

No. 18-119208-A

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

**COREFIRST BANK & TRUST f/k/a
COMMERCE BANK & TRUST,
Plaintiff-Appellee**

v.

**TIMOTHY F. DEGGINGER a/k/a
TIMOTHY DEGGINGER, et al.,
Defendant-Appellant.**

BRIEF OF APPELLEE

**Appeal from District Court of Shawnee County, Kansas
Honorable Larry D. Hendricks
District Court Case No. 15-CV-412**

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I. APPELLEE’S STATEMENT OF ISSUES ON APPEAL.

- A. The district court did not err in granting summary judgment in favor of CoreFirst Bank & Trust on Timothy F. Degginger’s counterclaims, and in denying Timothy F. Degginger’s renewed motion to dismiss, because there was no factual dispute that Timothy F. Degginger was the sole owner of the subject real estate.
- B. The district court did not err in granting summary judgment in favor of CoreFirst Bank & Trust on its foreclosure claim because there was no dispute as to any material fact.
- C. The district court did not abuse its discretion in granting CoreFirst Bank & Trust’s motion for attorney fees under K.S.A. 60-211 and the loan documents.

II. APPELLEE’S STATEMENT OF FACTS.

A. Case Origin

This is a foreclosure case on a residence. On May 6, 2015, CoreFirst Bank & Trust (“CoreFirst”) filed a petition against Timothy F. Degginger (“Degginger”) seeking foreclosure of a real estate mortgage it held on certain real estate located in Shawnee County, Kansas (the “Real Estate”). (ROA, Vol. I, p. 26). Degginger filed his answer on July 1, 2015. Degginger filed essentially a basic answer of admissions and general denials. (ROA, Vol. I, p. 46). The only specific defense mentioned was regarding CoreFirst as a successor-in-interest. (ROA, Vol. I, p. 46). After filing his answer, Degginger served discovery on CoreFirst. (ROA, Vol. I, p. 78).

CoreFirst filed a motion for summary judgment on its claims on August 6, 2015. (ROA, Vol. I, p. 49). Degginger responded to CoreFirst’s motion on October 21, 2015, after obtaining an extension of his time to respond. (ROA, Vol. I, p. 78). Relying on the documents produced by CoreFirst, Degginger’s primary defense was a claim that he was

not the sole owner of the Real Estate subject to the mortgage, despite his signature under oath on the mortgage that he was the 100% owner. (ROA, Vol. I, p.79). Degginger's only evidence to support this position was a 2004 title report in CoreFirst's loan file and notes made by a CoreFirst's employee, which are alluded to in his Statement of Facts. (ROA, Vol. I, pp. 81-83). In his response, Degginger did not assert that he needed to conduct any further discovery.

The parties briefed the issue, including the effect, if any, of the 2004 title report and employee notes, and the district court granted CoreFirst summary judgment on January 15, 2016, finding that the ownership issues raised by Degginger were not dispositive. (ROA, Vol. I, p. 115). The district court entered its Journal Entry of Judgment on February 25, 2016. (ROA, Vol. I, p. 137).

The district court based its decision in part on a determination of descent proceeding filed by Degginger in 1998, in which Degginger and his sister, who subsequently died in 1999, were deemed the 100% owners of the Real Estate as joint tenants with rights of survivorship. (ROA, Vol. I, pp. 120-121). The determination of descent proceedings detailed that Degginger and his sister's interest in the Real Estate was based upon the interest of his grandmother, Elizabeth Degginger, who had transferred the Real Estate to Degginger's parents, Timothy F. Degginger and Mary E. Degginger, by warranty deed on November 4, 1958. (ROA, Vol. I, p. 120).

On March 23, 2016, after judgment had been entered, Degginger filed a motion to dismiss the action claiming he had new evidence. (ROA, Vol. I, p. 160). Specifically, Degginger came forward for the first time with a January 2, 1936 deed, which he claimed

established that he was not the 100% owner of the Real Estate. (ROA, Vol. I, pp. 167-168). Degginger provided no explanation for why the deed was not presented earlier.

The 1936 deed Degginger presented was to his grandparents, Elizabeth and George Degginger, but as tenants in common, not as joint tenants with rights of survivorship. (ROA, Vol. I, pp.167-168). George Degginger died in 1951, and there was no probate case for him. (ROA, Vol. I, p. 168). Elizabeth and George Degginger had three children, two daughters and a son, who was Degginger's father. (ROA, Vol. I, p. 168). Thus, according to Degginger, the 1936 deed, by itself, put into question whether any part of Degginger's grandfather's one-half interest in the Real Estate under the 1936 deed ran through Degginger's aunts and their descendants, and reduced Degginger's ownership interest. (ROA, Vol. I, p. 168).

A hearing was held on March 30, 2016 concerning the motion to dismiss. (ROA, Vol. I, p. 212). The district court denied the motion on the basis that K.S.A. 60-212(h)(3) does not allow a motion to dismiss post-judgment on the grounds alleged by Degginger. (ROA, Vol. I, pp. 212, 215). The district court, however, exercised its equitable powers and directed CoreFirst to take such action as necessary to resolve any potential interest that may have been held in the Real Estate by Degginger's aunts. (ROA, Vol. I, p. 212; Vol. I, p. 215). A journal entry memorializing the district court's ruling was entered April 5, 2016. (ROA, Vol. I, p. 214).

Degginger appealed the district court's decision on April 8, 2016, without seeking certification from the district court. (ROA, Vol. I, p. 219). The appeal was dismissed as premature. (ROA, Vol. I, p. 223). After the mandate of dismissal was entered on August

29, 2016 (ROA, Vol. I, p. 225), CoreFirst moved forward with addressing the post-judgment ownership issues raised by Degginger, as directed by the district court's April 5, 2016 order.

CoreFirst sought to address the post-judgment ownership issue by rescinding its prior judgment and amending its petition to include all the possible heirs that Degginger claimed might have an interest in the Real Estate. (ROA, Vol. I, pp. 227, 230). CoreFirst maintained that Degginger was the 100% owner of the Real Estate based on additional deeds and title documents it had obtained, as detailed below, and based upon title work CoreFirst obtained prior to filing its foreclosure action. (ROA, Vol. I, p. 260, 270-280). However, CoreFirst proposed this procedure in order to conclusively resolve Degginger's claims regarding any potential interests held by Degginger's aunts. (ROA, Vol. I, pp. 264-268). Notably, Degginger contested all of CoreFirst's efforts to address these alleged interests. (ROA, Vol. I, p. 236).

During the pleadings on CoreFirst's two motions, CoreFirst submitted the title work for the Real Estate, showing title vested in Degginger, and deeds from the children of George Degginger transferring their interests to their mother. (ROA, Vol. I, pp. 269-280). Degginger had never submitted these deeds to the district court. The district court held a hearing on October 4, 2016, and granted both of CoreFirst's motions. (ROA, Vol. I, pp. 302-306). Additionally, the district court directed Degginger to produce to CoreFirst the names of all heirs of his grandfather. (ROA, Vol. I, p. 303).

