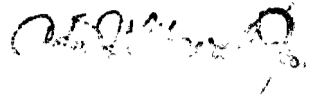


FILED APR 30 2002

NOT DESIGNATED FOR PUBLICATION



ALMA B. LITTLE

COURT OF APPEAL

VERSUS

FIFTH CIRCUIT

**CADLE COMPANY, CADLE
COMPANY II, FIRST NATIONAL
BANK OF JEFFERSON, AND
HIBERNIA BANK**

STATE OF LOUISIANA

01-CA-1424

APPEAL FROM
THE TWENTY-FOURTH JUDICIAL DISTRICT COURT,
PARISH OF JEFFERSON, STATE OF LOUISIANA,
NUMBER 555-508, DIVISION "J,"
HONORABLE STEPHEN WINDHORST, PRESIDING.

APRIL 30, 2002

**WALTER J. ROTHSCHILD
JUDGE**

Panel composed of Judges Edward A. Dufresne, Jr.
Thomas F. Daley and Walter J. Rothschild.

LEON RUDLOFF

3001 19TH Street
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MARK C. LANDRY

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Appellees.

RICHARD T. REGAN

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Counsel for, Linda Dupuy, wife of/and Wayne G. Forest, Intervenor/Appellees.

AFFIRMED.

WJR
EACH
T.D.

On November 19, 1988, Donald Little executed a collateral mortgage in favor of his mother, Alma Little, which was secured by Mr. Little's interest in the immovable property located at 520 Iona Street in Metairie, Louisiana. Ms. Little recorded the collateral mortgage in the mortgage records of Jefferson Parish on November 21, 1988.

On April 29, 1992, a judgment against Donald Little and in favor of First National Bank of Jefferson Parish was recorded in the Jefferson Parish mortgage records.¹ On January 22, 1997, the Cadle Company II recorded a judgment against Donald Little in the mortgage records of Jefferson Parish. The judgments recorded in the mortgage records encumbered Donald Little's interest in the immovable property located at 520 Iona Street.

On January 18, 2000, Ms. Little sold the Iona Street property to Linda Dupuy and her husband, Wayne Forest. An escrow agreement was executed by the parties which provided that \$100,000.00 of the sale proceeds would be held in escrow, due to the existence of two uncanceled judicial mortgages against the property, which were in favor of Hibernia National Bank and the Cadle Company II.

On July 7, 2000, Alma Little filed a Petition for Declaratory Judgment seeking a ruling from the trial court stating that the collateral mortgage in her favor is the highest

¹Hibernia National Bank is the successor in interest by merger to First National Bank of Jefferson Parish.

ranking lien against the property and that she is entitled to first priority to receive the escrowed money from the sale of the property. Hibernia National Bank and the Cadle Company II, Inc. filed a “Motion to Dismiss, Exception of No Cause of Action, Exception of No Right of Action, and Alternative Motion for Summary Judgment.” The trial court conducted a hearing on May 10, 2001. On May 18, 2001, the trial judge signed a judgment in which he granted the motion for summary judgment filed by Hibernia and the Cadle Company II, and found that the collateral mortgage in favor of Ms. Little had lost its priority ranking on November 24, 1998 because it had not been reinscribed. It is from this judgment of the trial court that the plaintiff appeals.

DISCUSSION

On appeal, Ms. Little argues that the trial court erred in rendering a summary judgment in favor of the defendants, finding that the collateral mortgage lost its ranking and did not prime the judicial mortgages in favor of Hibernia and the Cadle Company II. We disagree.

In Louisiana, summary judgment is now favored and it shall be used to secure the just, speedy, and inexpensive determination of all actions, except those specifically excluded in LSA-C.C.P. Art. 969. LSA-C.C.P. Art. 966(A)(2). A summary judgment shall be rendered if the pleadings, depositions, interrogatory responses, and admissions, together with any affidavits, show that there is no genuine issue of material fact and that the mover is entitled to judgment as a matter of law. LSA-C.C.P. Art. 966 (B). Material facts are those that have the potential to insure or preclude recovery, affect a litigant’s ultimate success, or determine the outcome of a legal dispute. Rambo v. Walker, 96-2538 (La. App. 1 Cir. 11/7/97), 704 So. 2d 30, 32. Appellate courts review summary judgments de novo applying the same criteria as the trial court to determine whether summary judgment is appropriate. Herndon and Associates v. Gettys, et al., 95-206 (La. App. 5 Cir. 7/25/95), 659 So. 2d 842. Accordingly, we undertake a de novo review of this appeal.

