

UNITED STATES COURT OF APPEALS  
For the Fifth Circuit

---

No. 93-2037  
Summary Calendar

---

BILL E. DAVIS,

Plaintiff-Appellant,

VERSUS

FEDERAL DEPOSIT INSURANCE  
CORPORATION and ELLEN M. LANG,

Defendants-Appellees.

---

Appeal from the United States District Court  
for the Southern District of Texas

(CA-H-92-1335 c/w CA-H-92-1633)

---

(December 14, 1993)

Before GARWOOD, SMITH and DeMOSS, Circuit Judges.

PER CURIAM:\*

In September, 1983, Davis executed a promissory note to Petrobank for \$300,000; and as security for such note, gave a Deed of Trust on Davis' undivided 1/2 interest in certain real property in Houston, Texas. The note called for monthly payments in the

---

\* 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

amount of \$3,300 which Davis made until June, 1986, when he ceased making monthly installment payments. At about that same time, Petrobank was declared insolvent and its assets taken over by the FDIC. In June, 1987, the FDIC sent a letter to Davis demanding payment of all delinquent installments and declaring its intention to accelerate the note if such delinquent installments were not paid. In April, 1988, the FDIC appointed a Successor Trustee under the Deed of Trust who posted on April 12, 1988 the notice of foreclosure to occur in May. On that same day, the Successor Trustee sent a notice to Davis at the address for Davis specified in the Deed of Trust, notifying Davis of his intention to hold the foreclosure sale on May 3, 1988. Another copy of the notice was sent to Davis at another address in Houston, but each of the notices sent to Davis were returned, one marked "REFUSED" and the other marked "NOT DELIVERABLE AS ADDRESSED". Notices of such sale were also sent to Tommy Gilbreath, Davis' partner and owner of the other undivided 1/2 interest in the property. Davis filed suit in the 164th District Court of Harris County, Texas seeking an injunction against the foreclosure sale; but after a preliminary hearing, the State Court denied the requested injunctive relief in its entirety. The Successor Trustee conducted the foreclosure sale as scheduled, and the property was bought for the sum of approximately \$150,000. The note was a non-recourse note so there is no deficiency claim involved. Following the foreclosure, Davis took the following actions:

- (a) In May, 1988, he filed an administrative proceeding under

the Federal Tort Claims Act;

- (b) In February, 1989, he filed a lawsuit against the FDIC in U. S. District Court for the Southern District of Texas, which was ultimately dismissed for failure to state a cause of action and affirmed on appeal to this Court.
- (c) In April, 1992, Davis filed a claim against the United States of America in the United States Court of Claims which is apparently still pending;
- (d) In April, 1992, Davis sued the Substitute Trustee in State District Court and again filed suit against the FDIC in the U. S. District Court for the Southern District of Texas. The State Court suit against the Successor Trustee was removed to Federal Court and consolidated with the new suit against the FDIC. The FDIC and the Successor Trustee filed Motions to Dismiss under Rule 12(b) or for Summary Judgment. All sides filed numerous affidavits in support of their respective positions. After conducting a hearing, the Trial Judge entered an extremely simplified Final Judgment which denied Davis any relief against the FDIC or the Successor Trustee. Thereafter, Davis timely filed a Motion for New Trial under Rule 59 which was subsequently denied by the Court, and Davis filed a Notice of Appeal from the denial of his Motion for New Trial.

We have carefully reviewed the briefs, the reply brief, the record excerpts and relevant portions of the record itself; and

have determined that no genuine issue of material fact has been properly raised by Davis, that no reversible error of law appears and that a full opinion would have no precedential value.

Accordingly, the judgment of the Trial Court is AFFIRMED.