

2003

Zions First National Bank v. Steven E. Hudson and Cloyee J. Hudson: Reply Brief

Utah Court of Appeals

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Recommended Citation

Reply Brief, *Zions First National Bank v. Hudson*, No. 20030348 (Utah Court of Appeals, 2003).
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IN THE UTAH COURT OF APPEALS

Zions First National Bank

Plaintiff / Appellee

vs

Steven E Hudson and Cloyee J Hudson

Defendants / Appellants

Case No. 20030348

Priority No.2

RESPONSE BRIEF OF APPELLANTS

Appeal on Final Judgment and Decree of Foreclosure by the Third Judicial District Court in and for Salt Lake County, State of Utah. Where on June 19, 2002, Judge Michael K. Burton heard Oral Argument and on March 21, 2003, Judge Joseph T. Fratto signed the Order.

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The Defendants request time for Oral Argument.

FILED
Utah Court of Appeals

OCT 20 2003

Paulette Staggs
Clerk of the Court

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STATEMENT OF JURISDICTION

Following Utah Code Annotated Section 78-2-2 (4), the Utah Supreme Court transferred this matter to the Utah Court of Appeals for disposition. The Appellants Pro-se in this brief, express to the Court issues concerning Federal Lending laws, Banking Laws, Utah Codes, Civil and Constitutional Rights of the Appellants that were violated by the Appellee.

NOTE FOR THE RECORD

When the Appellants were preparing their Brief, Mr. Hudson contacted a clerk of the District Court, who identified herself as Sandra. He asked the procedure to check out the file, in order to complete the Appellants' first Brief. The Clerk told Mr. Hudson that only Attorneys could check files. The Clerk's reason was Non-Attorneys usually don't return files. Mr. Hudson asked if it were possible to get an Index of the file. Which the Clerk did permit.

Beside the fact that discrimination issues occurred, by not allowing the Appellants pro-se to leave the court with the file, the Appellants found it difficult and time consuming to reference the record. They hope the references in their Briefs are as the Indexed Record shows, concerning page numbers.

APPELLANTS' RESPONSE

The Appellee's Counsel seems to be well experienced in twisting the facts to fit the defense, who seems to enjoy verbally attacking the Hudsons in an unscrupulous manner. Displaying a talent of randomly picking through pages of Depositions and composing statements to make it appear original answers to his questions, during his Deposition, are opposite of what was actually said.

Counsel, for the Appellee, has throughout this matter ignored the Court's order. Mr. Jacobson's conduct suggests that Rules and Orders of the Court do not apply to him when the Appellants are Pro-se. In the eyes of the Appellants, he has set a poor example of what the Justice system was meant to represent. The Record clearly proves the comments above and the following allegations of misconduct:

(a) The Court ordered a cut off date for Discovery which was January 31, 2002. (R-119) Mr. Jacobson requested Documents from the Hudsons on January 30, 2002. (R123-124) The Hudsons Requested Documents on January 17, 2002 by personally handing the Request For Production of Documents to Mr. Jacobson. He denied the request and demanded that it be mailed to him. Whereon January 22, 2002, the Hudsons mailed the request. Even after receiving a reminder notice of the Hudson's

Request for Documents, Mr. Jacobson waits until February 26, 2002 (R 125-126) to send a mere response stating the Hudsons must contact the Appellee and make arrangements to review the Documents, twenty-six days after Discovery Proceeding was ordered to be completed.

The Court ordered a cut off date of February 28, 2002, to file Motions (R. 119) This left the Hudsons two days to contact the Appellee, review the documents and file their Motions. Resulting in the Hudsons not having the opportunity to review any Documents they requested. Mr. Jacobson did and he filed his Motion for Summary Judgment on February 28, 2002 (R. 127)

(b) In addition, if Mr. Jacobson had done what he told the Hudsons to do (R.108) he would not have to explain the Ex-Parte communication with Judge Burton. The letter he submitted with the Appellee's Brief as the letter sent to Judge Burton should be in the file. The Judge should have put it there and the Hudsons should have received a copy of the letter. In short, if Mr. Jacobson practiced what he preached and followed the rules, there would be no Ex-Parte violations. Experiencing Mr. Jacobson's past conduct the Hudsons, with obvious reasons, is not convinced the letter to the Judge submitted with the Brief is the letter that was actually sent to the Judge.

