

**NO. 09-10145**

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

In the Matter of VANCE COLE CHESNUT,  
Debtor.

---

**MARK T. BROWN and  
TEMPLETON MORTGAGE CORPORATION,**  
Appellants,

v.

**VANCE COLE CHESNUT,**  
Appellee.

Appeal from the United States District Court  
for the Northern District of Texas, Fort Worth Division

---

**REPLY BRIEF OF APPELLANTS**

---

Dennis Olson  
State Bar No. 15273500  
OLSON NICOUD & GUECK, L.L.P.  
1201 Main Street, Suite 2470  
Dallas, Texas 75202  
(214)979-7300 Telephone  
(214) 979-7301 Facsimile

ATTORNEYS FOR APPELLANTS

JUNE 15, 2009

TABLE OF CONTENTS

TABLE OF CONTENTS ..... i

TABLE OF AUTHORITIES ..... ii

APPELLANTS’S REPLY BRIEF . . . . . Page 1

CONCLUSION. . . . . Page 4

SIGNATURE OF COUNSEL. . . . . Page 4

CERTIFICATE OF SERVICE . . . . . Page 5

CERTIFICATE OF COMPLIANCE. . . . . Page 5

## TABLE OF AUTHORITIES

The Reply Brief of Appellants contains no additional authorities.

**NO. 09-10145**  
**IN THE UNITED STATES COURT OF APPEALS**  
**FOR THE FIFTH CIRCUIT**

In the Matter of VANCE COLE CHESNUT,  
Debtor.  
**MARK T. BROWN and**  
**TEMPLETON MORTGAGE CORPORATION,**  
Appellants,

v.

**VANCE COLE CHESNUT,**  
Appellee.

---

Appeal from the United States District Court  
for the Northern District of Texas, Fort Worth Division

---

**REPLY BRIEF OF APPELLANTS, MARK T. BROWN AND**  
**TEMPLETON MORTGAGE CORPORATION**

---

**TO THE HONORABLE JUDGES OF THE COURT**  
**OF APPEALS FOR THE FIFTH CIRCUIT:**

COME NOW Appellants, Mark T. Brown and Templeton Mortgage Corporation (“Templeton”), and file Appellants’ Reply Brief and would respectfully show the Court the following:

REPLY ARGUMENT

Appellants stand on their original brief and reurge it as the basis to reverse the opinion of the United States District Court. Appellants again request oral

argument. In this brief argument, Appellants only comment on a few specific aspects of Appellee's Brief and reargue some points of Appellants' Brief.

Appellee cites his plan and its amendments and confirmation as instances in which Appellants could have and should have objected if they did not like the contents of the plan. It is important to put the chronology of the case in its proper context. At the time Appellee filed his bankruptcy on January 31, 2003, record title to the Eastland Property was in Ms. Chesnut as her sole and separate property. Less than a week later, on February 4, 2003, the Eastland Property was foreclosed upon and record title to the Eastland Property was in Templeton at all times until the bankruptcy court ruled that the automatic stay had been violated, in December, 2003. The title to the Eastland Property then went back to Mrs. Chesnut as her sole and separate property, for about seven months, until the United States District Court put the title back in Templeton in July of 2004. The Eastland Property remained in Templeton's name until this Court entered its reversal in 2005. Since then, record title has been in Mrs. Chesnut, as her sole and separate property.

Appellee's chapter 13 plan was ignored by Appellants because Appellants had actual title to the Eastland Property, and it was Appellee's burden to plead and prove that the Eastland Property was in fact property of the estate. The confirmed plan is binding on Appellants, and the bankruptcy court has subject matter

jurisdiction to order the release of Appellants' lien, only if the debtor pleads and proves that the Eastland Property is property of the estate. Even after the reversal in *Chesnut I*, Appellants continued to wait for the debtor to plead and prove that the Eastland Property was property of the estate. Appellee impermissibly attempts to shift the burden to Appellants.

The plan, as written, makes no sense unless Appellee eventually obtains a determination that the Eastland Property is property of the estate. At the time the plan was confirmed, in December of 2004, record title had been in the name of Templeton again for months, and the bankruptcy court knew that. The bankruptcy court conducted no hearing, and the plan would only make sense if at some point in the future there was a determination that the Eastland Property was property of the estate. Once the ruling by this court in *Chesnut I* came out, Appellee chose to do nothing and see if he could get the lien released upon completion of the plan, instead of meeting his burden of seeking and obtaining a determination in an adversary proceeding that the Eastland Property was property of the estate. No such determination has been obtained, and Appellants hold a lien on property owned by Mrs. Chesnut as her sole and separate property.

If Appellee intended for his plan to be binding on Appellants even if the Eastland Property was never determined in an adversary proceeding to be property

of the estate, Appellee should at least be required to disclose that in his plan.

### CONCLUSION

The judgments of the bankruptcy court and district court ordering Templeton to release its lien on the Eastland Property should be reversed. No remand is necessary.

Respectfully submitted,

OLSON NICOUD & GUECK, L.L.P.  
1201 Main Street, Suite 2470  
Dallas, Texas 75202  
(214) 979-7300 - Telephone  
(214) 979-7301 - Facsimile  
Email: [denniso@dallas-law.com](mailto:denniso@dallas-law.com)

By: \_\_\_\_\_  
Dennis Olson  
State Bar No. 15273500

ATTORNEYS FOR APPELLANTS  
MARK T. BROWN AND  
TEMPLETON MORTGAGE CORPORATION

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing Reply Brief was served upon:

James M. Morrison  
6815 Manhattan Blvd., Suite 310  
Fort Worth, Texas 76120

Tim Truman  
6851 N.E. Loop 820  
Suite 300  
Fort Worth, Texas 76180-6608

Pamela A. Bassel  
Bassel & Wilcox, P.L.L.C.  
206 E. 8<sup>th</sup> Street, Suite 201  
Fort Worth, Texas 76110-0509

via certified mail, return receipt requested, on the 15<sup>th</sup> day of June, 2009.

\_\_\_\_\_  
Dennis Olson

**CERTIFICATE OF COMPLIANCE**

This is to certify that the above and foregoing brief complies with the type/volume limitations of Fed. R. App. P. 32(a)(7). The brief consists of no more than 8 pages, 221 lines of text and 968 words as determined by the properties function of Corel WordPerfect 11.

\_\_\_\_\_  
Dennis Olson