

**[J-124-1997]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**WESTERN DISTRICT**

THOMAS B. O'DONOGHUE and	:	No. 48 W.D. Appeal Docket 1997
MARGARET T. O'DONOGHUE,	:	
	:	Appeal from the Order of the Superior
Appellants	:	Court entered August 19, 1996 at No.
	:	2144PGH95 affirming the Judgment of the
v.	:	Court of Common Pleas of Allegheny
	:	County, Civil Division, entered November
LAUREL SAVINGS ASSOCIATION, a	:	1, 1995 at No. GD 93-11894.
Pennsylvania Chartered Savings	:	
Association,	:	
	:	
Appellee	:	SUBMITTED: September 8, 1997

**DISSENTING OPINION**

**MR. JUSTICE ZAPPALA**

**DECIDED: APRIL 21, 1999**

I agree with the majority's holding that the statutory provisions governing the satisfaction of mortgages, 21 P.S. §§ 681-682, do not require a written request be made by the mortgagor to enter satisfaction of the mortgage. I do not agree, however, that the entry of summary judgment in favor of Appellee Laurel Savings Association by the common pleas court was proper. I find that the record demonstrates that there is a genuine issue of material fact regarding whether the O'Donoghues had an agreement with Laurel to mark their mortgages satisfied prior to the written demand made by the O'Donoghues' attorney on November 17, 1992.

Summary judgment may be entered only in those cases where the record clearly demonstrates that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. The record must be viewed in the light most favorable to the opposing party, and all doubts as to the existence of a genuine issue of

material fact must be resolved against the moving party. P.J.S. v. Pennsylvania State Ethics Commission, \_\_ Pa. \_\_ (filed January 25, 1999). Applying this standard of review, I find that there is a genuine issue of material fact as to whether the O'Donoghues and Laurel had agreed during the process of restructuring the loans that Laurel would mark the mortgages previously held by Laurel's predecessor, People's Savings Association, as satisfied when the mortgages were paid off with other loans.

The O'Donoghues entered into a series of loans with People's Savings Association, borrowing \$379,500 on March 15, 1978 (Loan No. 1-01-2866), \$29,000 on March 30, 1980 (Loan No. 1-12-3219), and \$190,000 on December 23, 1980 (Loan No. 1-12-3320). The loans were secured by mortgages on the O'Donoghues' properties, including The Blarney Stone Restaurant. After a flood on May 30, 1986 damaged the properties that secured the loans, the O'Donoghues were informed by Laurel officials that assistance in rebuilding efforts would be provided. The O'Donoghues subsequently applied to the Small Business Administration for a \$500,000 disaster loan to finance repairs to the restaurant.

During his deposition testimony, Thomas O'Donoghue testified that throughout the time period from May 30, 1986 to the beginning of 1988 there were ongoing discussions with Charles L. Ott, Laurel's vice-president, about how to bring payments on the mortgaged properties current. Mr. O'Donoghue indicated that he requested additional funding from Laurel for completion of renovations to the restaurant to get into full operation. Mr. O'Donoghue also spoke to Laurel officials, including Mr. Ott, about assistance in restructuring the loan obligations to Laurel so that the O'Donoghues could obtain SBA financing.

On February 9, 1988, Laurel advised the O'Donoghues that it would restructure the mortgages for the three earlier loans by extending the maturities of the notes secured by those mortgages. Additional security was required and a cross default clause connecting all of the encumbered property was to be inserted in the new mortgages. The

O'Donoghues agreed to the restructuring of the mortgages. Mr. O'Donoghue had several meetings with Mr. Ott in the months before the closing date of June 2, 1988 to sign papers in preparation for the restructuring.

At the June 2, 1988 closing of the restructured loans, the O'Donoghues executed a note in the principal amount of \$343,635 (Loan No. 4216) and a second note in the principal amount of \$212,800 (Loan No. 4217). The notes were secured by mortgages on the restaurant property and other properties of the O'Donoghues. The O'Donoghues understood that the proceeds of the loans were to be used to pay off and satisfy the three earlier loans. The proceeds were in fact applied to pay off the obligations of the loans.

In their amended complaint, the O'Donoghues asserted that it was further agreed that Laurel would satisfy the mortgages securing the earlier loans. Laurel disputes this allegation, arguing that neither Mr. O'Donoghue nor any representative on his behalf made any requests that the mortgages be satisfied prior to the written demand of the O'Donoghues' attorney on November 17, 1992. Laurel argues that there is no genuine issue of material fact as to whether the parties agreed that Laurel would satisfy the mortgages after closing on the restructured loans. I disagree.

The deposition testimony of Mr. Ott does not establish that no agreement was made with the O'Donoghues that the mortgages would be satisfied after the closing. Mr. Ott's testimony was that it was Laurel's normal procedure to satisfy the prior mortgages in connection with refinancing loans. The dispute between the parties is whether Mr. Ott's use of the term "satisfying" a mortgage indicated Laurel's agreement with the O'Donoghues to merely pay off the outstanding obligations or to satisfy the mortgages as that term is understood under the law governing the satisfaction of mortgages.

