

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR CERTIFICATE
HOLDERS OF DEUTSCHE ALT-A SECURITIES MORTGAGE LOAN TRUST -
SERIES 2007-1 MORTGAGE PASS THROUGH CERTIFICATES,**

Respondents,

v.

PAUL WEBER, et al.,

Appellants.

DOCKET NUMBER WD74227

Date: April 30, 2013

Appeal from:
Clay County Circuit Court
The Honorable Anthony Rex Gabbert, Judge

Appellate Judges:
Division Three: Alok Ahuja, P.J., Victor Howard and Cynthia L. Martin, JJ.

Attorneys:
Ray E. Sousley, Gregory E. Eufinger, Kansas City, MO, for appellant.
Richard L. Martin, Kansas City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

**HSBC BANK USA, NATIONAL ASSOCIATION, AS TRUSTEE FOR
CERTIFICATE HOLDERS OF DEUTSCHE ALT-A SECURITIES MORTGAGE
LOAN TRUST - SERIES 2007-1 MORTGAGE PASS THROUGH CERTIFICATES**

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WD74227

Clay County

In April 2007, Paul Weber purchased real property containing eight duplexes on North Topping Avenue in Kansas City. Each duplex can be accessed only from a private road which connects the properties to North Topping Avenue. A portion of the private road traverses the property on which each duplex is located.

Weber financed his purchase of the properties using sixteen different loans, two for each property, secured by first and second deeds of trust on each property. After purchase, Weber transferred all of his interest in the properties to Susie Q Properties LLC, of which Weber is the primary owner. The notes and deeds of trust remained in Weber's name.

In 2009, Weber was in default on the notes on three of the properties. In an apparent effort to obtain negotiating leverage with the lender, Weber and Susie Q executed and recorded a "Notice of Claim of Interest in Land Connection Agreement." The document provides that, in the event any person acquired an interest in any of the duplex properties through involuntary means, that acquirer would owe Susie Q a connection fee of \$250,000 to use the private road.

HSBC acquired the three duplex properties through a foreclosure sale. It then filed this lawsuit, contending that the Notice was a nonconsensual common law lien under § 428.105.1(3), RSMo, which was invalid and should be expunged from the record pursuant to § 428.120. Following a bench trial, the circuit court agreed, declared the Notice invalid, and ordered it to be expunged from the land records. The Webers and Susie Q appeal.

REVERSED.

Division Three holds:

Under § 428.105.1(3), a "nonconsensual common law lien" is a lien which, among other things, "[d]oes not depend upon the consent of the owner of the property affected . . . for its

existence.” In this case, although they were in default on the notes secured by the properties, only Weber and/or Susie Q were the “owners” of the properties when the Notice was executed and recorded. Because the owners of the properties affected consented to the Notice, it could not have been a nonconsensual common law lien within the meaning of § 428.105.1(3).

HSBC argues that, because it held deeds of trust against the properties, it had an “interest” in the properties, and was therefore an “owner” whose consent to the Notice was required. In a series of cases, however, the Missouri Supreme Court has held that the beneficiaries or trustee under a deed of trust are not “owners” of real property within the meaning of various Missouri statutes. That rule applies with full force here; HSBC, as the holder of deeds of trust against the properties, was not thereby rendered an “owner” of those properties.

HSBC also contends that it was the “owner” of the deeds of trust, and that the deeds of trust were “property affected” by the Notice. To the extent the Notice is a “lien” at all, however, it was a lien only against the properties themselves. Although the Notice may have affected the enforceability of the deeds of trust, it did not directly impose any charge or obligation against them.

Although the Notice may be subject to challenge on other grounds, HSBC’s petition asserted only a single claim: that the Notice was a nonconsensual common law lien within the meaning of § 428.105.1(3), RSMo. That claim fails because the owners of the affected properties consented to the Notice; we take no position concerning the Notice’s validity or enforceability on any other, unasserted basis.

Before: Division Three: Alok Ahuja, P.J., Victor Howard and Gary D. Witt, JJ.

Opinion by: Alok Ahuja, Judge

April 30, 2013

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