

# CAN YOU RELY ON LOAN PAYOFF STATEMENTS?



## *COUNSEL'S CORNER*

In August 2013, William Robertson and Connie Robertson agreed to sell real property to Terry Williams. The Robertsons had previously financed their property with EvaBank, who held two mortgages on the property.

Terry Williams engaged Traditions Bank to finance his purchase of the real estate. All parties used TBX Title as the closing agent to process the title, handle the escrow, pay debts secured by the property, and remit the balance to the Robertsons.

In September 2013 EvaBank sent a payoff statement to Traditions Bank, indicating a loan balance of \$22,222. That payoff statement, however, was for another EvaBank customer – *Michael Roberson*. Not *William Robertson*.

Five days after closing EvaBank contacted the Robertsons to report that their loan was past due. The Robertsons' response was predictable: the loan was paid in full at closing.

It was at this juncture that EvaBank first learned of the issue. EvaBank ultimately sent Traditions Bank an email explaining the mistake. And, EvaBank refused to release the mortgages encumbering the Robertsons' property until the loan balance was paid in full.

In December 2013 Traditions Bank sued EvaBank seeing a judgment that Traditions Bank held a first lien on the property and that EvaBank's refusal to release its mortgage liens was a slander of title.

EvaBank promptly filed a counterclaim for the full payment of all debts owing to it.

In February 2017 the trial court entered Judgment for Traditions Bank, and ordered EvaBank to release its mortgages. EvaBank appealed.

EvaBank asserted in its appeal that Traditions Bank and TBX Title had a duty to inquire and verify that the payoff statement was correct. Traditions Bank and TBX replied that they were entitled to rely on the payoff statement. And that is, after all, the sole purpose of a payoff statement.

The Supreme Court determined, by reviewing previous cases, that the party relying on the payoff statement “must have in good faith been ignorant of the true facts at the time a representation is made to him, and must have acted with diligence to learn the truth.”

The “good faith” part of the test was satisfied. The “due diligence” portion generated a deeper dive into the facts.

The Court found that both Traditions Bank and TBX Title had access to numerous documents that contained each of the Robertsons’ full names, address of the property, dates of the two mortgages, and the amounts of each loan. And that it was clear, to anyone who reviewed it, that the payoff statement had the wrong name – Michael S. Roberson instead of William Michael Robertson.

From there, the Court pinned the loss on Traditions Bank and TBX Title since both overlooked various discrepancies and, in the Court’s opinion, unreasonably relied on the payoff statement. The Judgment was reversed and EvaBank is entitled to be paid in full.

See *EvaBank v. Traditions Bank*; No. 1160495; Supreme Court of Alabama; February 9, 2018: <https://law.justia.com/cases/alabama/supreme-court/2018/1160495.html>.

#### Lessons Learned:

1. How many of us have ignored a discrepancy regarding a name, initial, property address, loan number, notice address or equivalent? And yes I include yours truly in the royal “us.” I, for one, will no longer be ignoring those matters.
2. Loan Payoff Statements are usually invisible to buyers and most sellers. They are prepared by mortgage lenders or servicing agents, and sent directly to the title agent. Buyers likely won’t have ready access to this intel, as it will be deemed confidential as between Seller and its lenders. Sellers, however, can demand to review the Statements for accuracy and it should be included in Seller’s Closing Checklist.
3. One of my takeaways from this case is the relation to Estoppel Certificates. If lenders and title agents may not automatically rely on Payoff Statements, then it

follows that none of us may assume that Estoppel Certificates are genuine and accurate without undertaking an added level of due diligence. Ouch. I did not see that coming.

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