued interest, attorney fees and all other expenses of sale.

After retaining the property for some 17 months Fidelity Federal sold it to a third party for $4500. The third party, after making certain improvements, then sold the property for $9500.

In our view, an opinion of the Middle Section of this Court, which is to be published, First Investment Company v. Allstate Insurance Company, filed in Nashville on August 12, 1994--although in a slightly different context--resolves this

appeal. In that case this Court, speaking through Judge Koch, stated the following:

> Foreclosure proceedings extinguish the mortgage debt when the proceeds of the foreclosure sale equal or exceed the debt and related costs. Accordingly, a mortgagee who bids in the full amount of the debt at the foreclosure sale accepts the property itself in full payment of the underlying debt, while a mortgagee who bids in less than the full amount of the debt retains its status as a creditor with regard to the deficiency. Farmers & Merchants Sav. Bank v. Farm Bureau Mut. Ins. Co., 405 N.W.2d 834, 837 (Iowa 1987); Whitestone Sav. & Loan Ass'n v. Allstate Ins. Co., 28 N.Y.2d 332, 270 N.E.2d 694, 696, 321 N.Y.S.2d 862 (N.Y. 1971).

We think the reasoning particularly applies in this case where the trustee's deed recites that the property was sold to Fidelity Federal "after receiving competitive bids."

We conclude that Fidelity Federal purchasing the property for the amount outstanding was equivalent to a third party paying that amount. This, of course, extinguished not only the debt, but any cause of action Fidelity Federal might have had for misrepresentation or unjust enrichment.

To test our reasoning, suppose that in accordance with the recital of the trustee's deed a third party had bid $43,000, Fidelity Federal purchased the property by bidding the sum it did and subsequently sold the property for $4500. Would Fidelity Federal then be entitled to recover the difference between the

amount it claims and the $4500 ultimately received? We think the question answers itself.

For the foregoing reasons the judgment is reversed and the complaint dismissed. The case is remanded for collection of costs below, which are, as are costs of appeal, adjudged against Union Planters.

____
Houston M. Goddard, P.J.

CONCUR:

____
Herschel P. Franks, J.

____
William H. Inman, Sr.J.