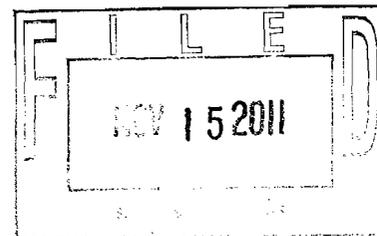


IN THE WEST VIRGINIA SUPREME COURT OF APPEALS



**REBUILD AMERICA, INC. and
REO AMERICA, INCORPORATED,**

Petitioners,

v.

Case No.: 11-0592

**MARK E. DAVIS, TAMMY DAVIS,
MIKE RUTHERFORD, Sheriff,
VERA MCCORMICK, Clerk, and
HUNTINGTON NATIONAL BANK, N.A.,**

Respondents.

**THE REPLY BRIEF OF THE RESPONDENT,
HUNTINGTON NATIONAL BANK, N.A.**

Christopher S. Smith - WV State Bar #3457
Stephen P. Hoyer - WV State Bar #5668
Nicola D. Smith - WV State Bar #11251
Hoyer, Hoyer & Smith, PLLC
22 Capitol Street
Charleston, West Virginia 25301
(304) 344-9821; (304) 344-9519 Fax

and

Philip B. Hereford - WV State Bar #1687
Hereford & Riccardi, PLLC
405 Capitol Street, Suite 306
Charleston, West Virginia 25301
(304) 346-1800; (304) 346-1836 Fax
Counsel for Huntington Banks

I. INTRODUCTION

On April 1, 2011, REO America, Inc. ("REO") and Rebuild America, Inc. ("Rebuild"), filed their Petition with this Court seeking an Appeal from an Order of the Circuit Court of Kanawha County, West Virginia, entered on November 4, 2010. On April 4, 2011, the Respondent, Huntington National Bank, N.A. (the "Bank"), filed its Response. The Respondents, the Sheriff and the Clerk of Kanawha County, also filed their Response on April 4, 2011.

This Court's October 6, 2011 Order provides that the Petitioners, REO and Rebuild, may file a supplement brief within thirty days after entry of the Order. The Order further provided that the Respondents, including the Bank, may file a brief in response thirty days after receipt of the Petitioners' brief. On November 7, 2011, the Petitioners filed their Supplemental Brief with this Court. It was received by Counsel for the Bank on November 8, 2011.

In accordance with this Court's October 6, 2011 Order, the Bank files this short Reply.

II. ARGUMENT

REO and Rebuild's arguments in their Response regarding the bankruptcy stay are misplaced for the following reasons.

First, the cases cited by REO and Rebuild at pages 2-3 of their Reply **do not involve tax sales**. Rather, as argued in the Bank's Response, the cases cited by REO and Rebuild involve **foreclosure sales**. Response of Huntington National Bank, N.A., pp. 11-12. The present case **is about a tax sale, not a foreclosure sale**. In addition, the present case **does not involve a mere "postponement"** of a sale.

Second, if REO and Rebuild were really convinced that their actions were not in violation of the bankruptcy stay, they should have (and still can) go to the Bankruptcy Court and ask for a declaratory judgment¹ that the stay was not in effect, or alternatively, that the stay be annulled. Instead, REO and Rebuild have purposely turned their backs on the Bankruptcy Court's expertise and needlessly burdened the State Court system with federal bankruptcy issues.

III. CONCLUSION

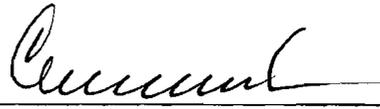
WHEREFORE, based upon the foregoing, the Appellee, Huntington National Bank, N.A., respectfully requests that the Court **AFFIRM** the Order of the Circuit Court of Kanawha County setting aside the tax sale and restoring the legal title in the property to the Plaintiffs, and Huntington National Bank respectfully requests such other and further action and this Court deems just and proper.

HUNTINGTON NATIONAL BANK, N.A.,

By Counsel



Philip B. Hereford - WV State Bar #1687
Hereford & Riccardi, PLLC
405 Capitol Street, Suite 306
Charleston, West Virginia 25301
(304) 346-1800; (304) 346-1836 Fax
Counsel for Huntington Banks



Christopher S. Smith - WV State Bar #3457
Hoyer, Hoyer & Smith, PLLC
22 Capitol Street
Charleston, West Virginia 25301
(304) 344-9821; (304) 344-9519 Fax
Chris@HHSMLaw.com
Co-Counsel for Huntington Banks

¹ Note that 28 U.S.C. § 2201(a) regarding declaratory judgments applies in bankruptcy cases. Sears, Roebuck & Co. v. O'Brien, 178 F.3d 962, 964 (8th Cir. 1999).

IN THE WEST VIRGINIA SUPREME COURT OF APPEALS

**REBUILD AMERICA, INC. and
REO AMERICA, INCORPORATED,**

Petitioners,

v.

Case No.: 11-0592

**MARK E. DAVIS, TAMMY DAVIS,
MIKE RUTHERFORD, Sheriff,
VERA MCCORMICK, Clerk, and
HUNTINGTON NATIONAL BANK, N.A.,**

Respondents.

CERTIFICATE OF SERVICE

I, Christopher S. Smith, hereby certify that on the 15th day of November, 2011, **THE
REPLY BRIEF OF THE RESPONDENT, HUNTINGTON NATIONAL BANK, N.A.**, was
served by United States first class mail, postage prepaid, on the following:

O. Gay Elmore, Jr., Esquire
Elmore & Elmore
121 Summers Street
Charleston, West Virginia 25301

Marc J. Slotnick, Esquire
Bailey & Wyatt, PLLC
Post Office Box 3710
Charleston, West Virginia 25337

Herschel H. Rose, III, Esquire
Rose Law Office
Post Office Box 3502
Charleston, West Virginia 25335

James W. Lane, Jr., Esquire
205 Capitol Street, Suite 400
Post Office Box 11806
Charleston, West Virginia 25339

Mark and Tammy Davis
51 Woodridge Drive
Charleston, West Virginia 25311



Christopher S. Smith