

President
Celia C. Flowers



Executive Vice President
Leslie Midgley

December 15, 2008

VIA FIRST CLASS MAIL

Blake A. Hawthorne
Clerk of the Supreme Court of Texas
P. O. Box 12248
Austin, Texas 78711

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

Dear Mr. Hawthorne,

Please allow this letter for submission to the Court as amicus curiae in support of the above-referenced Petitioner. We have enclosed for your convenience twelve (12) copies of this letter for distribution to the Justices, and we greatly appreciate your assistance in this matter.

This letter is written on behalf of the Texas Land Title Association ("TLTA"), of which I am acting President. As representative of the Texas title insurance industry, TLTA is gravely concerned with the implications of the Third Court of Appeals' decision and urges this Court to hear the case. The current holding directly conflicts with the public's ability to determine property ownership by relying upon the recorded chain of title.

The integrity of both Texas property law and the Texas title industry are inextricably linked by and dependent upon the following principles: (1) the ability of public records to provide constructive notice regarding a property's chain of title; and (2) the ability of the public to rely upon what is recorded. The Court of Appeals' decision undermines these principles by allowing a mortgagee to file a Correction Substitute Trustee's Deed which includes a parcel that was NOT initially referenced in the Notice of Substitute Trustee's Sale or in the original Substitute Trustee's Deed. The danger in this decision, from the title industry's standpoint, is not the appellate court's decision that the foreclosure sale passed title to the property; but rather, we are concerned that the court effectuated its decision by allowing a Correction Deed, which by nature related back in time to the date of the original Deed.


The Correction Substitute Trustee's Deed, made effective as of the date of the original Deed, included the legal description of a parcel that was *entirely omitted* from the original Deed; thus, this Correction Deed altered ownership of the added parcel in a manner that could not have been anticipated by simply reviewing the recorded documents in the property's chain of title. No member of the public, whether a buyer, lender, or title company, would have been able to rely upon the recorded chain of title during the time between the execution dates of the original Deed and the Correction Deed. Again, our concern is not primarily with the appellate court's legal findings, but rather, we are concerned with how the court allowed these findings to be effectuated. If the appellate court held that the Property Code requisites were met by the foreclosure as to both parcels, then the court could have effectuated this by requiring the mortgagee to conduct additional foreclosure proceedings as to the new parcel; in this way, the recorded chain of title would reflect foreclosure proceedings as of the current date. Instead, the court allowed a correction method which altered title to the property after the fact because no member of the public, from reviewing the recorded documents, would have been placed on notice that ownership of the property could change.

A decision such as this would have a chilling effect upon future transactions of this nature because parties would fear that, even though they are aware of all documents filed at the courthouse, a subsequent correction document may jump backward in time and change ownership. Perhaps allowing a correction method, such as the one described above, that does not relate back in time, would preserve the integrity of constructive notice; alternatively, this Court could decide to limit the legality of the Correction Substitute Trustee's Deed to the facts of this case so as to avoid rampant abuse of correction-deed filings.

The implications of this decision, as written, are damaging both for members of the title industry and for Texas property law in general. We respectfully request that this Court reverse the opinion of the Third Court of Appeal's holding as to the elements of the decision serving to empower a correction-deed to effectuate a substantive change to the ownership of the real property.

We appreciate your attention to this matter.

Sincerely,



Celia C. Flowers
President,
Texas Land Title Association

Enc.

cc: Keith M. Aurzada
POWELL GOLDSTEIN LLP
2200 Ross Avenue, Suite 3200
Dallas, TX 75201