

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 92-3516  
Summary Calendar

---

RESOLUTION TRUST CORPORATION,  
as Receiver for Pelican Homestead  
and Savings Association,

Plaintiff-Appellee,

versus

LINDA VENUS MAYER, wife of/and  
WILLIAM WARD MAYER,

Defendants-Appellants.

---

Appeal from the United States District Court for  
the Eastern District of Louisiana

---

(February 5, 1993)

Before REAVLEY, HIGGINBOTHAM and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:<sup>1</sup>

Linda Venus Mayer and William Ward Mayer (the "Mayers"),  
defendants below, appeal the district court's judgment in favor  
of the Resolution Trust Corporation (RTC) on the RTC's action to  
enforce a mortgage. We affirm.

---

<sup>1</sup> Local Rule 47.5 provides: "The publication of opinions  
that have no precedential value and merely decide particular  
cases on the basis of well-settled principles of law imposes  
needless expense on the public and burdens on the legal  
profession." Pursuant to that Rule, the court has determined  
that this opinion should not be published.

## I. BACKGROUND

On March 11, 1983, the Mayers executed a collateral mortgage note (the "Mortgage Note") in the amount of \$360,000.00 in order to establish a line of credit with Gulf Federal Savings and Loan Association (Gulf Federal), predecessor-in-interest to Plaintiff-Appellee RTC. The Mayers concurrently executed a \$360,000.00 collateral mortgage on their real property located at 2341 Camp Street and at 1923-25-29 Sophie Wright Place, both in Orleans Parish, Louisiana (the "Mortgage"), in order to secure the line of credit thus established. No funds were advanced to the Mayers at this time.

On October 7, 1983, the Mayers borrowed \$310,000.00 against their \$360,000.00 line of credit with Gulf Federal, pursuant to which the Mayers executed a promissory note in the amount of \$310,000.00 (the "Hand Note"). The Mayers were to pay the holder of the Hand Note (initially Gulf Federal) \$1,292.00 plus interest monthly, commencing November 1, 1983, and continuing until September 1, 2003, with a final payment of remaining principal and interest due on October 1, 2003. In fact, the Mayers last paid on the Hand Note on July 1, 1985. The balance due on the Hand Note is \$286,537.48 plus interest at 11.5% per annum applied on the outstanding principal balance beginning July 1, 1985. In the event of late payment or default, the Hand Note also requires the Mayers to pay late fees, and attorney's fees and costs of collection, as needed.

In April 1986, Gulf Federal initiated this action to enforce the Mortgage on the Sophie Place Property in order to collect upon the Hand Note. The Mayers filed a reconventional demand which was subsequently severed from Gulf Federal's action. In April 1988, the Mayers filed a voluntary bankruptcy petition pursuant to Chapter 11 of the Bankruptcy Code. In October 1988, the bankruptcy court discharged all of the Mayers' personal debts.

In November 1990, the Civil District Court for Orleans Parish entered judgment in favor of Pelican Homestead and Savings Association ("Pelican"), Gulf Federal's successor-in-interest and the RTC's predecessor-in-interest *viz.* the Hand Note, recognizing the right of [Pelican] as the successor to [Gulf Federal] in and to:

1. a promissory note dated October 7, 1983, in the amount of \$310,000.00;
2. a collateral mortgage note executed by Linda Venus Mayer and William Ward Mayer on March 11, 1983 in the principal sum of \$360,000.00; and
3. a collateral mortgage dated March 11, 1983 in the sum of \$360,000.00 which mortgage includes and covers the immovable property designated as 1923-25-29 Sophie Wright Place, New Orleans, Louisiana, . . . and for all other general and equitable relief.

Pelican subsequently moved the court to amend its judgment to state a monetary amount due Pelican so that the clerk of the court would issue a writ of fieri facias enabling the sheriff to seize and sell the Sophie Wright Place property in order to satisfy the judgment. The court amended its judgment, without stating a monetary amount due, empowering Pelican to execute the judgment.