Mr. Ott testified during his deposition as follows:

Q. \*\*\* At the time of the financing in June of 1988, it was clearly understood by you that the O'Donoghue mortgages that were just refinanced would be satisfied. Is that not correct?

A. That was normal procedure.

Q. That was your understanding.

A. Yes.

(R. 194-195). Mr. Ott further testified:

Q. Did you agree to satisfy the prior mortgages?

A. By normal course we do that, yes. I don't know whether there was a verbal agreement--I don't know that it was ever discussed verbally.

Q. In other words, it was your understanding that he would satisfy the prior mortgages--is that correct--that were paid off?

A. By normal course we do that, yes.

Q. Right. That was your understanding in connection with these three refinances. Is that correct?

A. No. My understanding--I wouldn't have thought anything any differently.

Q. Okay. In other words, you assume the mortgage--the prior mortgage would be satisfied. Is that correct?

A. By normal course they are, sure.

Q. That's the association's practice, is it not?

A. Yes.

Q. When you would [sic] not satisfy a mortgage that was paid off?

A. No situation that I know of.

(R. 185-187).

Mr. Ott was present at the closing on June 2, 1988, and had prepared the settlement statements signed by the O'Donoghues on that date. The settlement sheet for

Loan No. 4216 contains the notation "SATIS. MORTGAGE 1-1-2866" (the loan made by Laurel on March 15, 1978) across from the figure of \$343,635.00. The settlement sheet for Loan No. 4217 contains the notation "SATIS. MTGE. 1-12-3320" (the loan made by Laurel on December 23, 1980) across from the figure \$169,116.31, and the notation "SATIS. MTGE. 1-12-3219" (the loan made by Laurel on March 30, 1980) across from the figure \$27,603.46. (R. 74-75).

Mr. Ott testified that the notation referred to payoff of the mortgage. When asked whether the notation meant satisfy the mortgage, he responded, "I guess in my mind satisfaction or satisfy mortgage and payoff were the same because that balance would have been the balance of the mortgage." (R. 351).

On November 17, 1992, a letter was sent by an attorney who represented the O'Donoghues to Edwin Maus, Laurel's President, regarding the failure to satisfy the mortgages. The letter indicates that Mr. O'Donoghue had sought advice from the attorney after experiencing difficulty in obtaining credit. The attorney advised him to obtain a copy of a current credit report. The report indicated that the outstanding obligations to Laurel exceeded the amount believed to be owed. The attorney then determined that the earlier mortgages had never been satisfied by Laurel. A demand was made upon Laurel to immediately satisfy the mortgages and to explain the reasons why Laurel had not satisfied those mortgages for more than four years after receipt of payment in full of each. (R. 358).

By letter dated November 20, 1992, Bernard W. Prazer, Laurel's Vice President of Lending, responded that "[t]he mortgages in question where [sic] part of a refinancing package put together for Mr. & Mrs. O'Donoghue on June 2, 1988, and due to an oversight at that time the mortgages where [sic] never satisfied." The letter indicated that the mortgages would be satisfied immediately. An apology was offered, with an explanation that "it was an error and not done intentionally." (R.359).

This record indicates that there is a genuine issue of material fact as to whether an agreement had been reached with Laurel during the process of the debt restructuring that the original mortgages would be marked as satisfied. It is for the factfinder to determine whether Mr. Ott's explanation that his use of the phrase, satisfy the mortgage, was not intended to mean satisfaction as understood under 21 P.S. §§ 681-682, but instead was used to mean pay off the outstanding balance, is credible. Furthermore, it is for the factfinder to determine whether Mr. Ott communicated his intended meaning of the phrase to the O'Donoghues during the process of restructuring the loans. Because the letter of Mr. Prazer appears to indicate that Laurel's failure to satisfy the mortgages was due to an error on Laurel's part, rather than the absence of an agreement to satisfy the mortgages, I find that summary judgment in Laurel's favor was improper.

Finally, I do not agree with the majority that the deposition testimony of Mr. O'Donoghue indicates that the O'Donoghues never requested and Laurel never agreed to record the satisfaction of the original mortgages. The majority cites Mr. O'Donoghue's testimony that from the closing date of June 2, 1988 to July, 1992, Mr. O'Donoghue did not have any conversations with anyone at Laurel about satisfying the three mortgages. The O'Donoghues have asserted that they reached an understanding with Laurel that the mortgages would be marked satisfied during the course of restructuring their loans. Mr. O'Donoghue testified that the restructuring process took place over a number of months. His deposition testimony, which does not refer to the months before the closing date, does not contradict the O'Donoghues' claim that an agreement to satisfy the mortgages was reached earlier. The O'Donoghues should be given the opportunity to prove their claim at trial. Based upon this record, it cannot be determined as a matter of law that no agreement was made between the parties. Therefore, I dissent.

Mr. Justice Nigro joins this Dissenting Opinion.