(c) As far as the matter of the Ex-Parte communication not being proper before the court. (Appellee Brief Page 15 ¶ 2-3) it was Mr. Jacobson

who waited nine months after the Oral Argument to file the Final Order and send a copy of his Ledger Report to the Hudsons. This was how the Hudsons became aware of the Ex- Parte communication. The nine month wait deliberately stalled matters for the purpose of adding as many fees as possible to the Judgment.

The fact is, unrelated fees to this matter were added to the Judgment. (R. 301 last item on page) Fees for an Attorney writing a letter for the Vice-President of Zions Bank in response to Mrs. Hudson's resignation letter. The Hudsons are not responsible to pay an Attorney to write a response letter for the Vice-President of Zions Bank, when they did not request one. This is further evidence of misconduct adding irrelevant fees.

(d) The Appellee and its Counsel maliciously involved the Office Of Recovery Services and Mr. Hudson's ex-wife Jennifer Hunt nka, Maynard Hudson Rowell Kazzar and who ever else's last name she may now have, as Defendants. The Title Reports were counsels paralegal assisted the search is in error. During the Scheduling Conference, Judge Burton reviewed a Satisfaction Of Judgment, a letter from ORS stating they no longer was representing Jennifer Hunt, a letter form Mr. Hudson's Attorney (R. 88,89) and listened to Mr. Hudson explain how disturbed he was that the Appellee had done this. Judge Burton dismissed both

Defendants finding they had no claim on the property. Even though Judge Burton dismissed ORS and Jennifer Hunt, during the Scheduling Conference, Mr. Jacobson continued contacting ORS and Jennifer Hunt adding over \$1000.00. in fees to the Judgment (R. 302). His intentions for including ORS and Jennifer Hunt was to make Mr. Hudson appear to be a dead beat dad. There was no legal reason to involve them, charge fees and defame Mr. Hudson. Especially using the likes of his ex-wife and informing her of anything concerning Mr. Hudson.

For the record, Mr. Hudson supported two children to the age of eighteen faithfully. After they reached the age of 18 Mr. Hudson found out that he was not their Biological father. Mr. Hudson's efforts, money and his and the Court's time to rid himself of Jennifer ? forever has been wasted by this act of defaming him.

(e) The Appellee did not include Defendant Wells Fargo Bank, who is the Senior Lien Holder of the property. The Deed of Trust belonging to Wells Fargo states anyone attempting Foreclosure on the property must notify Wells Fargo. The Appellee instead claims to be Senior Lien Holder (R. 6 # 18) who now claims to be second Lien Holder. The Record and Title search show nothing in regards to Wells Fargo Bank. The sale of the property did not include the \$26,000.00 that's owed to Wells Fargo Bank

according to their Trust Deed. The Sheriff who conducted the sale was not aware that Wells Fargo had any interest in the property, due to the Appellee failing to inform the Sheriff and notifying Wells Fargo, allowing them the opportunity to protect their interest in the Property. The Hudsons continue to make payments to Wells Fargo honoring that Deed of Trust. The Hudsons see the sale of Zions interest in the property as Zions sold a lawsuit against them to an innocent and only bidder on the property.

(f) Appellee Brief Page 16 ¶ 1. Without official recognition or license to practice as a certified Psychiatrist the mental evaluation of the Appellants by Appellee's Counsel is frivolous, unintelligible and irrelevant to this matter. It's a display that all Pro-se litigants, in the eyes of the Appellee's Counsel, who fight for their Constitutional Rights or in this case try to keep the Appellee from illegally taking their home are mentally impaired. Especially when it becomes necessary to keep an eye on his conduct dealing with Court's Orders, Rulings and Rules of Procedures.

The fact is, if the Appellee's Counsel was honest with the Court, he would have written "I have taken this matter personally. I'm using the financial powers of Zions Bank to destroy the Hudsons. Even though the Hudsons have been violated, my only defense to their Counter Claim is an attack of discrediting them."

