

Not intended for publication

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

IN RE:

**MAX LAMAN
MARGARET LAMAN,**

CASE NO. 97-10461

DEBTORS.

CHAPTER 11

**MAX LAMAN
MARGARET LAMAN,**

PLAINTIFFS

v.

ADV. PRO. NO. 97-5092

BANK OF ALAMO,

DEFENDANT.

**MEMORANDUM OPINION AND ORDER RE
COMPLAINT TO DETERMINE EXTENT
AND VALIDITY OF LIEN**

The case at bar revolves around a series of loan transactions related to a certain tract of real estate located in Crockett County, Tennessee, and, more specifically, a promissory note executed for the purchase of part of this tract. The plaintiffs in this matter brought this adversary proceeding to determine the extent and validity of a lien the defendant holds on such property.

The Court conducted a trial on this matter on August 1, 1997. FED. R. BANKR. P. 7001. Pursuant to section 152(b)(2) of Title 28 of the United States Code, this is a core proceeding. After reviewing the testimony from the trial and the record as a whole, the Court makes the following findings of facts and conclusions of law. FED. R. BANKR. P. 7052.

I. FINDINGS OF FACT

On December 1, 1988, the plaintiffs in this case, Max and Margaret Laman, ("Lamans") purchased 197 acres of real estate in Crockett County, Tennessee, from D. H. Norville ("Norville"). The purchase price of this land was \$160,000.00. Norville conveyed the land by a warranty deed which the Lamans subsequently registered in the Crockett County's Register's office on December 3, 1988.

In order to finance the purchase of these 197 acres, the Lamans borrowed \$80,000.00 from the defendant in this case, the Bank of Alamo ("Bank"). This loan was made on December 3, 1988, and was

registered in the Bank's records as Note #17478. To secure this note, the Lamans executed a deed of trust on the 197 acres in favor of Robert W. Conley, trustee, who was the president of the Bank at that time.

In addition to the loan from the Bank, the Lamans also borrowed \$80,000.00 from the seller of the land, D.H. Norville. Such loan was evidenced by a promissory note made payable to Norville by the Lamans. To secure this obligation, the Lamans also executed a deed of trust on the land in favor of Norville. Such deed was also registered in the Crockett County Register's Office.

Since purchasing the land from Norville in 1988, the Lamans have divided their 197 acre tract of land into smaller lots which have each been sold to different buyers. On three separate occasions, buyers of these smaller lots financed the purchase price of such land by borrowing the necessary funds from the Bank of Alamo. The amount of money borrowed was always credited to the outstanding balance on the Lamans' \$80,000.00 loan # 17478. The borrowers of this money would then execute a promissory note made payable to the Lamans. Despite this fact, all payments on such loans were made to and in favor of the Bank. Each of these loans was eventually paid off by the borrowers and any liens securing such loan were released.

A fourth loan transaction which was structured like the previous three occurred on March 31, 1991. On this date, the Lamans sold 92.6 acres of their land to Craig and Shirley Browning ("Brownings") for the sum of \$145,000.00. The Brownings gave the Lamans a down payment of \$10,000.00. They also executed a promissory note in favor of the Lamans for \$80,000.00. This note was secured by a deed of trust on the 92.6 acres. To finance the remainder of the purchase price, the Brownings borrowed \$55,000.00 from the Bank of Alamo and executed a promissory note in favor of the Lamans to represent such indebtedness. This note was also secured by a deed of trust and the \$55,000.00 was credited towards the Lamans' original \$80,000.00 note, #17478. According to the testimony at trial, the Brownings delivered the promissory note directly to the Bank. The Lamans never had possession of the note, nor did they ever see the note. At trial, Max Laman testified that neither he nor his wife knew that the note was made payable to them. Until the dispute in the case at bar arose, Max Laman testified that he believed the note had been made payable to the Bank. As a result of this understanding, the Lamans never executed an assignment of the \$55,000.00 note to the Bank. All payments made by the Brownings on such note were made directly to the Bank and applied against the Browning's \$55,000.00 loan. Additionally, the Lamans turned over possession of the \$55,000.00 promissory note and the trust

deed securing such note to the Bank.

On December 3, 1991, the Lamans made the final payment on their original \$80,000 loan, note # 17478. A representative of the bank informed the Lamans at this time that their loan obligation had been fully satisfied. Additionally, the bank records were noted to reflect that the note had been paid in full.