Degginger failed to produce any such names. After CoreFirst determined and located those individuals on its own, it filed its Amended Petition to Foreclose Mortgage

on January 30, 2017 (“Amended Petition”). (ROA, Vol. I, p. 308). Degginger filed his answer to the Amended Petition and counterclaims on February 16, 2017, along with a renewed motion to dismiss. (ROA, Vol. I, pp. 346-360). This current appeal arises from these pleadings related to the Amended Petition and the counterclaims.

B. Motion for Summary Judgment on Degginger’s Counterclaims and Degginger’s Renewed Motion to Dismiss

Degginger alleged in the counterclaims he filed on February 16, 2017 that CoreFirst committed fraud. (ROA, Vol. I, pp. 349-352). Specifically, Degginger claimed that CoreFirst misrepresented facts regarding the title to the Real Estate, which induced him to grant the subject mortgage. (ROA, Vol. I, pp. 349-352). All of Degginger’s allegations of fraud centered on the idea that the 1936 deed prevented Degginger from having 100% ownership in the Real Estate. (ROA, Vol. I, p. 349-352). Additionally, on the same day, Degginger filed a renewed motion to dismiss arguing various defects in CoreFirst’s mortgage based on the same ownership issues. (ROA, Vol. I, p. 354).

On March 13, 2017, CoreFirst filed a Motion to Dismiss Defendant’s Counterclaims or in the Alternative Plaintiff’s Motion for Summary Judgment Against Defendant’s Counterclaims, and also filed a response to Degginger’s renewed motion to dismiss. (ROA, Vol. I, pp. 362-401). CoreFirst sought summary judgment on the grounds that Degginger’s belief about the ownership of the Real Estate was incorrect. (ROA, Vol. I, p. 365). For support, CoreFirst included certified copies of various title documents. (ROA, Vol. I, p. 373-393). Degginger filed a response on April 3, 2017. (ROA, Vol. II, p. 7).

Degginger's Statement of Facts focuses solely on the events and pleadings filed prior to CoreFirst's Amended Petition. Degginger does not state any facts relevant to his counterclaims, or the district court's decisions granting summary judgment in favor of CoreFirst on the counterclaims and denying the motion to dismiss. For clarity, CoreFirst has restated below the uncontroverted facts stated by the district court in its memorandum decision and order on June 14, 2017. (ROA, Vol. II, p. 75). Significantly, all of CoreFirst's facts were uncontroverted by Degginger except for statement four (4), which is why the district court simply restated the allegations in Degginger's counterclaims. (ROA, Vol. II, p. 75).

1. The Plaintiff filed its Amended Petition herein on January 30, 2017.
2. Defendant Degginger filed his Counterclaims on February 16, 2017.
3. The Counterclaims are all found in Paragraph 11 of the Counterclaims.
4. Paragraph 11 of the Counterclaims reads:

11. That the Plaintiff herein at all times pertinent to its action(s) brought against the Separate Defendant is subject to the following cause(s) of action in damages, as hereinafter alleged, as follows:

(a.) The Plaintiff, its agents and assigns created a fraud on the Separate Defendant Tim Degginger by failing to tell him a material fact at the time he signed the disputed Mortgage of December 3, 2004 that he did not have clear title to the property subject to the Mortgage, and similarly in all subsequent transactions devolving from said transaction was told that the Plaintiff did not possess a valid Mortgage to the subject real property (See Defendant's Answer, Paragraph 5.), in that:

(i.) The Plaintiff, its agents and assigns knew that it lacked the required Kansas Unity Rule by failing to include all parties in interest, to-wit: (the lawful Heirs to the Estate of George Degginger) and that the foregoing misrepresentation was a

material fact consequentially subjecting the Defendant to criminal liabilities under the federal banking rules and regulations at all times in effect during Defendant's relationship with the Plaintiff.

- (ii.) That the Plaintiff, its agents and assigns, did knowingly, intentionally and fraudulently secure a false and or materially deficient mortgage document on December 3, 2004, and in its all subsequent transactions with the Defendant, which Defendant is of the belief and which will be a topic subject to discovery that the Plaintiff then factored it contrary to federal banking rules and regulations through the FDIC, Freddie Mac and Fannie Mae.
 - (iii.) That averments contained within (i.) and (ii.) above are true as further set out and contained within the "Affidavit of Timothy Degginger" filed October 21, 2015 in support of the filed "Response of the Defendant to Plaintiffs Motion for Summary Judgment filed on October 21, 2015; Affidavit of Timothy Degginger" dated March 23, 2016 and marked "Exhibit B" in support of the filed "Response of the Defendant to Plaintiffs Motion to Dismiss filed on March 29, 2016; and Affidavit of Timothy Degginger" dated February 16, 2017 and marked "Exhibit A" in support of the filed "Renewed Defendant's Motion to Dismiss filed on February 16, 2017.
 - (iv) That the Plaintiff admits that the property subject to mortgage was a Homestead and based upon the wrongful conduct of the Plaintiff and its agents that the Plaintiff is precluded from seeking attorney's fees by virtue of the lack of clean hands in its attempt to seek the relief of the Court determining that an equitable mortgage exists and which may be foreclosed, the same constituting an abuse of process and malicious prosecution.
- (b.) In pursuit of a fraudulent loan foreclosure the Plaintiff, it's agents and assigns created a fraud upon the Court, and in so doing:
- (i) That it knowingly or negligently misrepresented material facts which induced the Separate Defendant to his detriment into executing financial papers for which criminal liability would attach in violation of federal banking laws and

resultant acts which constitute the crime pursuant to 18 U.S.C. § 1001.

- (ii) That the Plaintiff, its agents, employees and assigns by acknowledging that it did not have a valid mortgage nevertheless continues to pursue its claim that it holds a valid mortgage by bringing others not a party to the transaction between the Separate Defendant and the Plaintiff.
- (iii) That the Plaintiff, its agents, employees and assigns knowingly created a misrepresentation of a material fact on May 6, 2015 that its collateral to the real estate subject to the mortgage was impaired, and notwithstanding same, that it nevertheless made a materially untrue false assertion to the contrary in Plaintiff Bank's filed "Affidavit of David S. Fricke in Support of Plaintiffs Motion for Summary Judgment" at Paragraph 7 on Page 2, to-wit: "At the time of the making, execution, and delivery of the Mortgage, Degginger was the absolute owner of the Real Estate, free and clear of any other encumbrances."; that said statement constitutes as a matter of law a fraud upon the court and for which the Defendant may rightfully defend against without suffering the penalty of payment of Plaintiffs claim of attorney's fees assessed against the Defendant
- (iv.) That pursuant to PIK Civil Fraud- 127.40 the aforesaid facts under the standard of clear and convincing evidence were untrue misrepresentations made or by silence not conveyed to the Defendant pursuant to PIK Civil Fraud Through Silence 127.41 for which the Defendant materially relied upon thereby sustaining his damages in having to defend in the instant mortgage foreclosure in attacking its validity; such acts of the Plaintiff were actionable in that Plaintiff could not have discovered in the exercise of reasonable diligence that he did not have clear title at the time he executed the mortgage or in all subsequent transactions devolving from said transaction; that this misnomer was false or untrue or negligently misrepresented as such without sufficient knowledge concerning them to bind others that may have had an interest to the property for which the title was impaired and that he could not as a matter of law under the Kansas Uniform Commercial Code and the Kansas Mortgage Act create a valid and enforceable mortgage to the subject

real property which was the homestead of the Separate Defendant. Additionally, the Defendant alleges and states that the representation was substantial and that he would not have subjected himself to possible criminal liability pursuant to 18 U.S.C. § 1014.

