

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT KANSAS CITY**

**DEUTSCHE BANK NATIONAL TRUST
COMPANY, AS TRUSTEE IN TRUST FOR
THE BENEFIT OF THE CERTIFICATE
HOLDERS FOR AMERIQUEST MORTGAGE
SECURITIES TRUST 2004-R1. ASSET-
BACKED PASS-THROUGH CERTIFICATES,
SERIES 2004-R-1**

Plaintiff,

v.

Case No: 0916-CV31414

**ROBERT E. SUPPENBACH,
IDELLA V. SUPPENBACH,**

Defendants

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT
AND ENTRY OF JUDGMENT IN FAVOR OF PLAINTIFF
ON PETITION IN UNLAWFUL DETAINER**

This case came before the court on Plaintiff's Motion for Summary Judgment, filed herein on November 17, 2009. The court has considered the motion, Statement of Uncontroverted Facts, Suggestions and responses filed herein by defendants. For reasons set forth below, the court finds that the Motion for Summary Judgment should be GRANTED.

When considering a motion for summary judgment, the movant bears the burden of establishing a right to judgment as a matter of law on the record as submitted. Summary judgment is appropriate where the moving party establishes that no genuine issue of material fact exists and the party has a right to judgment as a matter of law. Any evidence in the record that presents a genuine issue as to the material facts defeats the movant's prima facie showing. ITT Commercial Fin Cop. v. Mid-Am. Marine Supply Corp., 854 S.W.2d 371, 376 (Mo.banc 1993). If the movant requires an inference to establish his right to judgment as a matter of law and the

evidence reasonably supports an inference other than that alleged by movant, a genuine dispute exists and movant's prima facie showing fails. ITT Commercial Fin., 854 S.W.2d at 382.

In this case, Movant seeks a judgment on its petition for unlawful detainer. Plaintiff seeks both a judgment of possession and a money judgment for rent under the applicable Missouri Statutes. The requirements for a claim of unlawful detainer are set forth in §534.030.1 which provides:

534.030. 1. When any person willfully and without force holds over any lands, tenements or other possessions, after the termination of the time for which they were demised or let to the person, or the person under whom such person claims; **or after a mortgage or deed of trust has been foreclosed and the person has received written notice of a foreclosure;** or at least ten business days have elapsed after the date of the notice described in subsection 3 of this section; or when premises are occupied incident to the terms of employment and the employee holds over after the termination of such employment; or when any person wrongfully and without force, by disseisin, shall obtain and continue in possession of any lands, tenements or other possessions, and after demand made, in writing, for the delivery of such possession of the premises by the person having the legal right to such possession, or the person's agent or attorney, shall refuse or neglect to vacate such possession, such person is guilty of an "unlawful detainer". (emphasis added).

Here Plaintiff has alleged and provided uncontroverted proof that plaintiff lawfully possessed the premises because it acquired title to the property by purchasing the property in a foreclosure sale, and that defendants were provided with written notice of the foreclosure, as evidenced by certified mail receipts and affidavit of publication. On September 21, 2009 the premises located at 5804 East 84th Street, Kansas City, Jackson County, Missouri, was sold at foreclosure sale, to Deutsche Bank National Trust Company, as Trustee for the benefits of the Certificateholders for Ameriquest Mortgage Securities Trust 2004-R1. Plaintiff has provided proof that Defendants received notice of the foreclosure sale. Additionally, in open court on this date, plaintiffs acknowledged that they received notice of the foreclosure. Plaintiff has also

provided Affidavit of Publication, indicating that published notice was given prior to and up to the date of the foreclosure sale.

Defendants attempt to raise other affirmative defenses to the unlawful detainer claim of plaintiff. They claim that they have paid for the property in full, and that they are the rightful owners of the property. They also claim that they paid \$113,998.93 to CITI Residential Lendings, for the property. Defendants also claim that plaintiff or its counsel is attempting to steal their property by deceit.

The sole issue in an unlawful detainer action is the immediate right of possession. Issues relating to title or matters of equity, such as mistake, estoppel or waiver cannot be interposed as a defense. It is generally held that counterclaims are also prohibited in unlawful detainer proceedings, regardless of the subject matter, unless permitted by statute. Missouri statutes do not so permit. Central Bank of Kansas City v. Mika, 36 S.W.3d 772,774 (Mo.App.W.D. 2001); Walker v. Anderson, 182 S.W.3d 266, 268 (Mo.App.W.D.2006). Defendants argue fervently that they are entitled to a jury trial on their claims challenging the legal title to the property, and claiming that plaintiff did not acquire lawful title to the property. These claims are not cognizable in an Unlawful Detainer action. Section 234.210 provides:

The merits of the title shall in nowise be inquired into, on any complaint which shall be exhibited by virtue of the provisions of this chapter.

The same claims were raised in Central Bank of Kansas City v. Mika, supra. In that case the Mikas contended that they were entitled to contest the unlawful detainer by showing the Bank's foreclosure was wrongful. To support their position they relied on Fitzpatrick v. Feeder, 315 S.W.2d 826 (Mo.1958) in which the court recognized an equitable cause of action to set

aside a foreclosure sale. The Court held that although there is legal authority for the existence of such causes of action, there is no authority or the proposition that such a claim can be raised as a defense to an unlawful detainer action under §534.030.” 36 S.W.3d at 774. The court went on to hold:

The sole issue in an unlawful detainer action is the immediate right of possession. Issues relating to title or matters of equity, such as mistake, estoppel and waiver cannot be interposed as a defense. It is generally held that counterclaims are also prohibited in unlawful detainer proceedings, regardless of the subject matter, unless permitted by statute. Missouri statutes do not so permit. 36 S.W.2d at 774.

For these reasons the court finds that plaintiff has established that that no genuine issue of material fact exists on its unlawful detainer claim, and the plaintiff has a right to judgment as a matter of law.

As to the issue of claim for rent, plaintiff itself references the agreement contained in the Deed of Trust. Exhibit 2 leases the premises located at 5804 East 84th Street, Kansas City, MO to Robert E Suppenbach and Idella V. Suppenbach for the amount of one cent per month.

(Paragraph 7, Plaintiff’s Affidavit and Exhibit 2 attached.)

IT IS NOW THEREFORE ORDERED AND ADJUDGED that Plaintiff’s Motion for Summary judgment is **GRANTED**.

IT IS FURTHER ORDERED that plaintiff is granted judgment for possession of the premises located at 5804 East 84th Street, Kansas City, MO, legally described as:

All of Lots 11 and 12, Morales Addition, Number Two a subdivision in the

City of Kansas City, Jackson County, Missouri, according to the recorded plat thereof.

Subject to easements, restrictions, reservations and covenants which may be of record.

IT IS FURTHER ORDERED that plaintiff is granted judgment for double its rate of lost rents (1 cent per month), at the rate of two cents per month, for the months of October, 2009 and all months thereafter until restitution of the premises to plaintiff.

IT IS FURTHER ORDERED that this is a final judgment. This Summary Judgment disposes of all issues which are properly before the court in this action.

Costs against Plaintiff.

IT IS SO ORDERED.

1/11/10
Date

/s/ Sandra C. Midkiff

Sandra C. Midkiff, Circuit Judge

Copies mailed/faxed this _____ to:

Ben Struby, Fax: 636-537-0067

Robert Suppenbach, 5804 East 84th Street, Kansas City,, Missouri

Idella Suppenbach, 5804 East 84th Street, Kansas City, Missouri

Judicial Administrative Assistant