

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ONE WEST BANK, FSB,	:	CV-2013-00781
	Plaintiff,	:
vs.	:	CIVIL ACTION
	:	:
DELORES E. SMITH, STEVEN W. SMITH, and	:	MORTGAGE FORECLOSURE
YVETTE E. SMITH,	:	:
	Defendants.	JUDG. PLEAD./SUMM. JUDG.

OPINION AND ORDER

This matter comes before the Court on cross, dispositive motions filed by each party. On May 30, 2013, Defendants Steven W. and Yvette E. Smith filed a motion for judgment on the pleadings. In this motion, Defendants allege that there is no genuine issue of fact to be tried. *See* Motion, ¶ 2. Alternatively, on June 14, 2013, Plaintiff moved for partial summary judgment against Defendants Steven W. and Yvette E. Smith. In their motion, Defendants agree that there is no genuine issue of material fact. *See* Motion, ¶ 26.

I. Findings of Fact

1. Defendants Steven W. and Yvette E. Smith (“Defendants Smith”) married in 1989.
2. On July 17, 1998, Defendants Smith purchased real property located at 124 Mechanic Street, Muncy, Lycoming County, Pennsylvania 17756 (Lycoming County Tax Parcel No. 39-2-604) (the “property”).
3. On March 27, 2003, Defendants Smith borrowed \$59,250.00 from Delta Funding Corporation (the “2003 loan”); they used the proceeds to renovate the property.
4. To secure the 2003 loan, Defendants Smith executed a mortgage in favor of Delta Funding Corporation in the amount of \$59,250.00 (the “2003 mortgage”).
5. On September 19, 2005, Defendants Smith refinanced the 2003 mortgage with a new mortgage from BNC Mortgage, Inc., in the amount of \$85,000.00 (the “2005 mortgage”).

6. Defendants Smith used the proceeds from the 2005 mortgage to pay off the 2003 mortgage and to build a garage on the property.
7. In 2007, Defendants Smith tried to refinance the 2005 mortgage. They submitted a mortgage application in both of their names, but this application was rejected due to their insufficient combined income.
8. After their mortgage application was rejected, Defendants Smith's mortgage broker suggested that they remove Yvette's name from the application and replace it with Steven's mother, Dolores Smith (now deceased), and re-file the application.
9. Steven and Dolores Smith submitted a second mortgage application; Indymac Bank approved this application (the "2007 mortgage").
10. On December 6, 2007, Steven, Yvette, and Dolores Smith attended the closing on the 2007 mortgage.
11. Yvette did not object during the 2007 mortgage closing.
12. The 2007 mortgage was properly recorded with the Lycoming County Recorder of Deeds on December 11, 2007.
13. Defendants Smith used the proceeds from the 2007 mortgage to satisfy the 2005 mortgage, replace the property's roof, and convert an enclosed porch on the property to a living room and kitchen.
14. At the time of the closing, Yvette knew that the proceeds from 2007 mortgage would be used to pay off the 2005 mortgage.
15. Defendants defaulted on the 2007 mortgage after failing to submit the payment due on June 1, 2009.

16. Defendants have made no further payments on the mortgage and have failed to cure the breach after notice as required by the terms of the mortgage.
17. On June 23, 2010, Indymac Bank assigned the 2007 mortgage to Plaintiff One West Bank.
18. On October 12, 2012, Defendants Smith conveyed the property to Yvette, solely.
19. At the time of the October 12, 2012 conveyance, Defendants had not satisfied Plaintiff's 2007 mortgage.
20. The amounts due on the 2007 mortgage as of December 21, 2012, consist of:

Unpaid Principal Balance	\$114,657.87
Accumulated Interest	32,849.66
Accumulated Late Charges	168.20
Taxes	3,758.85
Insurance	5,514.19
BPO/Appraisal	95.00
Property Inspections	66.00
Recoverable Balance	-66.00
Attorney Fees	2,265.00
PMI Insurance	3,209.20
TOTAL	\$162,517.97

