

IN THE CIRCUIT COURT IN AND FOR  
BAY COUNTY, FLORIDA

FILED

THE CADLE COMPANY,

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Plaintiff,

HAROLD BAZZEL  
CLERK CIRCUIT COURT  
BAY COUNTY, FLORIDA  
Case No.: 2008 CA 002210

vs.

BRUCE W. BRODSKY and  
REGIONS BANK,

Defendants.

**FINAL JUDGMENT AGAINST PLAINTIFF**

THIS CAUSE was heard by the Court at a one-day bench trial on August 5, 2008.

Upon evidence submitted during trial, the Court finds the following facts were established by a preponderance of the evidence:

**Findings of Fact**

1. Plaintiff, The Cadle Company, purchased the subject judgment from Hibernia National Bank ("Hibernia"). The judgment has a principal value of \$22,500. It was undisputed that Plaintiff purchased the judgment as part of a "package" from Hibernia, with the allocated "pro-rated" amount paid being \$202.50.
2. Hibernia obtained the judgment from a Louisiana court against Samuel D. Hughes (hereafter "Hughes" or "Judgment Debtor") on June 28, 1991. Plaintiff domesticated the judgment and recorded it in Bay County on August 29, 1997. (Case No. 97-2384-CA).
3. Plaintiff brought this action in equity seeking to foreclose the subject judgment lien against the homestead property of Defendant, Bruce W. Brodsky located at

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608 Amberjack Circle in Panama City, Bay County, Florida (hereinafter "subject property") and foreclose the interest of Defendant, Regions Bank, who holds a purchase money mortgage thereon.

4. Plaintiff is not the original holder of the subject judgment, and Mr. Brodsky is not the judgment debtor.

5. Mr. Brodsky did not purchase the property from the Judgment Debtor.<sup>1</sup>

6. Although Plaintiff domesticated and recorded the judgment in Bay County in 1997 and initially took some post-judgment collection action, it took no legal action to collect on the judgment for a period of five (5) years from 1998 to 2003.

7. For a period of two (2) years during the five (5) year period, the Plaintiff was aware of multiple properties and assets owned by the judgment debtor in Bay County including, without limitation, the subject property.

8. Plaintiff also was aware of the judgment debtor's sale of these properties and the substantial proceeds obtained by the judgment debtor from the sale of these properties. The net proceeds obtained by the judgment debtor from the sale of the real property at issue herein, \$157,980.43, would have been more than sufficient to satisfy all amounts due and owing under the judgment.

9. The Plaintiff had ample time to levy its judgment against the real property of the judgment debtor when it was owned by the judgment debtor, but made no effort to

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<sup>1</sup> The Judgment Debtor, who obtained title to and ownership of the subject property on or about May 20, 2000, sold the property to Randy F. Marsh and Brenda M. Marsh on or about August 29, 2002. The Marshes subsequently sold the subject property to the Defendant, Bruce W. Brodsky, on or about January 30, 2004.

do so. Accordingly, Plaintiff failed to act with reasonable diligence in pursuing its rights as to the judgment debtor. Plaintiff provided no explanation for its failure to act.

10. The delay by the Plaintiff in foreclosing resulted in Mr. Brodsky purchasing the subject property at a cost of \$197,000, to make improvements to the property exceeding \$30,000, and to pay over \$6,000 in property taxes, without actual knowledge of the existence of the judgment lien.

11. Plaintiff rejected a \$25,000 settlement offer from the judgment debtor which exceeded the principal amount of the judgment, and far exceeded the \$202.50 pro-rata price originally paid for the judgment. While the amount Plaintiff paid for the judgment and Plaintiff's rejection of the settlement offer are not facts essential to this Court's ruling, they are relevant to the equitable nature of this action and were not disputed or objected to by the Plaintiff.

#### Conclusions of Law

Plaintiff has sought equitable relief from this Court; i.e., equitable foreclosure of the Plaintiff's money judgment against Samuel D. Hughes on the homestead property of an innocent third party, Mr. Bruce Brodsky, a party who did not incur this debt. The Defendants argued that the Plaintiff's failure to diligently pursue its rights as to the judgment debtor gives rise to the affirmative defense of laches and serves to cut off the right of the Plaintiff to enforce the judgment as to the subject property. That defense was supported by both the factual findings of this Court, as well as applicable law.

