

DA 17-0715

IN THE SUPREME COURT OF THE STATE OF MONTANA

2019 MT 3N

CHRISTOPHER HARMON and REBEKAH HARMON,

Plaintiffs and Appellees,

v.

BARBARA A. FINK, an individual, and FREDERICK M. ADOLF, an individual; John Does 1 through 10, inclusive of any or all persons, known or unknown, claiming or who might claim any right, title estate, or interest in or lien or encumbrance upon the real property described in the Complaint adverse to Plaintiffs' ownership or any cloud upon Plaintiffs' title, whether such claim or possible claim be present or contingent, including the person or persons in possession if the Plaintiffs are not in possession,

Defendants,

BARBARA A. FINK, an individual,

Defendant and Appellant.

APPEAL FROM: District Court of the Twenty-First Judicial District,
In and For the County of Ravalli, Cause No. DV 16-266
Honorable Jeffrey H. Langton, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Barbara A. Fink, Self-Represented, Hamilton, Montana

For Appellees:

Alex Beal, Law Offices of Alex Beal, PLLC, Missoula, Montana

Submitted on Briefs: November 14, 2018

Decided: January 2, 2019

Filed:



Clerk

Justice Laurie McKinnon delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 Barbara A. Fink (Fink) appeals from an order of the Twenty-First Judicial District Court, Ravalli County, granting Christopher and Rebekah Harmon (the Harmons) summary judgment. We affirm.

¶3 The facts of this case are undisputed. Fink owned a parcel of land, Lot 24, in Hamilton, Montana, on which she lived in a home with a well. In 2007, Fink subdivided Lot 24 into two parcels—Tract 24A and Tract 24B. She recorded the subdivision. Fink's residence and well were located on Tract 24B; Tract 24A remained undeveloped with no water source. Fink subsequently obtained a trust indenture on Tract 24B (Trust Indenture) by conveying a deed of trust to a bank, which was recorded in June 2007.

¶4 A few years later, Fink obtained approval to re-aggregate the two parcels. In September 2009, Fink recorded the re-aggregation, recreating the original Lot 24. Fink then subdivided Lot 24 again, creating two parcels—Tract 24-A-1 and Tract 24-B-1—with boundaries identical to the former Tract 24A and Tract 24B. She recorded the subdivision in April 2010. Fink's residence and well remained on Tract 24-B-1. A month later, in March 2010, Fink executed a quit-claim deed transferring all of her interest in

Tract 24-A-1—the undeveloped parcel—to her father, Frederick Adolf (Adolf). Fink recorded the deed in April 2010.

¶5 Beginning in May 2010, Fink stopped paying the Trust Indenture on Tract 24-B-1. Later that year, the successor trustee of the Trust Indenture filed a notice of trustee's sale, providing notice that Fink defaulted and scheduling a trustee's sale of Tract 24-B-1 for February 10, 2011. Just before the scheduled trustee's sale, Fink (the owner of Tract 24-B-1) and Adolf (the owner of Tract 24-A-1) executed an Easement Agreement. In the Easement Agreement, Fink and Adolf agreed to modify Tract 24-B-1's well system to provide water for both Tract 24-B-1 and Tract 24-A-1. Fink recorded the Easement Agreement on February 9, 2011, one day before the scheduled trustee's sale.

¶6 The trustee cancelled Tract 24-B-1's February 10, 2011 sale and thereafter rescheduled the sale multiple times while Fink attempted to refinance the property. In the summer of 2011, Adolf constructed a small cabin on Tract 24-A-1 and, pursuant to the Easement Agreement, connected the structure to Tract 24-B-1's well. The successor trustee eventually rescheduled the trustee's sale a fourth and final time, setting it to occur on June 21, 2012. The successor trustee notified Fink of the sale but did not notify Adolf. The Federal National Mortgage Association (Fannie Mae) purchased Tract 24-B-1 at the trustee's sale, foreclosing the Trust Indenture. In December 2012, the Harmons purchased Tract 24-B-1 from Fannie Mae. In 2013, Adolf quit-claimed a 1% interest in Tract 24-A-1 back to Fink, making Adolf a 99% owner and Fink a 1% owner.

