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NO. 14-111418-A

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

JORDAN PATTERSON AMERICAN LEGION POST #319
(DAN E. TURNER AND PHILLIP L. TURNER)
Plaintiff/Appellants,

CHARLES YUNKER, ADJUTANT, AMERICAN LEGION KANSAS DEPARTMENT
Intervenor/Appellee,

vs.

QUALITY CONTRACTORS, LLC; JERRY PRITCHARD;
JAMES R. ANDERSON; VERDELL BUGG;
CAPITAL TITLE INSURANCE COMPANY, LC; DEANNA M. ZIMMERMAN
15TH STREET INVESTMENTS, LLC; and COMMERCE BANK & TRUST COMPANY
n/k/a COREFIRST BANK & TRUST
Defendants/Appellees.

BRIEF OF APPELLEES

CAPITAL TITLE INSURANCE COMPANY, LC and DEANNA M. ZIMMERMAN

Appeal from the District Court of Shawnee County, Kansas
The Honorable Franklin J. Theis, Judge
District Court Case No. 07 C 919

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DEFENDANTS/APPELLEES

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n/k/a COREFIRST BANK & TRUST
Defendants/Appellees.

NATURE OF THE CASE

Appellants Capital Title Insurance Company, LC (hereinafter "Capital Title") and Deanna M. Zimmerman hereby adopt and incorporate by reference, in its entirety, as if fully set forth herein, Appellants 15th Street Investments, LLC and Commerce Bank & Trust Company n/k/a CoreFirst Bank & Trust's (CoreFirst Bank & Trust) explanation of the nature of the case as articulated in their appellant brief.

STATEMENT OF ISSUES

- I. The Turners Lack Standing To Appeal.**
- II. The Kansas Ultra Vires Statute (K.S.A. 17-6104) Bars Post #319's Claims Against Capital Title Insurance Company, LC and Deanna M. Zimmerman.**

- III. Capital Title Insurance Company, LC and Deanna M. Zimmerman Are Innocent Purchasers Of The Subject Property.**
- IV. The Real Estate Contract Was Valid.**
- V. Commander Anderson Had Authority To Enter Into the Real Estate Contract and Execute The Corporation Warranty Deed.**
- VI. There Are No Material Facts To Suggest Commander Anderson Was Incapacitated During The Time Of Signing The Real Estate Contract Or The Corporation Warranty Deed.**
- VII. There Was Insufficient Material Facts To Support A Finding Of Duress.**
- VIII. The District Court Did Not Rely On The Affidavit Of James R. Anderson In Making Its Decision.**
- IX. The Turners Do Not Have A Valid Attorney's Lien, And Are Not Entitled To Their Attorney's Fees And Expenses.**
- X. The District Court Properly Granted Summary Judgment Against the Plaintiffs In Favor Of Capital Title Insurance Company, LC and Deanna M. Zimmerman**

STATEMENT OF FACTS

Capital Title and Deanna Zimmerman hereby adopt and incorporate by reference, in its entirety, as if fully set forth herein, 15th Street Investments, LLC and CoreFirst Bank & Trust's Statement of Facts as articulated in their appellate brief.

ARGUMENT AND AUTHORITIES

I. The Turners Lack Standing To Appeal.

Capital Title and Deanna Zimmerman hereby adopt and incorporate by reference, in its entirety, as if fully set forth herein, 15th Street Investments, LLC and CoreFirst Bank & Trust's argument and authorities articulated in their appellate brief.

II. The Kansas Ultra Vires Statute (K.S.A. 17-6104) Bars Post #319's Claims Against Capital Title Insurance Company, LC and Deanna M. Zimmerman.

Capital Title and Deanna Zimmerman hereby adopt and incorporate by reference, in its entirety, as if fully set forth herein, 15th Street Investments, LLC and CoreFirst Bank & Trust's argument and authorities articulated in their appellate brief.

III. Capital Title Insurance Company, LC and Deanna M. Zimmerman Are Innocent Purchasers Of The Subject Property.

Capital Title and Deanna Zimmerman hereby adopt and incorporate by reference, in its entirety, as if fully set forth herein, 15th Street Investments, LLC and CoreFirst Bank & Trust's argument and authorities articulated in their appellate brief.