II. Conclusions of Law

1. Pa. R.C.P. 1034(a) reads “[a]fter the relevant pleadings are closed, but within such time as to not unreasonably delay the trial, any party may move for judgment on the pleadings.” *Id.*
2. A court should grant a motion for judgment on the pleadings if, on the face of the pleadings, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Integrated Project Services v. HMS Interiors, Inc.*, 931 A.2d 724, 732 (Pa. Super. Ct. 2007) (citations omitted). When conducting its

inquiry, the Court's analysis is confined to the pleadings and all documents and exhibits attached thereto. *Id.*

3. Pa. R.C.P. 1035.2 provides:

[a]fter the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or in part as a matter of law (1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or (2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

4. In *Cunningham v. McWilliams*, 714 A.2d 1054, our Superior Court addressed moving for summary judgment during a mortgage foreclosure proceeding; particularly, that Court stated:

[u]pon default, the holder of a mortgage can legally proceed to enforce the terms of the mortgage either by foreclosure proceedings or by obtaining judgment on the bond accompanying the mortgage and issuing a writ of execution. In an action for mortgage foreclosure, the entry of summary judgment is proper if the mortgagors admit that the mortgage is in default, that they have failed to pay interest on the obligation, and that the recorded mortgage is in the specified amount. This is so even if the mortgagors have not admitted the total amount of the indebtedness in their pleadings.

Id. at 1056-57 (citations omitted).

5. Title 21 (Deeds and Mortgages) of the Pennsylvania Statutes recites:

[t]he legal effect of the recording of such agreements shall be to give constructive notice to subsequent purchasers, mortgagees, and/or judgment creditors of the parties to said agreements of the fact of the granting of such rights or privileges and/or of the execution of said releases, and the rights of the subsequent purchasers, mortgagees, and/or judgment creditors of the parties to said agreements shall be limited thereby with the same force and effect as if said subsequent purchasers, mortgagees, and/or judgment creditors had actually joined in the execution of the agreement or agreements aforesaid.

21 P.S. § 357.

6. Our Supreme Court has held that the language of 21 P.S. § 357 unambiguously provides that recording a mortgage has the legal effect of giving subsequent purchasers constructive notice of the mortgage. *First Citizens National Bank v. Sherwood*, 879 A.2d 178, 181 (Pa. 2005) (holding that a subsequent purchaser had constructive notice of a mortgage that was properly recorded despite the mortgage being improperly indexed).
7. In this matter, Yvette Smith had constructive notice of the 2007 mortgage because the 2007 mortgage was properly recorded, and Yvette Smith was a subsequent purchaser of the property that was encumbered by this mortgage. *See First*, 879 A.2d at 181.
8. The 2007 mortgage is valid against the property.
9. The property is subject to foreclosure as a result of Defendants' default on the 2007 mortgage.

III. Discussion

In the present case, Defendants argue that Yvette is not liable under the mortgage because she was not a signatory to the mortgage. The Court does not agree. Defendant's argument lacks merit because mortgage foreclosures are *in rem* proceedings. In *First Citizens National Bank*, our Supreme Court held that a subsequent purchaser takes property subject to a pre-existing mortgage if that mortgage is properly recorded. In this matter, the 2007 mortgage at issue was properly recorded on December 11, 2007. In an attempt thwart the filing of this action, on October 12, 2012 Defendants Smith transferred the property solely to Yvette. However, despite Yvette now holding the property solely in her name and the absence of her name from the 2007 mortgage, Yvette took the property subject to the 2007 mortgage because it was properly recorded. Therefore, the property is encumbered by the 2007 mortgage and subject to foreclosure as a result of Defendants' default on this mortgage.

The Court enters the following Order.

ORDER

AND NOW, this 22nd day of August, 2013, for the reasons stated above, it is hereby ORDERED and DIRECTED as follows:

1. Defendants Steven W. and Yvette E. Smith's motion for judgment on the pleadings is DENIED; and
2. Plaintiff's Motion for Partial Summary Judgment is GRANTED. Judgment, *in rem*, is hereby ENTERED for Plaintiff One West Bank, FSB, and against Defendants Steven W. Smith and Yvette E. Smith in the amount of \$162,517.97, together with the ongoing per diem interest, escrow advances, and any additional recoverable costs, including attorney's fees to date of Sheriff's sale, and for foreclosure and sale of the mortgaged property.

BY THE COURT,

Date

Richard A. Gray, J.

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