

No. 08-0444

IN THE SUPREME COURT OF TEXAS

MYRAD PROPERTIES, INC.

PETITIONER,

v.

LA SALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR THE REGISTERED
HOLDERS OF GMAC COMMERCIAL MORTGAGE SECURITIES, INC., COMMERCIAL
MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 1997-C1, ROBIN GREEN, AND
MELISSA COBB

RESPONDENTS.

BRIEF OF AMICUS CURIAE URGING REVERSAL

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AMICUS CURIAE

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2. Respondents/Appellees/Defendants

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TABLE OF CONTENTS

IDENTITY OF PARTIES AND COUNSEL ii

TABLE OF CONTENTS iv

INDEX OF AUTHORITIES v

INTEREST OF AMICUS CURIAE 1

ARGUMENT 1

CONCLUSION 2

CERTIFICATE OF SERVICE 3

INDEX OF AUTHORITIES

Case Authority

Fenn v. Boxwell, 312 S.W.2d 536, 541(Tex. Civ. App.—Amarillo 1958,
writ ref'd n.r.e.) 1

INTEREST OF AMICUS CURIAE

The undersigned attorney is a practitioner in real estate law, and is general counsel to the Bryan/College Station Regional Association of Realtors and to University Title Company, College Station, Texas. The undersigned and the clients it represents is interested in this matter because of the impact the opinion of the Court of Appeals will have upon the law of conveyances in this state. This brief is filed is urging reversal of the Court of Appeals.

ARGUMENT

Title insurers, realtors, lenders, owners, and purchasers of Texas real property depend on certainty and finality in the law of conveyances, and notice and due process of law if recorded instruments require amendment.

The effect of the Court of Appeals ruling is profound.

Correction instruments have long been acceptable means of curing typographical or scrivener's errors in documents. For instance, correction deeds have been appropriately used to correct a block number, where the grantor owned no property in the block incorrectly named (*Fenn v. Boxwell*, 312 S.W.2d 536, 541 (Tex. Civ. App.—Amarillo 1958, writ ref'd n.r.e.). However, the Court of Appeals ruling dramatically expands the scope of permissible use of a correction instrument.

In this case, the bank (Respondent) had several appropriate remedies to cure the error it alleges it made. It could have sought reformation of the substitute trustee deed, judicial foreclosure of the lien, or initiation of the foreclosure process again. The law should not

permit a correction instrument to be used to unilaterally create a result that more appropriately should be sought through notice and due process of law.

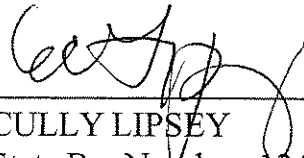
If a person is allowed to unilaterally alter the substance of a document by a correction instrument, reliance could not be placed upon recorded documents by title insurers, good faith purchasers, good faith lenders, and real estate practitioners. Well established Texas law, and the coherent application of that law in real property transactions, requires that the majority opinion of the Court of Appeals be reversed.

CONCLUSION

Amicus curiae urges reversal of the court of appeals.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of December, 2008, I sent a true and correct copy of the foregoing brief of amicus curiae to:

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