(v.) That whether or not the claims of the Defendant rise to the level of intentional acts sufficient to trigger Defendant's right to claim punitive damages pursuant to K.S.A. 60-3702; and by reason of such actionable conduct being required to be established by clear and convincing evidence, said Defendant further reserves his right to make such claims of his entitlement to request punitive damages at Trial if sufficient evidence exists upon the conclusion of discovery and at Pretrial Conference to so allege imposition of a punitive damage claim.

5. On January 2, 1936, the Real Estate was deeded to the grandparents of Degginger, George and Elizabeth Degginger, as tenants in common.
6. George and Elizabeth Degginger had three children, Elizabeth C. Strecker, deceased, Anna G. Dacquet, deceased and Timothy F. Degginger (not the defendant), deceased.
7. George Degginger died intestate in 1951.
8. On October 4, 1958, the three children of George and Elizabeth Degginger deeded their interests in the Real Estate to Elizabeth Degginger.
9. On November 4, 1958, Elizabeth Degginger deeded her interest in the Real Estate to her son and daughter in law, which are the Defendant Degginger's parents, Timothy F. Degginger and Mary E. Degginger, as joint tenants with right of survivorship.
10. Degginger's father, Timothy F. Degginger died September 29, 1985, as set forth in the District Court of Shawnee County, Case No. 1985-P-660, *In the Matter of the Estate of Timothy Francis Degginger*, vesting legal title of the Real Estate to Degginger's mother Mary E. Degginger as the survivor of her joint tenancy.
11. Degginger's mother, Mary E. Degginger died November 29, 1992, as set forth in the District Court of Shawnee County, Case No. 1998-P-440, *In the Matter of the Estate of Mary E. Degginger*. In the Decree of Descent filed

therein on May 14, 1998, the Real Estate was awarded to the defendant Timothy F. Degginger and his sister Mary Elizabeth Davis as joint tenants with the right of survivorship.

12. Degginger's sister, Mary Elizabeth Davis died on July 13, 1999 as set forth in the Certificate of Death, recorded December 10, 2004 in Book 4132, Page 658, vesting legal title of the Real Estate to Degginger.

(ROA, Vol. II, pp. 76-79).

The district court ruled that CoreFirst's motion must be treated as one for summary judgment, given that the district court decided to consider the title documents related to the Real Estate, which were outside the pleadings in the case. (ROA, Vol. II, p. 80). The district court also found that it was appropriate to move forward with summary judgment as "all parties have been given a sufficient opportunity to present evidence and brief any issues related to the claims, as there has been an extended discovery period." (ROA, Vol. II, p. 81).

The district court granted CoreFirst's motion for summary judgment as to the counterclaims based upon the evidence submitted by CoreFirst that established the chain of title to the Real Estate. (ROA, Vol. II, pp. 81-83). The district court found that when the mortgage was executed on December 3, 2004, Degginger alone held title to the Real Estate, and consequently, that Degginger had failed to establish that CoreFirst had made any untrue statement regarding Degginger's ownership. (ROA, Vol. II, p. 85). The district court entered its decision on June 14, 2017 detailing its finding of fact and ruling. (ROA, Vol. II, p. 75). Additionally, on the same day, the district court entered an order denying Degginger's renewed motion to dismiss on the same grounds. (ROA, Vol. II, p. 88).

After the district court's decisions, Degginger filed a motion for reconsideration. (ROA, Vol. II, p. 92). On August 23, 2017, the district court denied this motion. (ROA, Vol. II, p. 103). On September 12, 2017, Degginger filed his second notice of appeal, without seeking leave from the district court, and despite the fact that a motion for summary judgment on CoreFirst's Amended Petition had been filed and was still pending. (ROA, Vol. II, p. 105). The appeal was dismissed as premature, given this pending motion, and the mandate was returned on December 18, 2017. (ROA, Vol. II, p. 108).

C. Motion for Summary Judgment on CoreFirst's Foreclosure Claim

On April 27, 2017, CoreFirst also moved for summary judgment on the foreclosure claim asserted in its Amended Petition. (ROA, Vol. II, p. 14). The deadline for Degginger to respond was May 18, 2017; however, Degginger never responded. As mentioned above, from September 12, 2017 to December 18, 2017, the case was under appellate jurisdiction because of the second premature appeal filed by Degginger. (ROA, Vol. II, p. 105, 108). After the mandate was returned, Degginger still failed to file a response to CoreFirst's pending motion for summary judgment.

On January 26, 2018, the district court entered its memorandum decision and order granting CoreFirst's motion for summary judgment on its foreclosure claim. (ROA, Vol. II, p. 110). Citing to Kan. Sup. Ct. R. 141(f)(2), the district court deemed the motion finally submitted because Degginger failed to timely comply with subsection 141(b). (ROA, Vol. II, p. 111). The district court deemed CoreFirst's uncontroverted factual contentions stated in its supporting memorandum admitted. (ROA, Vol. II, p. 112). The

district court incorporated the uncontroverted statement of facts and legal arguments set forth by CoreFirst in its motion; specifically, finding as follows:

1. CoreFirst filed its Amended Petition to Foreclose Mortgage (“Petition”) on January 30, 2017.
2. Degginger filed his “Answer of the Separate Defendant Timothy F. Degginger and the Separate Defendant’s Counterclaim(s) Against the Plaintiff CoreFirst Bank & Trust” (“Answer to Amended Petition”) on February 16, 2017.
3. Defendants Mary Strecker, Ann C. Strecker, Gemma White, George Strecker, Roberta Ann Keen, Gloria T. Lynn, Patricia G. McCall, and Georgia N. Taylor (the “Disclaiming Defendants”) each filed an Answer of Disclaimer herein on February 13, 2017.
4. Defendants John Doe (Real Name Unknown; Tenant/Occupant) and Jane Doe (Real Name Unknown; Tenant/Occupant) were properly served with the Amended Petition on March 20, 2017. John Doe and Jane Doe have not answered or otherwise responded to the Amended Petition. John Doe and Jane Doe are consequently in default.
5. The unknown heirs, executors, administrators, devisees, trustees, creditors, and assigns of all defendants alleged to be deceased; any unknown spouse of any of the defendants; any unknown guardians, conservators and trustees of any of the defendants that is a minor or is under any legal disability (the “Unknown Defendants”) were properly served by publication notice in accordance with K.S.A. § 60-307.
6. On February 18, 2011, for value received and in consideration of a loan made by CoreFirst in the amount of \$41,406.29, plus interest, Degginger, made, executed, and delivered to CoreFirst a promissory note, in writing (the “Note”).
7. Payment of the Note is secured by a commercial real estate mortgage in favor of CoreFirst, whereby Degginger executed a commercial real estate mortgage dated December 3, 2004, to CoreFirst in the amount of \$50,000.00, which was subsequently recorded with the Register of Deeds of Shawnee County, Kansas on December 10, 2004, in Book 4132 and Page 910 (the “Mortgage”).
8. By executing the Mortgage, Degginger has currently mortgaged and

warranted to CoreFirst all of the following-described real estate located in Shawnee County, Kansas, to wit:

