

J. R. COBB AND EUNICE LEE COBB,

Complainants,

VS.

CENTRAL BANK OF BALDWIN,

Respondent.

IN THE

CIRCUIT COURT OF BALDWIN

COUNTY, ALABAMA. IN EQUITY

NO. 2225.

This being the day regularly set for a hearing in the above cause, such order being made on the regular day of the Court, and with the consent and approval of the Solicitors for the respective parties, and the case being regularly called and the complainants not appearing, and having made no effort towards a trial or continuance of the case, it is the opinion of the Court that this cause should be dismissed.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the case of J. R. Cobb and Eunice Lee Cobb, as Complainants, vs. Central Bank of Baldwin, as Respondent, be and the same is hereby dismissed for want of prosecution.

This 19th day of May, 1955.

*Hubert M. Hall*  
JUDGE

in the deed from the said Grantors, said deed omitting a

portion of the description, through error. Your Complainants were placed in possession of the Grantors' homestead of a certain specified tract of land containing 10 acres more or less, upon payment of a portion of the purchase price and other valuable considerations. Your Complainants resided upon this property purchased from said Grantors until on or about, to-wit: the 11th day of February 1946, at which time Your Complainants sold this, their homestead, to Arnold Cobb and Eunice Lee Cobb, his wife, for the sum of Fifteen Hundred Dollars, receiving Seven Hundred Dollars as a payment at the time the deed was executed, and a mortgage Deed with power of sale in the amount of Eight Hundred Dollars was then executed by the said Arnold Rogers and Beatrice Rogers, his wife, as a purchase money mortgage to secure the remainder of the purchase money to be paid.

These papers, the deed and the mortgage back, were prepared by a scrivener for the parties to the transactions, and said deed was drawn to describe the certain specified homestead as follows:

"The South Half of the South Half of the Northwest Quarter of the Northeast Quarter of Section 19, Township 5, South Range 4 East, containing 10 acres, more or less.

SAID MORTGAGE was drawn to describe the certain specified homestead as follows:

"The South Half of the South Half of the Northwest Quarter of Section 19, Township 5, South, Range 4, East, containing 10 acres more or less."

Said deed from Thomas K. Mishon and Mary Mishon, his wife to J.R. Cobb, dated May 8, 1945 was recorded on January 12, 1946 in the office of the Judge of Probate of Baldwin County in the Deed Book NS-102, pages 181 and 182.

Said deed from J.R. Cobb and wife, Eunice Lee Cobb to Arnold Rogers and Beatrice Rogers, his wife, was dated February 11, 1947 and recorded on February 13, 1947 in the office of the Judge of Probate of Baldwin County in Deed Book NS-116 pages 456 and 457. Said Mortgage from Arnold Rogers and Beatrice Rogers, his wife, to J.R. Cobb and wife, Eunice Lee Cobb was

dated March 23, 1946 and recorded May 24, 1946.

The above described deed, being the second such deed executed between said parties, whereby the Plaintiffs in this cause granted said property to Arnold Rogers and Beatrice Rogers, setting forth the correct description, replacing a deed drawn at the time of the drawing of the Mortgage. There is attached hereto copy of original Mortgage Deed. (Original is exhibit "A" in case no. 2030).

That the said Arnold Rogers and Beatrice Rogers also gave a mortgage to the Central Baldwin Bank of Roberts-dale with a proper description of said property.

That a bill is now pending in this Honorable Court to correct the erroneous Mortgage given from the aforesaid Rogers to your petitioners and to foreclose said corrected instrument. That the Central Baldwin Bank had notice of the aforesaid Mortgage by virtue of it's having been recorded in the office of the Probate Judge and had notice of the aforesaid petition.

Your Complainant further prays that upon final hearing of this cause made by this bill of Complaint, this Honorable court will make and enter an order declaring the aforesaid Mortgage to your petitioners as the Senior Mortgage on said property on said lands and allowing your petitioner to assert all rights of a Senior Mortgagee wherein said lands are involved and these Complainants pray for such other further or different relief as in Equity and good conscience they shall be entitled to in good premises.

