

VOLUME I  
CLERKS RECORD

APPELLATE COURT NO. 01-06-00798-CV

FILED IN  
1ST COURT OF APPEALS  
HOUSTON, TEXAS

OCT 10 2006

M. KARINNE McCULLOUGH  
CLERK

FCLT LOANS ASSET CORPORATION & TIMOTHY J. BLAIR & FIRSTCITY FINANCIAL CORPORATION  
APPELLANT(S)

TRIAL COURT NO. 2005-04492 VS.

PRUDENTIAL FINANCIAL, INC.  
APPELLEE(S)

FROM THE

152ND District Court of Harris County, at Houston, Texas

HON. KENNETH WISE, JUDGE PRESIDING.

Applied for by CURRAN TOMKO TARSKI, LLP on 28TH day of AUGUST A.D., 2006 and delivered to the FIRST COURT OF APPEALS on the day of A.D., 2006.

CHARLES BACARISSE  
Harris County, District Clerk

By:   
PATRICIA TIPPINS Deputy

Attorney for Appellant:

SUSAN HAYS

1700 PACIFIC AVE STE 4545

DALLAS TX 75201

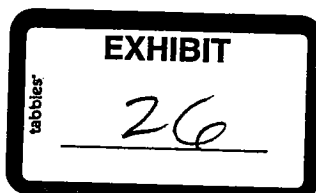
Attorney for Appellee:

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HOUSTON TX 77022

AP3 R04-30-92



POSTED

FCLT LOANS ASSET § TIMOTHY J BLAIR § FIRST CITY FINANCIAL

VS. NO. 2005-04492

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**CAPTION**

**THE STATE OF TEXAS**

**COUNTY OF HARRIS**

At a Term of the District Court, begun and holden at Houston, Texas within and for the County of Harris before the Honorable **KENNETH WISE**, Judge of the 152<sup>ND</sup> Judicial District Court in and for said County on the 2<sup>ND</sup> day of JANUARY, 2006, and which said term is still in session, the following Cause came on for trial, to wit:

**FCLT LOANS ASSET CORPORATION § TIMOTHY J BLAIR § FIRSTCITY FINANCIAL CORP.**

**VS**

**NO. 2005-04492**

**PRUDENTIAL FINANCIAL, INC.**

FIRST SUPPLEMENTAL

~~POSTED~~

CLERKS RECORD

NO. 01-06-798-CV

FCLT LOANS ASSET CORPORATION § TIMOTHY J BLAIR § FIRST CITY FINANCIAL CORPORATION  
APPELLANT(S)

VS. TRIAL COURT NO. 2005-04492,

PRUDENTIAL FINANCIAL, INC.  
APPELLEE(S)

FROM THE

152ND District Court of Harris County, at Houston, Texas

HON. KENNETH WISE JUDGE PRESIDING.

Applied for by 1<sup>ST</sup> COA on the 6TH day of JULY A.D., 2007., and assigned to the FIRST COURT OF APPEALS

2007 JUL 17 PM 3:40  
CLERK OF THE COURT



CHARLES BACARISSE  
Harris County, District Clerk

By   
BERRIE DENSON Deputy

**FCLT LOANS ASSET CORPORATION § TIMOTHY J BLAIR § FIRSTCITY  
FINANCIAL CORPORATION**

VS. NO. 2005-04492

PRUDENTIAL FINANCIAL, INC.

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**AFFIRMATIVE DEFENSES**

1. Defendant FCLT asserts as an affirmative defense that the claims of JP Morgan Chase Bank, National Association, FirstCity Financial Corporation and Timothy J. Blair are barred, in whole or in part, by the doctrines of waiver and/or estoppel.

2. Defendant FCLT asserts as an affirmative defense that the claims of JP Morgan Chase Bank, National Association, FirstCity Financial Corporation and Timothy J. Blair are barred by laches.

3. Defendant FCLT asserts as an affirmative defense that the claims of JP Morgan Chase Bank, National Association, FirstCity Financial Corporation and Timothy J. Blair are barred by the doctrines of *res judicata* and/or collateral estoppel.

4. Defendant FCLT asserts an affirmative defense that the claims of JP Morgan Chase Bank, National Association, FirstCity Financial Corporation and Timothy J. Blair are barred by accord and satisfaction.

**WHEREFORE, PREMISES CONSIDERED,** Defendant FCLT Loans Asset Corp. prays that Defendants FirstCity Financial Corporation and JP Morgan Chase Bank, National Association, and Third Party Defendant Timothy J. Blair, take nothing against him, and that Defendant FCLT have such other and further relief, both general and special, both in law and in equity, to which it may show itself to be justly entitled.

Respectfully submitted,

McMANEMIN & SMITH, P.C.

By: 

G. Michael Curran  
State Bar No. 05259600  
David A. Stephan  
State Bar No. 19143900

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Plaza of the Americas, L.B. 175  
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Telephone: (214) 953-1321  
Facsimile: (214) 953-0695

ATTORNEYS FOR DEFENDANT FCLT  
LOANS ASSET CORP.