LOTS 33 AND 35, CLAY STREET, HARVEY'S SUBDIVISION
IN THE CITY OF TOPEKA, SHAWNEE COUNTY, KANSAS,

commonly referred to as 135 SW Clay Street, Topeka, Kansas 66606 (the "Real Estate"), including a assignment of leases and rents.

9. At the time of the making, execution, and delivery of the Mortgage, Degginger was the absolute owner of the Real Estate, free and clear of any other encumbrances. At the time the Mortgage was filed in the office of the Register of Deeds of Shawnee County, all recording and registration fees were paid in full, and said filing was prior to the acquisition by any person herein of any right, title, interest, estate, equity, or lien in and to the Real Estate.
10. By the terms and provisions of the Note and Mortgage, Degginger promised and agreed to pay the Note as set forth in the Note, and in the event of default of any of the terms thereof, Degginger agreed that the Mortgage, including the assignment of leases and rents provision, could be foreclosed.
11. Degginger also agreed to pay all taxes and assessments levied against the Real Estate, to pay insurance premiums, and to pay CoreFirst's costs and expenses in connection with the Note and Mortgage, including but not limited to court costs and attorneys' fees.
12. Payments have not been made as required and the Note and Mortgage are in default.
13. As of March 31, 2017, \$74,482.03 was due and owing under the Note and Mortgage, itemized as follows:

Principal:	\$33,306.30
Interest:	\$14,155.16
Late Fees:	\$705.94
Attorneys' Fees:	\$24,881.25
<u>Costs and Expenses:</u>	<u>\$1,433.38</u>
Total:	\$74,482.03;

plus accruing interest and attorneys' fees and costs incurred by CoreFirst after March 31, 2017.

14. CoreFirst is the holder of the Note and Mortgage.
15. At the time of Degginger's default on the Note and Mortgage, less than 1/3 of the original indebtedness secured by the Mortgage had been paid.
16. On September 4, 2007, Commerce Bank and Trust changed its name to CoreFirst Bank & Trust.
17. On January 2, 1936, the Real Estate was deeded to the grandparents of Degginger, George and Elizabeth Degginger, as tenants in common.
18. George and Elizabeth Degginger had three children, Elizabeth C. Strecker, deceased, Anna G. Dacquet, deceased, and Timothy F. Degginger, deceased.
19. George Degginger died intestate in 1951.
20. On October 4, 1958, the three children of George and Elizabeth Degginger, with their spouses, deeded their interests in the Real Estate to their mother, Elizabeth Degginger.
21. On November 4, 1958, Elizabeth Degginger deeded her interest in the Real Estate to her son and daughter-in-law, which are the defendant Degginger's parents, Timothy F. Degginger and Mary E. Degginger, as joint tenants with right of survivorship.
22. Degginger's father, Timothy F. Degginger, died September 29, 1985, as set forth in the District Court of Shawnee County, Case No. 1985-P-660, *In the Matter of the Estate of Timothy Francis Degginger*, vesting legal title of all the Real Estate to Degginger's mother Mary E. Degginger as the survivor of her joint tenancy.
23. Degginger's mother, Mary E. Degginger, died November 29, 1992, as set forth in the District Court of Shawnee County, Case No. 1998-P-440, *In the Matter of the Estate of Mary E. Degginger*. In the Decree of Descent filed therein on May 14, 1998, the Real Estate was awarded to the defendant Timothy F. Degginger and his sister Mary Elizabeth Davis as joint tenants with the right of survivorship.
24. Degginger's sister, Mary Elizabeth Davis died on July 13, 1999 as set forth in the Certificate of Death, recorded December 10, 2004 in Book 4132, Page 658, vesting all legal title of the Real Estate to Degginger.

(ROA, Vol. II, pp. 112-115).

Following the entry of judgment, Degginger filed a “Motion for New Trial; in the Alternative, Motion to Alter or Amend Judgment; or Grant Defendant’s Renewed Motion to Dismiss” on February 9, 2018. (ROA, Vol. II, p. 118). CoreFirst responded to Degginger’s motion on February 23, 2018. (ROA, Vol. II, p. 152). The district court denied the motion and adopted CoreFirst’s facts, argument and authorities as stated in CoreFirst’s response. (ROA, Vol. II, p. 169).

D. Motion for Allowance of Attorney Fees Under K.S.A. 60-211 and Loan Documents

On February 9, 2018, CoreFirst filed a motion seeking attorney fees under K.S.A. 60-211 and as allowed under the subject loan documents. (ROA, Vol. II, p. 127). CoreFirst asserted that Degginger and his attorney had engaged in a course of conduct throughout the litigation of this foreclosure case that demonstrated a pattern of harassment, and which caused unnecessary delay and needlessly increased the costs of litigation. (ROA, Vol. II, p. 133-135). CoreFirst argued that this behavior warranted sanctions under K.S.A. 60-211, and specifically outlined in the motion the following actions by Degginger and his attorney:

1. Degginger did not come forward with the 1936 deed until two months after the entry of the district court’s original memorandum decision on the ownership issue and one after the journal entry of foreclosure. Degginger has never offered any explanation for this delay.
2. When the district court denied his motion to dismiss in March of 2016, and directed CoreFirst to determine how to resolve any potential interest stemming from Degginger’s aunts, Degginger filed his first premature

appeal. This appeal removed the case from the district court's jurisdiction for the several months it took to have the appeal dismissed.

3. When the case was returned to the district court in August of 2016, Degginger:
 - a. Continued on his course of action even after CoreFirst came forth with the 1958 deeds that showed his aunts and his father had deeded their interest to his grandmother.
 - b. Degginger objected and fought the actions of CoreFirst to add the descendants of Degginger's aunts to allow them the opportunity to assert any potential interest in the real estate.
 - c. Degginger did not supply the information he was required to provide under the district court's October 20, 2016 order on CoreFirst's motion to amend. CoreFirst was required to find the information on its own, resulting in further delay and expense.
4. After all the known living descendants filed disclaimers, and after the date to answer under service by publication passed, Degginger continued to fight this action.
5. Degginger failed to respond to CoreFirst's motion for summary judgment.
6. Degginger's motion to reconsider simply delayed this matter.
7. Degginger's second premature appeal delayed this matter.

(ROA, Vol. II, pp. 134-135).