FILED

2-14

1949

ALICE J. DUCK, Clerk

By:

Solicitor for Complainants

Received in Sheriff's Office  
this 15 day of Feb, 1949  
TAYLOR WILKINS, Sheriff

202226

2-17-1949  
Complainant  
D. D. Ellis, President  
of Central Baldwin Bank  
Taylor Wilkins, Sheriff  
By H. F. Hall, Deputy Sheriff

J.R. Cobb  
Eunice Lee Cobb  
Complainants

VS

Central Bank of Baldwin, a Corp.  
Respondent

Petition for Declaratory Judgment

From the law office of  
C. LeNoir Thompson

FILED

FEB 14 1949

AUBRE J. DUCK, Register

been recorded in the office of the probate judge and has been  
notice of the aforesaid mortgage is given to the probate  
connected instrument. That the Central Baldwin Bank has  
said mortgage to said mortgagee and to foreclose said  
court to correct the error in the mortgage given from the aforesaid  
That a bill in now pending in this Honorable  
also have a mortgage to the Central Baldwin Bank of Mobile  
that the said bank is a mortgagee and Justice Roberts  
Deed. (Original is exhibit A in case no. 2030).  
mortgage. There is attached hereto copy of original mortgage  
relating to said deed of 1948 of the granting of the  
Justice Roberts' setting for the correct description  
in said case. Attached also is a bill to amend the foregoing  
deed executed between said parties, whereby the attorneys  
therefor executed deed, being the second and  
dated March 22, 1948 and recorded at 54, 1948.

BOOK 012 P. 584

J. R. COBB ET AL.  
COMPLAINANTS

VS.

CENTRAL BALDWIN BANK,  
a corporation.  
RESPONDENT

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY

Now comes the Respondent and demurs to the Complainants petition for declaratory judgment, and for grounds thereof, says:

1.

That said petition sets out no facts entitling the Complainants to the relief prayed for.

2.

That said petition sets out no facts warranting a declaratory judgment.

3.

That said petition sets out no facts bringing the matters alleged within the purview of the declaratory judgment statute.

4.

That said petition does not present a justiciable controversy.

5.

That said petition sets out no facts, or controversies that could not be presented to a court having jurisdiction;

6.

That said petition seeks that execution of a right on behalf of the Complainants, rather than to declare the rights of the Complainants.

7.

That the Complainants have a full and adequate remedy in other proceedings.

8.

That there is another suit pending between the parties hereto, in which all issues presented may be determined.

FILED

2-14 1968

ALICE J. DUCK, Clerk

  
Solicitor for Respondent.

2225-

RECORDED

J. R. COBB ET AL

COMPLAINANTS

VS.

CENTRAL BALDWIN BANK,  
a corporation.

RESPONDENT

Filed 3-2-49  
Alice J. Luck  
clerk

J. R. COBB AND EUNICE  
LEE COBB

COMPLAINANTS

VS

CENTRAL BANK OF BALDWIN,  
A CORPORATION,

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA,

IN EQUITY

NO. 2225

RESPONDENTS

Now comes the Central Baldwin Bank, a corporation, and for answer to the Complaint filed in this cause against the Central Bank of Baldwin, a corporation, says:

That the above styled complaint was served upon the Central Baldwin Bank, a corporation, but that the Central Baldwin Bank is not the Central Bank of Baldwin, a corporation. Further that the Central Bank of Baldwin is not a corporation.

Walters & Brantley

BY:

*Walter J. Walters*  
Solicitor for the Central Baldwin  
Bank, a corporation.

Sworn to and subscribed before me this 19 day of May, 1955.

*Louise J. Plummer*  
Notary Public, Baldwin County, Ala.