While appeal of the civil district court's judgment was pending before the Louisiana Fourth Circuit Court of Appeals, the RTC was appointed receiver for Pelican and was substituted as the proper party plaintiff in the pending state court action. Pursuant to its authority under 12 U.S.C. § 1441a, the RTC removed the action to the United States District Court for the Eastern District of Louisiana. The Mayers filed a motion for remand which was denied. On April 29, 1992, the district court entered judgment adopting the amended final judgment of the Civil District Court, Orleans Parish. The Mayers timely appealed to this court.

## II. ANALYSIS

### A. EXHAUSTION OF ADMINISTRATIVE REMEDIES.

The Mayers appeal on several grounds, none of which we find compelling. First, they argue that the RTC violated its own rules and procedures by removing this action prior to the completion of administrative review of the Mayers' reconventional claim. However, as the RTC correctly responds, the Mayers' reconventional demand was severed from the RTC's claim against the Mayers and the administrative review provisions of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) apply only to claims against the RTC, not claims asserted by the RTC. 12 U.S.C. § 1821(d)(13)(D); *see, e.g., FDIC v. Shain, Schaffer & Rafanello*, 944 F.2d 129, 132 (3d Cir.

1991).<sup>2</sup> Thus, the status of the RTC's administrative review of the Mayers' claim does not affect the removability of the RTC's claim.

B. EFFECT OF THE DISCHARGE IN BANKRUPTCY.

Second, the Mayers argue that both the district court's judgment and the RTC's claim violate 11 U.S.C. § 524. However, the discharge in bankruptcy only covered the Mayers' personal obligations. *Id.* § 524(a)(2). The RTC's claim and the district court's judgment are *in rem* against the Sophie Wright Place property itself. As such, they do not violate the bankruptcy court's discharge.<sup>3</sup>

C. AMENDMENT OF THE CIVIL DISTRICT COURT'S JUDGMENT.

La. Code Civ. Proc. art. 1951 provides, *inter alia*, that "[a] final judgment may be amended by the trial court at any time, with or without notice, on its own motion or on motion of any party (1) [t]o alter the phrase[ology] of the judgment, but not the substance."

The Civil District Court's November 20, 1990 judgment "recognized" Pelican's rights "in and to" the Hand Note, the collateral Mortgage Note, and the collateral Mortgage. The only

---

<sup>2</sup> We do not accept the Mayers' argument that the mere fact that they appealed an adverse judgment constitutes a "claim" against the RTC.

<sup>3</sup> Furthermore, to the extent that the Mayers' argument is based upon the argument that the Hand Note is unsecured, this, too, is in error. The Hand Note was secured by the collateral Mortgage by operation of the Mortgage Note which established the line of credit against which the Hand Note was drawn.

language added by the March 1, 1991 amended judgment was as follows:

It is further ordered that [Pelican] is entitled to *exercise all of its rights under the mortgage including* the right of executory process and to seek other writs as it deems appropriate.

A.R. 647 (emphasis added). Unlike *Hebert v. Hebert*, 351 So. 2d 1199 (La. 1977), cited by the Mayers, the amended judgment herein does not create additional rights or remedies on behalf of either party, rather it "entitle[s]" Pelican to exercise rights it already possessed -- to wit, "all of its rights under the mortgage" which the prior judgment had already "recognized" Pelican's rights "in and to." This, in our opinion, is an alteration of form not substance, and is therefore permitted by Article 1951(1).

### III. CONCLUSION

Contrary to the Mayers' contention, the Hand Note in the amount of \$310,000.00 was secured by the collateral Mortgage on the Sophie Wright Place property. As such, the Hand Note was *not* an unsecured debt which was discharged in bankruptcy. Agreeing with the substantive finding of the courts below, and finding no procedural error on the part of either the RTC or the district court, we AFFIRM the judgment of the district court.

AFFIRMED.