

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

RICHARD F. STOKES  
JUDGE

1 THE CIRCLE, SUITE 2  
SUSSEX COUNTY COURTHOUSE  
GEORGETOWN, DE 19947

September 23, 2009

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Re: ***Joseph v. Reinert, Tirino & Thorp LLC et al.***  
C.A. No. S08L-07-014-RFS

*Upon Plaintiffs' Motion for Summary Judgment. Denied.*  
*Upon Defendant's Motion for Summary Judgment. Denied.*  
Submitted: August 14, 2009

Dear Counsel:

This is the Court's decision on two summary judgment motions arising from a mortgage foreclosure action initiated by Plaintiffs Albert E. Joseph and Karen E. Joseph ("Plaintiffs"). Defendant Mid-Atlantic Farm Credit ACA ("Mid Atlantic") holds a commercial mortgage on a piece of property located in Sussex County, Delaware ("the

Property”), which Plaintiffs sold to Defendant Reinert, Trino & Thorp, LLC (“Reinert”).<sup>1</sup> Plaintiffs hold a \$100,000 promissory note, also referred to in the relevant documents as a bond and a second mortgage, on the Property.

Reinert defaulted on his obligations and a default judgment has been entered against him. Plaintiffs now seek a judgment that the \$100,000 note is a purchase money mortgage that has priority over Mid Atlantic’s mortgage, pursuant to 25 *Del. C.* § 2108. That is, Plaintiffs seek a declaratory judgment based on the fact that the \$100,000 loan was made in order to secure part of the purchase price and that it was filed within five days of conveyance of the deed. Mid Atlantic asks for a judgment that its mortgage be given first lien status based on the fact that two of the key documents, the Contract and the Settlement Sheet, refer to Plaintiffs’ \$100,000 loan as a “second mortgage,” indicating Plaintiff’s knowledge that they did not have first line status. Under Rule 56(a) and (b), it is permissible for a party to seek summary judgment on a motion for a declaratory judgment.

Based on the language of the Contract and Plaintiffs’ mortgage, Plaintiffs may possibly hold a purchase money mortgage but that fact questions exist as to Plaintiff’s understanding of the term “second mortgage.” Plaintiffs acknowledge signing the documents and seeing the phrase in question. They assert that they did not understand the phrase and that they would not have signed the documents if they had been aware of its

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<sup>1</sup>The original buyers, Robert C. Reinert and Sarah K. Reinert assigned their interest to Reinert.

significance.

Despite these assertions, it is conceivable that evidence could be introduced at trial showing that Plaintiffs possessed a quantum of knowledge sufficient to meet the requirements for one of the common law causes of action argued by Mid Atlantic. When the record indicates that it would be desirable to inquire more thoroughly into the facts in order to clarify the application of law to the circumstances, summary judgment will not be granted.<sup>2</sup> Such is the case here.

The motions for summary judgment are *Denied*, and the matter will proceed to trial.

***IT IS SO ORDERED.***

Very truly yours,

Richard F. Stokes

RFS/cv

cc: Prothonotary

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<sup>2</sup>*Guy v. Judicial Nominating Comm'n*, 659 A.2d 777 (Del. Super. Ct.).