Degginger responded to CoreFirst's motion on February 16, 2018, and CoreFirst filed its reply in support of the motion on March 2, 2018. (ROA, Vol. II, p. 144, p. 162). The district court then held an evidentiary hearing on the motion on March 15, 2018. At this hearing, the district court heard testimony from Degginger, and received and reviewed billing statements from CoreFirst's counsel in support of the attorneys' fees requested. (ROA, Vol. V, pp. 1-54).

At the hearing, the district court found a gross lack of reasonable discovery or investigation by Degginger, and that Degginger engaged in a strategy to delay the district court's determination. (ROA, Vol. V, p. 47). The district court noted that Degginger presented the 1936 deed to the district court, but failed to come forward with the subsequent deeds and failed to address the determination of descent proceedings he went through, which would have shown him any title issues with the Real Estate. (ROA, Vol. V, p. 44). Finally, the district court acknowledged that the billing statements of CoreFirst's counsel had been reviewed, and found that the fees requested were reasonable. (ROA, Vol. V, pp. 49-50). The Court granted CoreFirst's fees and costs in the amount of \$16,917.77 from March 18, 2016 to January 26, 2018 pursuant to K.S.A. 60-211, and acknowledged that fees prior to March 18, 2016 had already been granted under the terms of the subject loan documents. (ROA, Vol. IV, p. 50). An order memorializing the district court's decision was entered on March 27, 2018. (ROA, Vol. II, p. 182).

III. ARGUMENTS AND AUTHORITIES.

On appeal, Degginger raises issues regarding the district court's decisions granting CoreFirst summary judgment on its Amended Petition and Degginger's counterclaim, denying Degginger's motion to dismiss, and granting CoreFirst's motion for attorney fees. Degginger also mentions a number of extraneous matters that fall outside the scope of the issues raised on appeal. This includes references to several pleadings and decisions by the district court prior to the filing of CoreFirst's Amended Petition. These allegations are irrelevant to the current action, unsupported, and not fully briefed. Consequently, these

extraneous issues mentioned by Degginger should be considered waived and abandoned. *Superior Boiler Works, Inc. v. Kimball*, 292 Kan. 885, 889, 259 P.3d 676 (2011); *Manhattan Ice & Cold Storage v. City of Manhattan*, 294 Kan. 60, 71, 274 P.3d 609 (2012). Looking at the issues properly briefed by Degginger, this brief will demonstrate that the district court did not err when denying Degginger's renewed motion to dismiss, granting summary judgment in CoreFirst's favor, or granting CoreFirst's motion for attorney fees.

A. The district court did not err in granting summary judgment in favor of CoreFirst on Degginger's counterclaims, and in denying Degginger's renewed motion to dismiss, because there was no factual dispute that Degginger was the sole owner of the Real Estate.

1. Standard of Appellate Review.

Summary judgment is appropriate when the record shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. *Thomas v. Cnty. Comm'rs of Shawnee Cnty.*, 293 Kan. 208, 220, 262 P.3d 336, 345 (2011). Courts resolve all facts and inferences which may reasonably be drawn from the evidence in favor of the party against whom the ruling is sought. *Id.* at 220, 262 P.3d at 345. When opposing a motion for summary judgment, the non-moving party must come forward with sufficient evidence to establish a genuine dispute as to a material fact. *Id.* at 220, 262 P.3d at 345. It follows then that, in order to prevent summary judgment, a disputed fact must be material to the conclusive issues in the case. *Id.* at 220, 262 P.3d at 345. If reasonable minds could differ as to the conclusions to be drawn from the evidence, summary judgment is not appropriate. *Id.* at 220, 262 P.3d at 345. An issue of

fact is not genuine unless it is material to the controlling issues in the case. *Osterhaus v. Toth*, 291 Kan. 759, 768, 249 P.3d 888, 896 (2011). Thus, a disputed question of fact that is immaterial to the controlling issues does not preclude summary judgment. *Bergstrom v. Noah*, 266 Kan. 847, 872, 974 P.2d 531, 552 (1999). That is, if a disputed fact has no effect on the judgment regardless of its resolution, the dispute does not present a genuine issue of material fact. *Id.* at 872, 974 P.2d at 552. On appeal, the Court applies “the same rules and where [it] find[s] reasonable minds could differ as to the conclusions drawn from the evidence, summary judgment must be denied.” *Steckschulte v. Jennings*, 297 Kan. 2, 14, 298 P.3d 1083, 1093 (2013).

2. Analysis.

All of Degginger’s claims and defenses in this matter stem from the notion that he is not the 100% owner of the Real Estate. From this belief, Degginger filed counterclaims asserting that CoreFirst committed fraud by failing to tell him that he did not have clear title to the Real Estate when he executed the mortgage. (ROA, Vol. I, p. 346). Further, based on the same theory, Degginger also filed a renewed motion to dismiss the Amended Petition. (ROA, Vol. I, p. 354). In this motion he attacked the validity of the underlying mortgage based on the premises that the heirs of George Degginger held an ownership interest in the Real Estate and did not sign the mortgage. (ROA, Vol. I, p. 355). Additionally, he claimed CoreFirst was attempting a disguised quiet title action by now including the heirs of George Degginger as defendants. (ROA, Vol. I, p. 355).

CoreFirst has maintained throughout the litigation that Degginger was the sole owner of the Real Estate. Consequently, CoreFirst filed a motion to dismiss, or in the

alternative for summary judgment, regarding the counterclaims, and contested Degginger's motion to dismiss. (ROA, Vol. I, p. 362; Vol. I, p. 394). On both issues, CoreFirst argued that Degginger's belief about the interests of the heirs of George Degginger was incorrect, and therefore his arguments failed.

In support of its motion for summary judgment, CoreFirst set forth twelve (12) statements of uncontroverted facts. (ROA, Vol. I, pp. 365-367). The majority of these facts addressed the ownership of the Real Estate, and referenced certified copies of various title documents to establish the chain of title for the Real Estate. In response, as the district court found, Degginger controverted only one statement of fact, which alleged that, "The Counterclaims allege that they are fraud claims, and are based on the allegation that the lawful heirs of the estate of George Degginger have an interest in the Real Estate." (ROA, Vol. II, p. 75). Degginger did not controvert any fact regarding the chain of title, or dispute the validity of any document included by CoreFirst. (ROA, Vol. II, pp. 7, 75).