Since executing the promissory note in favor of D.H. Norville, the Lamans had been making interest payments on the \$80,000.00 loan only. D. H. Norville died in the Spring of 1994. Pursuant to a demand by Norville's heirs, the Lamans desired to pay off the \$80,000.00 Norville note. In order to do so, the Lamans borrowed \$87,000.00 from the Bank of Alamo on May 7, 1994. Believing that the Lamans had already executed an assignment of the \$55,000.00 Browning note and trust deed, the Bank required the Lamans to execute a First Trust Deed lien on the 73.826 acres still owned by the Lamans. The Bank also required the Lamans to execute an assignment of the \$80,000 note and Trust Deed executed by the Brownings in favor of the Lamans. Such Trust Deed and assignment were subsequently registered in the Crockett County Register's Office in May of 1994.

In the Spring of 1996, the Brownings also defaulted on the \$55,000.00 note by failing to make payments to the Bank. The Bank sought to institute foreclosure proceedings against the subject property. After investigating the County Register's Books, however, the Bank discovered that no assignment of the \$55,000 promissory note had ever been executed. As a result of this default on the \$55,000 note and their inability to proceed with a foreclosure action, the Bank has refused to release the Laman's from their \$80,000 obligation on note # 17478.

In December of 1996, the Brownings defaulted on the \$80,000.00 note made payable to the Lamans. In lieu of foreclosing on the property, the parties agreed that the Brownings would execute a Deed in Lieu of Foreclosure in favor of the Lamans. On December 30, 1996, such deed was executed and the 92.6 acres was reconveyed to the Lamans.

In response to the Bank's refusal to release the lien on the property for the original \$80,000.00 note, the Lamans filed this adversary proceeding on April 4, 1997. Through this action, the plaintiffs are seeking to have the Court find that the deed of trust which secured the original \$80,000.00 note, #17478, is no longer valid and should be released. The plaintiffs further ask the Court to find that the Lamans have no obligation with respect to the \$55,000.00 note executed by the Brownings.

II. CONCLUSIONS OF LAW

What is essentially at issue in this case is a contract. When the Brownings executed the \$55,000.00 promissory note and deed of trust on March 31, 1991, they entered into a contract with the Bank of Alamo for the repayment of the money. The Lamans were third-party beneficiaries to this contract by virtue of receiving the \$55,000 credit on their original loan with the Bank. This contract was evidenced in writing by the promissory note and trust deed executed in favor of “Max and Margaret Laman” on March 20, 1991.

In Tennessee, a contract may be reformed if a mutual mistake has been made in the written expression of the parties’ agreement or if one party was induced to make a mistake in committing the agreement to writing as a result of the fraud of the other party. Kozy v. Werle, 902 S.W.2d 404, 411 (Tenn.App. 1995); Pierce v. Flynn, 656 S.W.3d 42, 46 (Tenn.App. 1983); City of Memphis v. Moore, 818 S.W.2d 13, 15 (Tenn.App. 1991). In the case at bar, a mutual mistake is exactly what occurred in the drafting of the promissory note and deed of trust by the Brownings to the Lamans. All of the evidence presented at trial unequivocally proved that all three of the parties believed the documents executed on March 20, 1991, to be in favor of the Bank of Alamo. Laman himself testified that he never had possession of the documents and that it was his belief, up until the time of the Brownings default in the Spring of 1996, that the documents had been executed in favor of the Bank of Alamo.

Additionally, the parties’ course of performance indicated a mistaken belief as to who the payee was on the \$55,000.00 promissory note. Once the note was executed, the Bank credited the Lamans \$80,000 loan, note # 17478, with the amount of \$55,000.00. The Brownings made all payments on the \$55,000.00 debt directly to the Bank of Alamo.

Due to the testimony and evidence presented at trial, as well as the parties’ course of performance, this Court finds that the equitable remedy of reformation of the contract is the appropriate remedy in this case. As a result, both the promissory note and the deed of trust executed by the Brownings in favor of the Lamans will be reformed to reflect the proper payee and holder of the deed of trust to be the Bank of Alamo.

III. ORDER

It is therefore ORDERED that the promissory note, number 21854, and deed of trust executed on March 20, 1991, by William C. and Shirley M. Browning are reformed to reflect the payee as The Bank of Alamo in lieu of Max and Margaret Laman. The Court FURTHER ORDERS that said Deed of Trust in favor of the Bank of Alamo is a duly recorded first lien on said real property.

IT IS SO ORDERED.

BY THE COURT

**G. Harvey Boswell
United States Bankruptcy Judge**

Date: August 28, 1997