¶7 In July 2016, the Harmons filed a complaint against Fink and Adolf in District Court, asking the court to declare the Easement Agreement unenforceable. After Fink and

Adolf answered the Harmons' complaint, both sides filed motions for summary judgment. The District Court ultimately granted the Harmons' motion for summary judgment, finding that the June 21, 2012 trustee's sale of Tract 24-B-1 extinguished the Easement Agreement because the Easement Agreement, a junior easement, was subject to extinguishment through foreclosure of the Trust Indenture, a senior mortgage. *See* § 70-21-302, MCA; *Terry L. Bell Generations Trust v. Flathead Bank of Bigfork*, 2013 MT 152, ¶ 12, 370 Mont. 342, 302 P.3d 390. Fink appeals, contending the trustee did not provide adequate notice of the trustee's sale, and accordingly, the sale could not have extinguished the junior Easement Agreement.

¶8 We review a district court's grant of summary judgment de novo, applying the same standard as the district court. *Knucklehead Land Co. v. Accutitle, Inc.*, 2007 MT 301, ¶ 10, 340 Mont. 62, 172 P.3d 116. The court should grant summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. M. R. Civ. P. 56(c)(3).

¶9 The Legislature enacted the Small Tract Financing Act of Montana, §§ 71-1-301 to -321, MCA (the Act), to ease financing restrictions on small tracts of real property. Section 71-1-302, MCA. The Act struck a compromise between lenders (trustees) and borrowers (grantors) whereby the grantors gave up their rights to possession and redemption while the trustees gave up their right to deficiency judgment upon default. *Knucklehead*, ¶ 13 (citing *First State Bank of Forsyth v. Chunkapura*, 226 Mont. 54, 57, 734 P.2d 1203, 1205 (1987)). The compromise resulted in the creation of the trust indenture—a special type of mortgage. *Knucklehead*, ¶ 13; §§ 71-1-305, -313, MCA.

¶10 A trust indenture is “an indenture executed in conformity with [the Act] and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the indenture to a beneficiary.” Section 71-1-303(6), MCA. If a grantor defaults on her trust indenture payments, the trustee can avoid judicial proceedings and foreclose on the defaulted property by advertisement and sale. Section 71-1-313, MCA; *Knucklehead*, ¶ 13. To do so, however, the trustee must comply with the Act’s strict notice requirements before selling the defaulted property in a trustee sale. *See* § 71-1-315, MCA.

¶11 Section 71-1-315, MCA, delineates the specific way the trustee must provide notice of a foreclosure sale. Through certified mail at least 120 days before the scheduled sale, the trustee must send a copy of the recorded notice of sale to various interested parties, including the grantor and “any person who has a lien or interest subsequent to the interest of the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at that address.” Section 71-1-315(1)(a)(i), (v), MCA.

¶12 In this case, the trustee notified Fink, the grantor, of the June 21, 2012 trustee’s sale, as required by § 71-1-315(1)(a)(i), MCA. The trustee did not notify Adolf of the sale. Fink contends the trustee erred by failing to notify Adolf, reasoning that, as a party to the Easement Agreement, Adolf was a person with an interest in Tract 24-B-1 who the trustee needed to mail a notice to under § 71-1-315(1)(a)(v), MCA.

¶13 The District Court found Fink’s notice argument unpersuasive, and we agree. Section 71-1-315(1)(a)(v), MCA, requires the trustee to mail notice to any person with an interest subsequent to the trustee’s interest whose *interest and address* appear of record at

the filing date and time of the notice of sale. The recorded Easement Agreement between Fink and Adolf did not contain Adolf's address. Therefore, the trustee was not required to provide Adolf notice pursuant to § 71-1-315(1)(a)(v), MCA, because his address did not appear of record at the filing date and time of the notice of sale. We conclude the trustee's notice to Fink complied with the Act's strict notice requirements and affirm the District Court's decision. Because the trustee was not required to provide Adolf notice, we do not address Fink's argument that Adolf's interest in the Easement Agreement endured the trustee's sale.

¶14 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. This appeal presents no constitutional issues, no issues of first impression, and does not establish new precedent or modify existing precedent.

¶15 Affirmed.

/S/ LAURIE McKINNON

We concur:

/S/ JAMES JEREMIAH SHEA
/S/ BETH BAKER
/S/ INGRID GUSTAFSON
/S/ DIRK M. SANDEFUR