Based on the uncontroverted facts, the district court found that Degginger was the sole owner of the Real Estate at all relevant times. (ROA, Vol. II, pp. 82-83). The evidence brought forward by CoreFirst demonstrated that on October 4, 1958, several years after the death of George Degginger, all the children of George Degginger deeded all of their interests to their mother, Elizabeth Degginger, in a series of quitclaim deeds. (ROA, Vol. II, pp. 79, 82). Elizabeth Degginger then transferred all of her interest in the Real Estate to her son and daughter-in-law, Timothy F. Degginger and Mary E. Degginger, the parents of defendant Degginger, as joint tenants with rights of survivorship. (ROA, Vol. II, p. 79). When Timothy F. Degginger later died, Mary E. Degginger became the sole owner of the

Real Estate. (ROA, Vol. II, p. 79). Mary E. Degginger then died on November 29, 1992, and determination of descent proceedings were initiated in 1998 to address her interest in the Real Estate. (ROA, Vol. II, p. 79). Notably, defendant Degginger initiated and participated in the determination of descent. (ROA, Vol. I, pp. 109-113). Pursuant to the Decree of Descent entered on May 14, 1998, Degginger and his sister, Mary Elizabeth Davis, were awarded the Real Estate as joint tenants with rights of survivorship (ROA, Vol. II, p. 79). When Degginger's sister died on July 13, 1999, Degginger became the sole owner of the Real Estate (ROA, Vol. II, p. 79).

Based on this undisputed chain of title, the district court found that Degginger could not prevail on his counterclaims (ROA, Vol. II, pp. 81-83). Degginger alleged that CoreFirst committed fraud by failing to tell him that he did not have title to the Real Estate; however, as the district court noted, if a statement is not false, a claim of fraud cannot lie (ROA, Vol. II, pp. 81-82); *See Kelly v. VinZant*, 287 Kan. 509, 515, 197 P.3d 803 (2008). The facts here, which Degginger did not controvert, established the chain of title for the Real Estate, and that Degginger was, at all relevant times, the sole owner of the Real Estate (ROA, Vol. II, pp. 81-83). Consequently, CoreFirst could not have engaged in any fraudulent behavior or made any untrue statement regarding the ownership of the Real Estate.

Using the alleged ownership issues, Degginger attempted in both his pleadings to characterize this case as a dispute about a deficient mortgage. The district court rejected these arguments in both orders entered on June 14, 2017, incorporating CoreFirst's legal authorities and arguments, and specifically addressing some of Degginger's other

arguments (ROA, Vol. II, pp. 83-85; Vol. II, p. 88).

Degginger raised unity of interest arguments, which he continues on appeal, to suggest that all owners of property must sign a mortgage or the mortgage will be void (ROA, Vol. I, p. 363). As acknowledged by the district court this rule applies to a grant transferring property in joint tenancy. (ROA, Vol. II, 83-84). The district court found the rule satisfied when George Degginger's only known children transferred all their interests to Elizabeth Degginger (ROA, Vol. II., p. 84).

Despite Degginger's suggestions, Kansas law does not require that all owners sign a mortgage in order for the mortgage to be effective. *See Fed. Land Bank of Wichita v. Shane*, 150 Kan. 175, 92 P.2d 103, 108 (1939). The unities of interests apply to a grant transferring property in joint tenancy, and have no bearing on whether a partial owner can mortgage that owner's partial interest. *See In re Estate of Lasater*, 30 Kan. App. 2d 1024, 54 P.3d 514 (2002). By executing the mortgage, Degginger pledged whatever interest he held in the Real Estate, and CoreFirst could foreclose on that interest, even if Degginger turned out not to be the sole owner.

Overall, as the referenced pleadings demonstrate, the only issue throughout this litigation has been the scope of CoreFirst's mortgage. Degginger did not, and does not now on appeal, dispute that he signed the subject note and mortgage. Degginger only raises a question regarding the extent of his ownership interest. CoreFirst is not trying to enforce a faulty mortgage, or improperly complete a quiet title action, as alleged by Degginger.

After Degginger raised this ownership issue, CoreFirst was simply trying to

determine the interest covered by its mortgage, and ensure that any parties with a known possible interest in the Real Estate were included in the lawsuit, as is typical for a foreclosure action. Degginger was the one who came forward with the claim that the descendants of his aunts were potential interest holders, based on the 1936 deed. Therefore, CoreFirst needed to add them to the Amended Petition. The fact that Degginger did not identify these individuals, as he was directed to do by the district court, and the fact that every one of them disclaimed an interest, does not take away the reason why they were added to the Amended Petition.

In his brief, Degginger now focuses on the fact that there was no probate for his grandfather, George Degginger. Obviously, the time for administering an estate or probating a will has long passed. However, the time for conducting a determination of descent has not, and Degginger took such action in 1994. Granted, while the 1936 deed, by itself, would make the 1994 determination of descent problematic, which was the district court's concern in March of 2016, the 1958 deeds of George Degginger's children to Elizabeth Degginger resolved that issue. As discussed above, Degginger never submitted the 1958 deeds, simply the 1936 deed.

Degginger has come forward with no evidence to dispute the district court's finding that he is the sole owner of the Real Estate. Degginger continues to point only to the 1936 deed, ignoring the subsequent deeds and determination of descent proceedings. As the district court found, the uncontroverted facts showed that when the mortgage was executed Degginger was the sole owner of the Real Estate. For this reason, Degginger's counterclaims and his motion to dismiss were denied. On appeal, Degginger brings forward

no facts or arguments that dispute the district court's rulings.

Finally, Degginger makes various statements about equity and the need for a day in court. However, these arguments ignore his actions in the beginning of the case. Degginger clearly got the opportunity to conduct discovery – it is the means by which he raised the ownership issue when he responded to CoreFirst's original motion for summary judgment. (ROA, Vol. I, p. 78). Once Degginger had the documents produced by CoreFirst, he could have asked for more time to respond to summary judgment and for additional time to conduct specific discovery on the issue. He did neither. Instead, he waited over two months after the district court entered its judgment against him, before he came forward with the 1936 deed. To date, Degginger has ever explained the delay. Consequently, there is no reason why the application of K.S.A. 60-256 and Kan. Sup. Ct. R. 141 is inequitable in this situation. The district court's decision should be affirmed.

B. The district court did not err in granting summary judgment in favor of CoreFirst on its foreclosure claim because there was no dispute as to any material fact.

1. Standard of Appellate Review.

CoreFirst incorporates the standard stated in III. A. 1. above.

2. Analysis.

Under K.S.A. 60-256 and Kan. Sup. Ct. R. 141, a party opposing a motion for summary judgment has an affirmative duty to come forward with sufficient evidence, in the form of affidavits or citations to the record, to establish the existence of a genuine dispute of material fact for trial, or to otherwise show by affidavit why the party is unable to obtain such affidavits or present such evidence. *See* K.S.A. 60-256(e)(2); 60-256(f);

Thomas v. Cnty. Comm'rs of Shawnee Cnty., 293 Kan. 208, 220, 262 P.3d 336 (2011); *Miller v. Sirloin Stockade*, 224 Kan. 32, 36, 578 P.2d 247 (1978). If the non-moving party fails to fulfill this duty, the motion for summary judgment which shows by affidavit or other proper citation to the record that there is no factual dispute and that judgment is appropriate as a matter of law should be granted and judgment entered. *Miller*, 224 Kan. at 36; Kan. Sup. Ct. R. 141(f).