IV. The Real Estate Contract Was Valid.

Capital Title and Deanna Zimmerman hereby adopt and incorporate by reference, in its entirety, as if fully set forth herein, 15th Street Investments, LLC and CoreFirst Bank & Trust's argument and authorities articulated in their appellate brief.

V. Commander Anderson Had Authority To Enter Into the Real Estate Contract and Execute The Corporation Warranty Deed.

Capital Title and Deanna Zimmerman hereby adopt and incorporate by reference, in its entirety, as if fully set forth herein, 15th Street Investments, LLC and CoreFirst Bank & Trust's argument and authorities articulated in their appellate brief.

VI. There Are No Material Facts To Suggest Commander Anderson Was Incapacitated During The Time Of Signing The Real Estate Contract Or The Corporation Warranty Deed.

Capital Title and Deanna Zimmerman hereby adopt and incorporate by reference, in its entirety, as if fully set forth herein, 15th Street Investments, LLC and CoreFirst Bank & Trust's argument and authorities articulated in their appellate brief.

VII. There Was Insufficient Material Facts To Support A Finding Of Duress.

Capital Title and Deanna Zimmerman hereby adopt and incorporate by reference, in its entirety, as if fully set forth herein, 15th Street Investments, LLC and CoreFirst Bank & Trust's argument and authorities articulated in their appellate brief.

VIII. The District Court Did Not Rely On The Affidavit Of James R. Anderson In Making Its Decision.

Capital Title and Deanna Zimmerman hereby adopt and incorporate by reference, in its entirety, as if fully set forth herein, 15th Street Investments, LLC and CoreFirst Bank & Trust's argument and authorities articulated in their appellate brief.

IX. The Turners Do Not Have A Valid Attorney's Lien, And Are Not Entitled To Their Attorney's Fees And Expenses.

Capital Title and Deanna Zimmerman hereby adopt and incorporate by reference, in its entirety, as if fully set forth herein, 15th Street Investments, LLC and CoreFirst Bank & Trust's argument and authorities articulated in their appellate brief.

X. The District Court Properly Granted Summary Judgment Against the Plaintiffs In Favor Of Capital Title Insurance Company, LC and Deanna M. Zimmerman.

Finally, Capital Title and Deanna Zimmerman do not have any further liability in the case. Zimmerman's acts were consistent with those notarial acts that are prescribed in K.S.A. 53-503. K.S.A. 53-503(c) provides:

“In witnessing or attesting a signature, the notarial officer must determine, either from personal knowledge or satisfactory evidence, that the signature is that of the person appearing before the officer and named in the instrument”


Here, there is nothing in the record suggesting James Anderson did not sign the deed that Zimmerman notarized. In fact, all the evidence establishes that James Anderson was the individual who signed the deed which was notarized by Zimmerman. (R. XVI pp. 2215-23; XIII, p. 1570.) The Plaintiffs offer absolutely no testimony or documents to suggest otherwise. Zimmerman's actions were not negligent. On the contrary, her actions were extremely reasonable and appropriate. Kansas law does not place the duty on a notary to investigate and determine whether the person executing the instrument has the authority to execute it on behalf of a corporate entity. The law merely places the burden on Zimmerman to confirm the person executing the instrument is actually that person. In this case, Zimmerman confirmed the person executing the instrument, was actually James R. Anderson. Accordingly, the District Court appropriately granted summary judgment in these appellants favor on the Plaintiff's claims.

CONCLUSION

Based on the uncontroverted facts as discussed more fully in 15th Street Investment, LLC and CoreFirst Bank & Trust's appellate brief, the District Court properly granted summary judgment in favor of Capital Title Insurance Company, LC and Deanna M.

Zimmerman. In addition, the uncontroverted facts establish Capital Title Insurance Company, LC and Deanna M. Zimmerman notary actions were consistent with Kansas law. Accordingly, the District Court's decision should be affirmed.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 2nd day of December, 2014, he served a true and correct copy of the above and foregoing document by:

- United States mail, first class postage prepaid
- Facsimile transmission in accordance with Kansas Supreme Court Rule 119(b)(3) to the fax number listed below
- E-Mail transmission in accordance with Kansas Supreme Court Rule 122(J) to the e-mail address listed below
- Hand delivery

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