

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

March 24, 2011

Lyle W. Cayce
Clerk

No. 10-10574
Summary Calendar

REGIONS BANK,

Plaintiff-Appellee

v.

STEVE MCKEEVER,

Defendant-Appellant

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:09-CV-489

Before WIENER, PRADO, and OWEN, Circuit Judges.

PER CURIAM:*

Defendant-Appellant Steve McKeever served as the borrower's guarantor in connection with a real estate loan from Plaintiff-Appellee Regions Bank to a third party. Following Regions's foreclosure, in which it purchased the encumbered property at the trustee's sale for \$550,000, Regions sued McKeever to recover \$335,416.84 as the deficiency remaining following that purchase. Responding to the suit, McKeever asserted a number of defenses including, *inter*

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

No. 10-10574

alia, (1) the Supreme Court of Texas has never addressed the applicable portions of the Texas Property Code regarding waiver, (2) the waiver provision of the applicable section is void as an unenforceable penalty, (3) he did not clearly and unequivocally waive his right to have the deficiency measured by the fair market value of the property, and (4) genuine issues of material fact preclude summary judgment.

We have carefully reviewed the record on appeal, including the briefs of the parties and – especially – the district court’s Order Granting Motion For Summary Judgment of May 3, 2010. As a result of our *de novo* review, we are satisfied that district court’s grant of summary judgment was providently granted for essentially the same reasons patiently and completely set forth in its Order. Accordingly, the Final Judgment of the district court and all orders issued in connection with this action are
AFFIRMED.