(g) (Appellee's Brief Page 2 footnote) In an attempt to further discredit the Appellants. Counsel for the Appellee attacks Mrs. Hudson by implying she is a sort of freeloader by stating she is unemployed. The fact of whether Mrs. Hudson has employment is irrelevant to this matter. What is relevant is, Mrs. Hudson was a dedicated employee for twenty years to Zions Bank. She worked as a Teller, for five years in Kanab, Utah. She moved to Salt Lake continuing employment as Vault and Head Teller, Branch Secretary/Loan Interviewer, Personal Banker/Loan Officer at the same Branch for fourteen years and then as an Accounts Payable Clerk for two years in Appellee's Accounting Department. She is a product of the Appellee who trained her and taught her the procedures. She argues this matter because the Appellee did not follow the procedures they taught her. What other reason would she argue this matter. Furthermore, to seek employment in any of the job titles above she would be subject to a credit check. A Court action filed against her relating to finances is discouraging to most employers. Mrs. Hudson is in fact working. Both Appellants have spent ninety percent of their time for the past three years trying to defend themselves from this unjustifiable action.

The Appellee misleads the Court as to Mrs. Hudson terminating her employment before the commencement of this action. It is this action that

forced her to quit. The record shows, the document that the Appellee claims is a legal Amendment to the HECL was signed December 28, 2000 (R. 24-26). Six months later the Appellee commenced the Judicial Foreclosure on June 4, 2001 (R. 1-9). The Appellants were served with the papers on June 6, 2001. Mrs. Hudson's letter of resignation is dated June 15, 2001, and her last day of work for the Appellee was June 29, 2001 (R. 157 Line 13&14). Mrs. Hudson resigned after Appellee commenced the action not before as Appellee's Counsel has stated, therefore misleading the Courts. Mrs. Hudson felt she was forced to resign. She was no longer happy with working for a company that was trying to steal her home by fraudulent means.

The loan was not reinstated pursuant to the provisions of 57-1-31, Utah Code Annotated (Supp.1981) (R. 107) The agreement of the Trust Deed was changed December 28, 2002, with an Amendment, which the terms were misrepresented. The terms of the Amendment never left Mr. Chambers' office for consideration or approval from his employer Zions Bank, until January 4, 2002 which is after the Amendment was signed. (R-224) The terms the Appellee was unable to fulfill to begin with. Terms that forced Mrs. Hudson to become a Co-Borrower, the interest rate was higher (11%) and the payments were \$200.00 a month more than the original

agreement of the Trust Deed. Counsel for the Appellee has a problem with understanding the wording of 57-1-31 U.C.A (Supp1981) In simple terms it states: If the Hudsons cured the Default, all proceedings shall be dismissed and the obligations (meaning no changes made to the obligation) of the Trust Deed shall be reinstated as if no acceleration occurred.

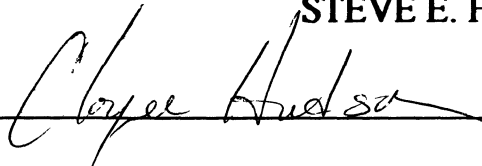
CONCLUSION

1- The Amendment was signed December 28, 2000. The Appellee denied the Hudsons reinstatement of the loan pursuant to 57-1-31 U.C.A Supp(1981). The Hudsons cannot be held responsible for signing an Amendment that was misrepresented and in violation to the Federal Lending Laws which govern the Appellee. According to that law, in order for the Appellee to change the interest rate, add a Co-Borrower and restructure the payments a new loan and agreement must be done. Also a Co-Borrower cannot be forced into becoming a Co-Borrower. If the Co-Borrower agrees the Lender must include their name on the loan. Mrs. Hudson's name does not appear on the loan as a Co-Borrower, and the lender must provide the Co-Borrower with disclosures stating the obligations if the Borrower does not pay. None of these requirements were done. See Code of Federal Regulations Title 12, Chapter 11, Section .227.14 Prohibited Practices with Extensions of Credit

Dated this Day of October 20, 2003

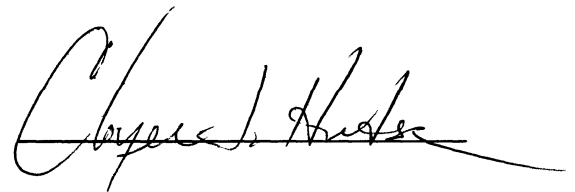


STEVE E. HUDSON



I hereby certify that a true and correct copy of the Appellant Response Brief was sent First Class Mail by the United States Postal Service on October 20, 2003 to the following:

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