



SCHAFFER & BRUSTKERN, LLP

ATTORNEYS AT LAW

3305 NORTHLAND DRIVE, SUITE 301

AUSTIN, TEXAS 78731

Office 512.467.6076 | Fax 512.467.6550

www.sbaustinattorneys.com

Daniel J. Brustkern

dbrustkern@sbaustinattorneys.com

December 15, 2008

Mr. Blake A. Hawthorne, Clerk
The Supreme Court of Texas
201 West 14th Street, Room 104
Austin, Texas 78711

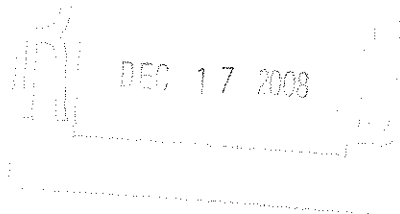
Re: No. 08-0444; *Myrad Properties, Inc. v. LaSalle Bank National Association, et al.*

Dear Mr. Hawthorne:

In accordance with Texas Rule of Appellate Procedure 11, The Homebuilder's Association Greater Austin as *amici curiae*, submits this letter brief in support of the Petition for Review filed by Myrad Properties, Inc. in the above-referenced matter. *Amici* request that this brief be received and forwarded to the Court for its consideration.

Amici is the only organization of builders throughout the greater Austin and central Texas area that is affiliated with the National Association of Home Builders. The member firms construct over ninety percent of the single family detached housing in the five county metropolitan area. *Amici* as a group are a significant part of the central Texas economy and provide numerous jobs directly and indirectly through their development and construction efforts. Like the Petitioner Myrad, many of the members of the Homebuilder's Association Greater Austin, build, develop and sell properties in the usual course of business.

Amici has reviewed the brief filed by the Petitioner in this case. *Amici* adopts herein, without limitation, the argument and authorities put forth in Argument Number 2 in Petitioner Myrad's Brief on the Merits currently on file with the Court.



In the instant case, the Appellate court affirmed the Trial Court's holding that after a foreclosure sale, which both Petitioner and Respondent agree was posted for and verbally announced as one property, a corrective deed could be filed to include an additional property never posted for or advertised for sale at the foreclosure sale. The Appellate Court's ruling in this case poses disastrous consequences for numerous parties involved in the building, development and sale of real property. Purchasers, lenders, title companies, builders, developers and potential home owners are all threatened by the ruling by the Third Court of Appeals in this matter.

After a foreclosure sale, a deed is filed by the trustee for a specific property or properties which were properly posted for and announced for sale at a foreclosure auction. Allowing the trustee or deed holder to file a corrective deed to include additional properties, or all properties in a deed subsequent to a properly held foreclosure sale is patently unjust. The bidders at the foreclosure sale are only bidding on the property announced and posted. If, after the foreclosure sale, additional properties are allowed to be foreclosed upon via a corrective deed, no party having an interest in real estate, particularly builders, developers, investors, lenders, title companies and consumers will be able to rely on either the foreclosure notice or the deeds filed post foreclosure.

All of these parties rely on the accuracy of the instruments filed in the real property records wherein they do business. The ability for a party post filing and sale to change such records threatens the real estate industry as it works and has worked for over one hundred years. Correction deeds have a very limited and specific purpose, none of which is to unilaterally expand the sale or description of real property after an instrument has been filed or posted. There are other valid and existing legal means to correct erroneous foreclosure postings and auctions. In such an instance the trustee merely needs to post the second property for foreclosure, or rescind the transaction and set all the intended properties for foreclosure.

Mr. Blake A. Hawthorne, Clerk
The Supreme Court of Texas
December 15, 2008
Page 3 of 5

Because of the concerns that the current ruling could invalidate or throw into jeopardy the ability for anyone to rely on the filings in the real property records which would jeopardize the real property industry as we know it today, *Amici* urge this Court to grant Myrad Properties, Inc.'s Petition for Review, grant oral argument thereon and ultimately reverse the Appellate Court's decision and render judgment in favor of Myrad.

Respectfully submitted,

Schaeffer & Brustkern.LLP.
Daniel J. Brustkern
State Bar No. 130262400
3305 Northland Drive, Ste. 301
Austin, Texas 78731
(512) 4676076 - Telephone
(512)467-6500 - Telecopier

By:


Daniel J. Brustkern

ATTORNEY FOR AMICI CURIAE
HOME BUILDER ASSOCIATION
GREATER AUSTIN

Mr. Blake A. Hawthorne, Clerk
The Supreme Court of Texas
December 15, 2008
Page 4 of 5

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing document was served on the attorney of record by delivering a true and correct copy via certified mail, return receipt requested on this 15th day of December, 2008 as follows:

Texas Landowners Council
c/o James R. Gaines, President
4425 Mopac South, Building I
Austin, Texas 78735

Mr. Donald R. Taylor
Mr. Miguel S. Rodriguez
Taylor, Dunham and Burgess, LLP
301 Congress Avenue, Suite 1050
Austin, Texas 78701

Mr. Keith M. Aurzada
Powell Goldstein LLP
220 Ross Avenue, Suite 3200
Dallas, Texas 75201

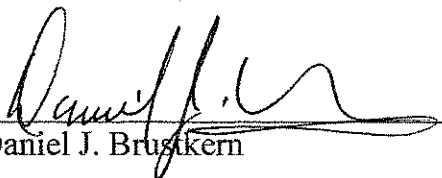
Bryan College Station Regional Association of Realtors
c/o Cully Lipsey
Hoelscher, Lipsey & Elmore, P.C.
1021 University Drive East, Suite 102
College Station, Texas 77840

Hill Country Home Builders Association
c/o Justin MacDonald, President
1444 Sidney Baker Street
Kerrville, TX 78028

Home Builders Association of Greater Austin
c/o Gary Henky, President
8140 Exchange Drive

Mr. Blake A. Hawthorne, Clerk
The Supreme Court of Texas
December 15, 2008
Page 5 of 5

Multifamily Council of Texas Association of Builders
c/o W. Barry Kahn, Chair
Hettig/Kahn Holdings, Inc.
5325 Katy Freeway, Suite One
Houston, TX 77007


Daniel J. Brusker