CoreFirst filed its motion for summary judgment on April 27, 2017 (ROA, Vol. II, p. 14). CoreFirst set out 24 statements of uncontroverted fact in its memorandum in support of summary judgment (ROA, Vol. II, pp. 18-22). Each statement was supported by evidence in the form of an affidavit from CoreFirst's Executive Vice President and General Counsel, David S. Fricke, or certified copies of the documents referenced (ROA, Vol. II, pp. 18-22). The uncontroverted facts were further supported by loan documents attached to Mr. Fricke's affidavit. (ROA Vol. II, pp. 35-42).

Degginger's response was due on May 19, 2017; however, he failed to file any response. During this time, Degginger continued to litigate issues regarding his counterclaims and renewed motion to dismiss, including a premature appeal of the district court's ruling on the same (ROA, Vol. II, p. 105). CoreFirst repeatedly referenced the pending motion for summary judgment on its foreclosure claim, and Degginger's appeal was ultimately dismissed because of this pending motion (ROA, Vol. II, p. 108). Still, Degginger filed no response after the mandate was returned on December 18, 2017.

On January 26, 2018, the district court proceeded under Kan. Sup. Ct. R. 141(f) (ROA, Vol. II, p. 111). Degginger had been given ample time to respond to the motion

for summary judgment, but failed to do so. Consequently, the district court found CoreFirst complied with Kan. Sup. Ct. R. 141(a), and deemed CoreFirst's uncontroverted facts admitted (ROA, Vol. II, pp. 111-112). Based on these facts, the district court granted judgment in CoreFirst's favor on its foreclosure claim (ROA, Vol. II, pp 111-118).

Following the entry of judgment, Degginger filed a "Motion for New Trial; in the Alternative, Motion to Alter or Amend Judgment; or Grant Defendant's Renewed Motion to Dismiss" on February 9, 2018 (ROA, Vol. II, p. 118). In this motion, Degginger sought relief from the judgment, citing to K.S.A. 60-259(a) and K.S.A. 60-260(b)(6) (ROA, Vol. II, p. 118). Degginger raised many of the same arguments made in his renewed motion to dismiss and in response to CoreFirst's motion for summary judgment on the counterclaims. Degginger did not address why a response to CoreFirst's motion for summary judgment was never filed.

CoreFirst responded to Degginger's motion for a new trial on February 23, 2018. (ROA, Vol. II, p. 152). The district court denied the motion and adopted CoreFirst's facts, argument and authorities, and stated that Degginger "has failed to provide any of the grounds outlined in K.S.A. 60-260" and found that "K.S.A. 60-259 is not appropriate and if appropriate the defendant has failed to provide any of the grounds outlined in that statute." (ROA, Vol. II, p. 169).

On appeal, Degginger does not cite to any evidence ignored by the district court, does not come forward with any applicable authority to show that the district court incorrectly ruled, and does not give any explanation for why he failed to respond to

CoreFirst's motion.

Throughout this litigation, the only defense raised by Degginger is the allegation that he is not the 100% owner of the Real Estate. For the reasons set forth above, there is no merit to this allegation. Degginger has been unable to come forward with a viable defense to CoreFirst's foreclosure claim, and on appeal, he simply continues the same arguments regarding ownership, which were addressed and rightfully rejected by the district court. As detailed above, the district court properly addressed these arguments. Degginger has provided no reason for why the application of K.S.A. 60-256 and Kan. Sup. Ct. R. 141 is inequitable. The district court's ruling granting CoreFirst summary judgment on its foreclosure claim should be upheld.

C. The district court did not abuse its discretion in granting CoreFirst's motion for attorney fees under K.S.A. 60-211 and the loan documents.

1. Standard of Appellate Review.

Kansas appellate courts review a district court's decision to impose sanctions under K.S.A. 60-211(c) using an abuse of discretion standard. Judicial discretion is abused "when judicial action is arbitrary, fanciful, or unreasonable. If reasonable persons could differ as to the propriety of the action taken by the trial court, then it cannot be said that the trial court abused its discretion." *In re Marriage of Bergmann*, 49 Kan. App. 2d 45, 49, 305 P.3d 664 (2013) (quoting *Thornburg v. Schweitzer*, 44 Kan. App. 2d 611, 625, 240 P.3d 969 [2010]). However, judicial action premised on an error of law is, by definition, an abuse of discretion, and interpretation of a statute is a question of law subject to unlimited review. *In re Marriage of Shelhamer*, 50 Kan. App. 2d 152, 155,

323 P.3d 184 (2014) (citing *Northern Natural Gas Co. v. ONEOK Field Services Co.*, 296 Kan. 906, 935, 296 P.3d 1106 [2013]); *State v. Johnson*, 297 Kan. 210, 215, 301 P.3d 287 (2013) (citing *State v. White*, 279 Kan. 326, 332, 109 P.3d 1199 [2005]). Thus, while the interpretation of a statute is reviewed *de novo*, the district court's decision to impose sanctions is still reviewed under an abuse of discretion standard.

2. Analysis.

A party violates K.S.A. 60-211(b) when a pleading or motion: (1) is filed for an improper purpose, as to harass an opposing party or to unnecessarily delay or increase the expense of litigation; (2) contains claims unwarranted in existing law or by a good-faith argument for a change or extension of that law; (3) presents insupportable factual allegations or contentions; or (4) improperly denies factual contentions. The award of sanctions must be supported by substantial competent evidence. *Evenson Trucking Co. v. Aranda*, 280 Kan. 821, 835, 127 P.3d 292 (2006).

If K.S.A. 60-211(b) has been violated, sanction may include an order to pay the other party's "reasonable expenses, including attorney's fees, incurred because of the filing of the pleading, motion or other paper." K.S.A. 60-211(c). When determining whether to sanction a party, the court should consider the following factors: (1) whether the improper conduct was willful or negligent; (2) whether it was part of a pattern of activity or an isolated event; (3) whether it infected the entire pleading or only one particular count or defense; (4) whether the person has engaged in similar conduct in other litigation; (5) whether it was intended to injure; (6) what effect it had on the litigation process in time or expense; (7) whether the responsible person is trained in law;

(8) what amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case; and (9) what amount is needed to deter similar activity by other litigants. *Wood v. Groh*, 269 Kan. 420, 431, 7 P.3d 1163, 1171–72 (2000).

After obtaining its foreclosure judgment on January 26, 2018, CoreFirst filed a motion for attorney fees pursuant to K.S.A. 60-211 and the underlying loan documents on February 9, 2018. (ROA, Vol. II, p. 127). Degginger responded on February 16, 2018. (ROA, Vol. II, p. 144). The district court held an evidentiary hearing on March 15, 2018 where it heard testimony from Degginger and arguments of counsel. (ROA, Vol. V, pp. 1-54). Additionally, at this hearing the district court received and reviewed the billing statement of CoreFirst’s counsel. (ROA, Vol. V, pp. 49-50). CoreFirst argued, and the district court agreed, that Degginger engaged in conduct throughout this case designed to cause confusion and unnecessarily delay the court’s determination. (ROA, Vol. V, p. 49).