J. R. COBB AND EUNICE  
LEE COBB

COMPLAINANTS

VS

CENTRAL BANK OF BALDWIN,  
A CORPORATION,

RESPONDENTS

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA,  
IN EQUITY  
NO. 2225

Now comes the Central Baldwin Bank, a corporation, and for answer to the Complaint filed in this cause against the Central Bank of Baldwin, a corporation, says:

1.

That the above styled complaint was served upon the Central Baldwin Bank, a corporation, but that the Central Baldwin Bank is not the Central Bank of Baldwin, a corporation. Further that the Central Bank of Baldwin is not a corporation.

Wilters & Brantley

BY:

*W. J. Wilters*  
Solicitor for the Central Baldwin  
Bank, a corporation.

Sworn to and subscribed before me this 19 day of May, 1955.

*Louise X. Hunsberrus*  
Notary Public, Baldwin County, Ala.

RECORDED

J. R. COBB AND EUNICE  
LEE COBB

COMPLAINANTS

VS

CENTRAL BANK OF BALDWIN,  
A CORPORATION,

RESPONDENT

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA,

IN EQUITY

NO. 2225

Now comes the Respondent, and without waiving their demurrers and Plea of Nul Tiel Corporation heretofore filed in this cause and insisting thereon, files the following answer:

1.

They admit that the Complainants are over the age of twenty-one years and reside at Chickasaw, Alabama. They deny the Central Bank of Baldwin is a corporation with its home office at Robertsdale, Alabama.

2.

The Respondent admits that part of Section 2 of the Complaint which states that J. R. Cobb and wife Eunice Lee Cobb conveyed to Arnold Rogers and Beatrice Rogers, his wife, the South half of the South half of the Northwest quarter of the Northeast quarter of Section 19, Township 5 South, Range 4 East, containing 10 acres, more or less, and that this deed was dated February 11, 1947, and recorded in the office of the Judge of Probate of Baldwin County, Alabama, in Deed Book 116, pages 456-7. Further the Respondent admits that Arnold Rogers and Beatrice Rogers also gave a mortgage to the Central Baldwin Bank of Robertsdale with the same description as above alleged of this property. That the Respondent denies all other allegations contained in Section 2 of the Complaint that they have not specifically admitted and demands strict proof of the same.

3.

For further answer to the Complainants' Complaint the Respondent says that Arnold Rogers and wife Beatrice Rogers gave a mortgage to the Central Baldwin Bank of Robertsdale, Alabama, dated February 12, 1947, and recorded in Mortgage Book 124, page 431 the following described lands situated in Baldwin County, Alabama, to-wit:

South half of South half of Northwest quarter of Northeast quarter of Section 19, Township 5 South, Range 1 East.

4.

And for further answer to the Complaint the Respondent says that they caused a diligent search of the records in the office of the Judge of Probate to ascertain and determine whether there was any existing mortgages, liens or encumbrances against the South half of South half of Northwest quarter of Northeast quarter of Section 19, Township 5 South, Range 1 East, Baldwin County, Alabama, and whether the said Arnold Rogers and Beatrice Rogers had a good and valid authority to mortgage the said lands. That this search was caused to be made by their attorney, the Honorable H. T. Hall.

5.

Further that the Respondents had no actual or constructive notice of any mortgages, liens or encumbrances existing upon the aforesaid lands in favor of J. R. Cobb and Eunice Lee Cobb or any other person, firm or corporation.

Walters & Brantley

BY:

Solicitor for the Central Baldwin Bank, a corporation.

FILED

2-14 1949

ALICE J. DUCK, Clerk

RECORDED

J. R. COBB AND EUNICE  
IRE COBB

COMPLAINANTS

VS

CENTRAL BANK OF BALTIMORE,  
A CORPORATION,

RESPONDENT

FILED  
MAY 19 1955  
CLERK

2025

ANSWER

FILED

MAY 19 1955

ALICE J. DUCK, Clerk

855 pc 710