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing First Amended Answer of Defendant FCLT Loans Asset Corp. has been forwarded on this the ~~15~~ 17 day of September, 2005, by depositing the foregoing in the United States mail, via certified mail, return receipt requested to:

John Hopwood  
Locke Liddell & Sapp, LLP  
600 Travis Street  
3400 JPMorgan Chase Tower  
Houston, Texas 77022

Odean Volker  
Haynes & Boone, LLP  
One Houston Center  
1221 McKinney, Suite 2100  
Houston, Texas 77010

Robert S. MacIntyre, Jr.  
Thompson & Knight, LLP  
333 Clay Street, Suite 3300  
Houston, Texas 77002

  
David A. Stephan



COURT OF APPEALS FOR THE  
FIRST DISTRICT OF TEXAS AT HOUSTON

NOTICE OF ORDER

Cause No. 01-06-00798-CV; *FCLT Loans Asset Corp. and Timothy J. Blair, Class Representative v. FirstCity Financial Corporation*  
On Appeal from the 152nd District Court of Harris County, Texas  
Trial Court Cause No. 2005-04492

The clerk's record filed in the above-referenced appeal on October 9, 2006 does not include a copy of the (1) First Amended Answer of Defendant FCLT Loans Asset Corp. The Court finds that the above-referenced item is relevant to this appeal. *See* TEX. R. APP. P. 34.5(c)(1).

Therefore, we **order** the District Clerk of Harris County to file a supplemental clerk's record including a copy of the above-referenced document within ten days of the date of this order, subject to appellant, FCLT Loans Asset Corp.'s payment for, or his making arrangements to pay for, said supplemental record. *See id.*; *see also* TEX. R. APP. P. 35.3(a)(2).

It is so ORDERED.

Judge's signature: /s/ Justice Jane Bland

Acting individually     Acting for the Court

Panel consists of \_\_\_\_\_

Date: July 5, 2007

Absent emergency or a statement that the motion is unopposed, must wait ten days before acting on motion except for motion to extend time to file a brief. *See* TEX. R. APP. P. 10.3(a).

**Note:** Single justice may grant or deny any request for relief properly sought by motion, except in a civil case a single justice should not: (1) act on a petition for an extraordinary writ or (2) dismiss or otherwise determine an appeal or a motion for rehearing. TEX. R. APP. P. 10.4(a).

FILED  
CHARLES BACARISSE  
DISTRICT CLERK  
HARRIS COUNTY, TEXAS

07 JUL -6 AM 8:59

BY \_\_\_\_\_  
POST JUDGEMENT DEPUTY

000004

BILL OF COSTS

THE STATE OF TEXAS  
COUNTY OF HARRIS

FCLT LOANS ASSET CORPORATION § TIMOTHY J BLAIR § FIRSTCITY FINANCIAL CORPORATION

VS. NO. 2005-04492

PRUDENTIAL FINANCIAL, INC.

TO OFFICERS OF COURT,

CLERK'S COSTS

Supplemental Clerks Record \_\_\_\_\_ \$6.00


TOTAL \$ \_\_\_\_\_ **\$6.00**

THE STATE OF TEXAS  
COUNTY OF HARRIS

I, CHARLES BACARISSE, Clerk of the District Court in and for Harris County, Texas, do hereby certify that the above is a Correct Bill of all Costs incurred (except statement of facts which have not been filed in this office) in the above numbered and entitled suit up to this date.

IN WITNESS WHEREOF, I, hereunto affix my hand and seal of the Court at office in Houston, Texas this 17TH day JULY of A.D., 2007.

CHARLES BACARISSE,  
CLERK DISTRICT COURT,  
HARRIS COUNTY, TEXAS

BY   
BERRIE DENSON, DEPUTY

SU6 R11-06-92

000005

CERTIFICATE

THE STATE OF TEXAS

COUNTY OF HARRIS

I, CHARLES BACARISSE, Clerk of the District Court in and for Harris County, Texas, do hereby certify that the above and foregoing are true and correct copies of all the proceedings directed by Counsel and/or Rule 34 to be included in the Original/Supplemental Clerks Record in the Cause of

FCLT LOANS ASSET CORPORATION § TIMOTHY J BLAIR § FIRSTCITY FINANCIAL CORPORATION

VS. NO. 2005-04492

PRUDENTIAL FINANCIAL, INC.

as the same appear from the originals now on file of record in this office.

GIVEN under my hand and seal of said Court at office in the City of Houston, on the 17TH day of JULY A. D., 2007.

CHARLES BACARISSE,  
CLERK DISTRICT COURT,  
HARRIS COUNTY, TEXAS

BY:   
BERRIE DENSON DEPUTY

Houston, Texas, JULY 16, 2007

KENT GEOFFREY RUTTER TBA #00797364  
1221 MCKINNEY #2100  
HOUSTON, TX 77010  
(713)547-2211

**TO CHARLES BACARISSE, DISTRICT CLERK**  
**Attn: Civil Post Judgment**  
**P.O. Box 4651, Houston, Texas 77210**

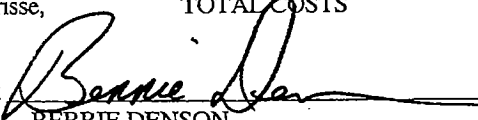
No. 2005-04492

**FCLT LOANS ASSET CORPORATION § TIMOTHY J BLAIR § FIRSTCITY FINANCIAL CORPORATION**  
APPELLANT(S)

VS

**PRUDENTIAL FINANCIAL, INC.**  
APPELLEE(S)

FIRST SUPPLEMENTAL CLERKS RECORD	\$6.00	
DELIVERED TO THE FIRST COURT OF APPEALS		
Charles Bacarisse, TOTAL COSTS	\$6.00	

District Clerk  Deputy  
BERRIE DENSON

Make cashier's check, attorney or law firm check, or money order payable to **CHARLES BACARISSE, District Clerk.**