

**IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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**COMPLETE TITLE OF CASE**

RICK ROBSON,

Appellant,

v.

BOBBI JO DIEM, et al.,

Respondents.

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**DOCKET NUMBER WD71084**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** August 24, 2010

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**Appeal from**

The Circuit Court of Platte County, Missouri  
The Honorable Owens Lee Hull, Jr., Judge

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**APPELLATE JUDGES**

Division Two: Joseph M. Ellis, Presiding Judge, and James M. Smart, Jr., and Karen King Mitchell, Judges

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**ATTORNEYS**

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and Abdulhamid Zlitni,

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Attorneys for Respondents Countrywide Home  
Loans, Inc., and Federal National Mortgage Association.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**  
**MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**RICK ROBSON,** )  
 )  
 ) **Appellant,** )  
**v.** )  
 )  
**BOBBI JO DIEM, et al.,** )  
 )  
 ) **Respondents.** )

WD71084

Platte County

Before Division Two Judges: Joseph M. Ellis, Presiding Judge, and  
James M. Smart, Jr., and Karen King Mitchell, Judges

Rick Robson appeals the trial court’s judgment in favor of Countrywide Home Loans, Inc. (“Countrywide”) and Bobbi Jo Diem and Abdulhamid Zlitni (collectively, “the Diems”), and the denial of his own motion for summary judgment on his petition to quiet title to a particular piece of real property. On appeal, Robson claims that the trial court erred in excluding extrinsic evidence showing that Robson’s title was superior to that of either Countrywide or the Diems, and in concluding that Robson was not entitled to notice of the foreclosure sale of the property at issue. Robson also claims that the trial court erred in denying Robson’s own motion for summary judgment.

**REVERSED AND REMANDED.**

**Division Two holds:**

When Robson entered into a contract to purchase the property at issue from the previous owners of the property, he acquired equitable title to the property. As someone holding equitable title in the property, but not a party to the deeds in the legal chain of title when he brought his quiet title action, he should have been allowed to present extrinsic evidence establishing his equitable title and also establishing that the warranty deed and deed of trust in favor of Countrywide and the Diems

were based upon mutual mistake, thus, Robson alleges, making his interest in the property superior to theirs. There is no other way for a third party holding an equitable interest in a property to establish his title in court.

Section 443.325 RSMo instructs that notice of a foreclosure sale is to be given to anyone shown by the records in the office of the recorder of deeds to be the owner of the property forty days prior to the scheduled date of sale. However, the Missouri Supreme Court has defined “owner” under this statute broadly to include anyone having a beneficial interest in the property. Because Robson had possession of the property at the time of sale, and because title documents filed indicating Robson’s interest in the property might have been found in a title search, factual issues remain as to whether Robson was entitled to notice of the sale, therefore making summary judgment inappropriate.

There are no reasons in this case for us to deviate from the general rule that the denial of a motion for summary judgment is not appealable, so Robson’s third point is denied.

**Opinion by: Karen King Mitchell, Judge**

August 24, 2010

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