CoreFirst’s motion for sanctions is based solely on the period starting with Degginger’s post-judgment behavior. Specifically, when Degginger took post-judgment action based on the 1936 deed. Degginger’s post-judgment actions concerning the 1936 deed have caused a two-year delay in the prosecution of the case.

In its ruling, the district court noted that Degginger came forward with the 1936 deed only after judgment had been entered against him. (ROA, Vol. V, p. 42, 45). Degginger had previously tried to raise title issues, based on documents found during discovery in CoreFirst’s loan file, but the district court had not found those to be dispositive. (ROA, Vol. I, pp. 120-122). Without any explanation for the delay,

Degginger then came forward with the 1936 deed claiming that the heirs of George Degginger still held an ownership interest. (ROA, Vol. V, p. 45). As the district court noted, Degginger appeared to make no attempt to explore the subsequent chain of title for the Real Estate beyond this 1936 deed, and appeared to ignore the determination of descent proceedings he initiated and participated in with his sister concerning the Real Estate. (ROA, Vol. V, p. 44, 46). The district court found that this showed a “gross lack of any reasonable discovery or any reasonable investigation.” (ROA, Vol. V, p. 45).

Further, the district court found it significant that Degginger continued to raise ownership issues based on the 1936 deed even after CoreFirst submitted the subsequent deeds and information regarding the determination of descent, which CoreFirst filed on October 3, 2016 with its reply in support of its motion to set aside the judgment. (ROA, Vol. 1, p. 259; Vol. V, pp. 44-46). Degginger’s conduct was only an attempt to delay the proceedings. (ROA, Vol. V, pp. 46-47). As stated by the district court, Degginger continued “making the argument that he was less than 100 percent of the real estate owner when it was very clear after these efforts that he, in fact, was and he could have been the one that could have discovered just as easily and maybe more so than that of the plaintiff.” (ROA, Vol. V, pp. 47-48).

The district court also noted in its decision the significant delay caused by the two premature appeals filed by Degginger. (ROA, Vol. V, pp. 43, 45). As the district court stated regarding the first appeal, “there was a Notice of Appeal filed by the defendant in an ongoing case without requesting the Court’s granting the ability to file an appeal without a final judgment, which is something all attorneys should know.” (ROA, Vol. V,

p. 43). As for the second appeal, it was filed while CoreFirst's motion for summary judgment on its foreclosure claim was pending, and again Degginger sought no certification from the district court. (ROA, Vol. V, p. 45).

In conclusion, the district court found that the actions of Degginger "greatly impacted this litigation in both time and expense," and that "the factors are there under the *Wood* case and pursuant to 60-211 to find that this was willful and at least grossly negligently handled by the defendant in this case in a strategy it appears to the Court simply to delay the ultimate determination." (ROA, Vol. V, pp. 48, 49). The district court noted that it reviewed the billing statement of CoreFirst's counsel, and found that the fees requested were reasonable. (ROA, Vol. V, p. 49-50).

Based on these findings, among others, the district court granted CoreFirst's motion for attorney fees in the amount of \$16,917.77, for fees and costs incurred from March 18, 2016 through January 26, 2018. (ROA, Vol. V, p. 50). The district court also reaffirmed that the other fees requested by CoreFirst had been previously granted under the terms of the underlying loan documents. (ROA, Vol. V, p. 50).

On appeal, Degginger attempts to shift blame to CoreFirst for Degginger's actions and delays. Raising new arguments, Degginger complains that the premature appeals occurred because CoreFirst "would not prepare their required journal entries." (Appellant's Brief, p. 29). There is simply no support for this allegation. Degginger had two full opportunities to explain to this Court why his appeals were not premature. Additionally, both notices of appeal were based on orders in which Degginger's counsel signed the journal entry, or the Court entered its own decision. (ROA, Vol. I, p. 214; Vol.

II, p. 105). The appeals were dismissed because there had been no final judgment by the district court, not because of any inaction by CoreFirst. (ROA, Vol. I, p. 223; Vol. II, p. 108). Further, the award of attorney fees was not the result of the district court's "unhappy discussions about appellate review," as suggested by Degginger. (Appellant's Brief, p. 29). The district court simply expected Degginger and his counsel to use appellate review appropriately. (ROA, Vol. V, pp. 43, 45).

Degginger also argues on appeal that CoreFirst is not entitled to attorney fees because it did not act in good faith. For support, Degginger claims CoreFirst knew the mortgage was void, and again cites to documents it found in CoreFirst's loan file that he latched on to after conducting discovery. These documents, which only alluded to possible title issues, were resolved by the chain of title documents CoreFirst submitted and the title work CoreFirst received before filing this action. Again, as mentioned by the district court in its ruling, Degginger continues to argue about his ownership interest despite undisputed evidence showing he is the sole owner of the Real Estate. (ROA, Vol. V, p. 47-48).

Finally, Degginger argues that CoreFirst is not entitled to an award for fees and costs incurred prior to filing the Amended Petition. There appears to be no argument that the subject loan documents allow for the recovery of CoreFirst's attorney fees and costs. Instead, Degginger mistakenly claims that CoreFirst "dismissed its first petition because its foreclosure proceeding failed," and argues, without authority, that "a dismissal of the judgment also dismisses the fee which is a part of the judgment." (Appellant's Brief, pp. 28-29). Degginger misstates the record. The action was not dismissed. CoreFirst set

aside the original judgment and amended its petition not because of any mistake made by CoreFirst, but because of the confusion Degginger caused by his post-judgment actions, specifically, coming forward with the 1936 deed and making allegations post-judgment that he was not the 100% owner of the Real Estate based on that deed. (ROA, Vol. I, p. 259). These allegations turned out to be untrue. A fact which, as the district court found, Degginger could have easily discovered by reviewing the subsequent deeds for the Real Estate and the determination of descent proceedings. (ROA, Vol. V, pp. 44-46).

In summary, Degginger has misused the 1936 deed. The deed tells an incomplete story that is only completed by the 1958 deeds of the children of George Degginger to Elizabeth Degginger. By only submitting the 1936 deed, Degginger caused a two-year delay in the case, which he continued even after CoreFirst submitted the 1958 deeds of the children of George Degginger to Elizabeth Degginger. These 1958 deeds explain why the parties originally started with Elizabeth Degginger as the source of the chain of title for this litigation with the original judgment. Therefore, the 1994 determination of descent, which Degginger himself initiated, is the basis of Degginger's 100% ownership.

Degginger has come forward with no arguments that show the district court abused its discretion by granting CoreFirst's motion for attorneys' fee pursuant to K.S.A. 60-211 and the underlying loan documents. The district court's ruling should be affirmed.

IV. CONCLUSION.

For the above stated reasons, CoreFirst prays that the district court's decisions granting summary judgment in CoreFirst's favor on Degginger's counterclaims and CoreFirst's foreclosure claim, denying Degginger's renewed motion to dismiss, and

granting CoreFirst's motion for attorney fees under K.S.A. 60-211 and the loan documents be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2018, I electronically filed the above and foregoing using the CM/ECF system which sent notification to all parties of interest participating in the CM/ECF system including the following:

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