

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

SOVEREIGN BANK,

:

: No. 06-01,773

:

Plaintiff

:

:

vs.

: CIVIL ACTION – LAW

:

CLARK’S AG CENTER, INC.,
NORMAN VENEMA and JULIA A.
CLARK-VENEMA,
Defendant

:

:

: Order re lien priority

:

ORDER

AND NOW, this ____ day of January 2007, upon consideration of Sovereign Bank’s Emergency Motion to Stay Writ of Execution and its Amended Complaint, which contains counts for declaratory judgment and fraud, it is ORDERED and DIRECTED as follows:

1. The Court finds that Sovereign Bank (Sovereign) has not established all the elements of equitable subrogation. Four criteria must be met for equitable subrogation to apply: (1) the claimant paid the creditor to protect his own interests; (2) the claimant did not act as a volunteer; (3) the claimant was not primarily liable for the debt; and (4) allowing subrogation will not cause injustice to the rights of others. First Commonwealth Bank v. Heller, 863 A.2d 1153, 1158 (Pa.Super. 2004), appeal denied 887 A.2d 231 (Pa. 2005). Although the third element is satisfied, the Court finds that the others are not. Sovereign did not have to pay off its initial mortgage to protect its own interest. Sovereign already had first lien priority. It did not have to refinance the initial mortgage and mark it satisfied. It was not as if another bank was offering refinancing to the Venemas, so Sovereign also did to keep

the Venemas business. The Court also finds Sovereign acted as a volunteer. Id. at 1159; Home Owners' Loan Corp. v. Crouse, 151 Pa.Super. 259, 30 A.2d 330 (Pa.Super. 1943). In Home Owners' the Superior Court stated: "The payor must have acted on compulsion, and it is only in cases where the person paying the debt of another will be liable in the event of a default or is compelled to pay in order to protect his own interests, or by virtue of legal process, that equity substitutes him in the place of the creditor without any agreement to that effect; in other cases the debt is absolutely extinguished." 30 A.2d at 331. Sovereign has not presented any evidence that it acted on compulsion. Furthermore, the Court finds allowing subrogation would cause injustice to the rights of Clark's Ag Center, Inc. (CACI). CACI paid valuable consideration for the assignment from PNC. Prior to purchasing the assignment, CACI had a title search conducted and determined that PNC's lien had priority over Sovereign's re-financed mortgage as PNC's lien was first in time. Sovereign could have protected itself by conducting a title search prior to refinancing the Venemas mortgage.¹ The Superior Court in Home Owners' further stated: "the courts of equity will not relieve a party from the consequences of an error due to his own ignorance or carelessness when there were available means which would have enabled him to avoid the mistake if reasonable care had been exercised." Id. at 332. Based on principles and holdings set forth in First Commonwealth Bank and Home Owners' Sovereign is not entitled to equitable subrogation.

2. The Court finds that Sovereign has not met its burden of proof to show the Venemas committed fraud. Fraud must be proven by clear and convincing evidence. The Court finds the Venemas testimony credible that although they were aware PNC obtained a

¹ The Court also notes that it would not be equitable to deprive CACI of its lien position, which Sovereign could have discovered, when Sovereign has title insurance.

judgment against them personally,² they were not aware that it was a judgment or a lien against their home at the time they refinanced their mortgage with Sovereign on or about November 4, 2004. Although PNC's confessed judgment was entered and filed on May 14, 2003, PNC did not begin execution proceedings against the Venemas residence until March 3, 2006. The Venemas testified that they believed certain business assets would be sufficient to cover the judgment and their attorney told them that the judgment would not affect their home. Furthermore, even if Sovereign had proven fraud by the Venemas, the Court does not believe that would entitle Sovereign to divest CACI of its lien position. Sovereign did not present any evidence that CACI participated in or was aware of any alleged fraud by the Venemas.

Based on the foregoing, the Court finds CACI has first lien priority and Sovereign has a junior lien on the property located at 128 Gentry Lane, Montoursville, Pennsylvania.

By The Court,

Kenneth D. Brown, P.J.

cc: Kristine Waltz, Esquire (counsel for CACI)
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Evan Pappas, Esquire (counsel for Sovereign)
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Work file

² The Venemas were liable as guarantors on a loan and line of credit PNC provided to their pet food distribution business.