"No rule is better settled than that equity aids the vigilant and not the indolent."

Lanigan v. Lanigan, 78 So.2d 92, 96 (Fla. 1955); See also Nussey v. Caufield, 146 So.2d

779, 783 (Fla. 2<sup>d</sup> DCA 1962); See also Smith v. Daffin, 155 So. 658 (Fla. 1934). Further, laches “is always a defense where the facts in a particular case would justify the chancellor in arriving at the conclusion that complainant has so slept on his rights as to work an injustice upon the party against whom relief is being sought.” Cone Bros. Const. Co. v. Moore, 193 So. 288 (Fla. 1940).

It was the Plaintiff’s burden to prove that it diligently pursued its remedies and made all reasonable efforts to collect the judgment against the judgment debtor. The Plaintiff has failed to meet that burden.

To sustain its affirmative defense of laches, it was the Defendants’ burden to prove that Plaintiff had so slept on its rights as to work an injustice against Mr. Brodsky and Regions Bank. The Defendants have met that burden.

It is therefore,

ORDERED and ADJUDGED that

1. There are no equities on behalf of the Plaintiff. All equities in this matter lie with the Defendants.<sup>2</sup>
2. Plaintiff has failed to sustain its burden of proof in this matter.
3. The Defendants have sustained their burden of proof as to their affirmative defense of laches.
4. Plaintiff shall take nothing by this action and Defendants shall go hence without day.

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<sup>2</sup> For purposes of determining where the equities lie in this matter, the Court has accepted the Plaintiff’s evidence that Defendants purchased title insurance for the subject property but finds such evidence unpersuasive.

5. The Plaintiff's right to satisfy its judgment as to the real property of Bruce W. Brodsky located at 608 Amberjack Drive, Panama City, Bay County, Florida, ought to be and hereby is cut off. The subject judgment is of no force or effect as to said property.

6. The lien of the subject Judgment (which is recorded in Official Records Book 1731 at Pages 401 through 404 and Official Records Book 2966 at Pages 990 through 994 of the public records of Bay County, Florida) is hereby removed and judicially released from the following described property:

Lot 26, according to the plat of Bay Point Unit One, as recorded in Plat Book 11, Pages 47 through 56, in the office of the Clerk of the Circuit Court of Bay County, Florida.

Parcel No. 30933-075-000

7. This Order does not impair any other remedies that the Plaintiff has in law or equity, including without limitation execution or levy on assets in the hands of the judgment debtor, or held by third parties for the use and benefit of the judgment debtor, or to any other judgment liens that the Plaintiff may have.

8. The Court shall retain jurisdiction as to all issues relating to attorneys' fees and costs upon proper motion and hearing.

**DONE AND ORDERED** in Chambers at Panama City, Bay County, Florida this 22 day of August 2008.



A CERTIFIED TRUE COPY  
HAROLD BAZZEL CLERK  
OF THE CIRCUIT COURT  
By [Signature]  
Deputy Clerk

[Signature]  
Hon. DEDEE S. COSTELLO  
Circuit Judge

conformed copies to:

R. Todd Harris, Esquire  
McDonald-Fleming-Moorhead  
25 W. Government Street  
Pensacola, FL 32502  
(Attorney for Defendants)

James Sorenson, Esquire  
P.O. Box 4128  
Tallahassee, Florida 32315-4128  
(Attorney for Plaintiff)

received  
4/1/09

IN THE DISTRICT COURT OF APPEAL  
FIRST DISTRICT, STATE OF FLORIDA

NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

THE CADLE COMPANY,

Appellant,

v.

CASE NO. 1D08-4555

BRUCE W. BRODSKY and  
REGIONS BANK,

Appellees.

Opinion filed March 30, 2009.

An appeal from the Circuit Court for Bay County.  
Dedee S. Costello, Judge.

James E. Sorenson, D. Tyler Van Leuven, Chadd Heckman, Jare S. Gardner, and  
Marylinzee Van Leuven of of Williams, Gautier, Gwynn, DeLoach & Sorenson,  
P.A., Tallahassee, for Appellant.

Edward P. Fleming, and R. Todd Harris of McDonald - Fleming - Moorhead,  
Pensacola, for Appellees.

PER CURIAM.

AFFIRMED.

BARFIELD, WEBSTER, and PADOVANO, JJ., CONCUR.