In St. Charles Mortgage and Loan, Inc. v. Oubre, 97-371 (La. App. 5 Cir. 10/15/97), 701 So. 2d 1020, this Court noted that the subject matter of legislation on mortgages was revised by Acts 1992, No. 1132, effective January 1, 1993. Section 7 of Acts 1992, no. 1132, provides as follows:

The provisions of this Act relative to the time for reinscription of mortgages are applicable only to those mortgages created on or after January 1, 1993. Mortgages and privileges created before January 1, 1993 shall continue to be regulated by the laws in existence before January 1, 1993. The procedure for reinscription of mortgages and privileges as set forth in Civil Code Articles 3328 through 3331 shall be effective as to all requests for reinscription filed on or after the effective date of this Act.

St. Charles Mortgage and Loan, Inc., *supra* at 1020-1021.

In Seal v. Crain, 99-0739 (La. App. 1 Cir. 7/20/00), 767 So. 2d 798, 801, the First Circuit noted that the time of reinscription of pre-1993 mortgages is governed by the law in effect prior to January 1, 1993, but the procedure used to reinscribe such mortgages is governed by the law effective after January 1, 1993.

LSA-C.C.art. 3328 currently provides that “the effect of recordation of a document creating a mortgage or evidencing a privilege ceases ten years after the date of the document.” Prior to 1993, LSA-C.C. art. 3369 provided that mortgages securing the payment of an indebtedness, which mature less than nine years from the date of the obligation, are preserved by registry for ten years from the date of the obligation. Article 3369 further provided that the effect of registry ceases, even against the contracting parties, if the inscriptions have not been renewed within the periods of time provided in the article.

St. Charles Mortgage, *supra*.

In the present case, the collateral mortgage in favor of Ms. Little was executed and recorded in 1988. The document indicates that the note was “payable on demand.” Therefore, it matured in less than nine years, and the effect of recordation ceased after ten years, which was in 1998. The collateral mortgage lost its priority ranking when Ms. Little failed to reinscribe it prior to the expiration of the ten year period. Therefore, the judicial

mortgages in favor of Hibernia and the Cadle Company II have higher ranking than the collateral mortgage.

Ms. Little argues that she has possession of the original note, evidencing a continuing pledge, and that she has evidence that Mr. Little has made various payments from 1989 through 1999. Therefore, she asserts that any prescriptive period has been interrupted on the collateral mortgage note and the collateral mortgage. However, as indicated by the trial judge in his reasons for judgment, Ms. Little's argument regarding prescription is irrelevant to the issue in this case. In her Petition for Declaratory Judgment, Ms. Little did not seek a ruling on the validity of the collateral mortgage as between the parties to the mortgage. The issue in this case involves the effect of the collateral mortgage as it pertains to third parties. In Security National Trust v. Alexander, 621 So. 2d 30, 31 (La. App. 2 Cir. 1993), writ denied, 629 So. 2d 1140 (La. 1993), the Court stated that the failure to reinscribe a mortgage within the ten-year period provided in Article 3369 does not render the mortgage unenforceable as against the mortgagor, but it renders the initial inscription of the mortgage in the public records ineffective as to third persons, such as other creditors of the mortgagor. Similarly, the Court in Federal Deposit Insurance Corp. v. McFarland, 99-30756, 243 F.3d 876 (5th Cir. La.2001), stated that untimely reinscription renders the initial inscription of the mortgage ineffective against third parties, but it does not invalidate the mortgage as between the contracting parties.

The law is clear that when a mortgage is not timely reinscribed, it loses its priority, and mortgages that were recorded subsequent to the untimely inscribed mortgage attain seniority ranking. In this case, there is no dispute that Ms. Little did not reinscribe the collateral mortgage note within ten years of the date of the note or the date of recordation with the mortgage records of Jefferson Parish. Accordingly, we find that the collateral mortgage in favor of Ms. Little lost its seniority in November of 1998 and the mortgages in favor of Hibernia National Bank and the Cadle Company II now have higher ranking than the collateral mortgage.

We find no genuine issues of material fact with regard to the ranking of the mortgages in this case. Therefore, the trial judge was correct when he rendered a summary judgment in favor of the defendants, Hibernia National Bank and the Cadle Company II, and the trial court ruling is affirmed.

AFFIRMED.



EDWARD A. DUFRESNE, JR.
CHIEF JUDGE

SOL GOTHARD
JAMES L. CANNELLA
THOMAS F. DALEY
MARION F. EDWARDS
SUSAN M. CHEARDY
CLARENCE E. MCMANUS
WALTER J. ROTHSCHILD

JUDGES

Court of Appeal

FIFTH CIRCUIT

STATE OF LOUISIANA

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JERROLD B. PETERSON
DIRECTOR OF CENTRAL STAFF

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CERTIFICATE

I CERTIFY THAT A COPY OF THE OPINION IN THE BELOW-NUMBERED MATTER HAS BEEN MAILED OR DELIVERED THIS DAY APRIL 30, 2002 TO ALL COUNSEL OF RECORD AND TO ALL PARTIES NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

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