

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

DEUTSCHE BANK NATIONAL TRUST	:	
CO. AMERICAS,	:	
	:	CASE NO. CA2009-10-264
Plaintiff-Appellant,	:	
	:	<u>OPINION</u>
- vs -	:	4/12/2010
	:	
BRANDIE WEBER, et al.,	:	
	:	
Defendants-Appellees.	:	

CIVIL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CV2008-04-1930

Steven E. Elder Co., L.P.A., Steven E. Elder, Andrew P. George, 731 Fife Avenue,
Wilmington, Ohio 45177, for plaintiff-appellant

Lerner, Sampson & Rothfuss, Susana E. Lykins, 120 E. Fourth Street, Suite 800,
Cincinnati, Ohio 45202, for plaintiff-appellant

David M. Kirschsieper, Government Services Center, 315 High Street, 7th Floor,
Hamilton, Ohio 45011, for defendant-appellee, Butler County Child Support
Enforcement Agency

POWELL, J.

{¶1} Plaintiff-appellant, Deutsche Bank National Trust Company Americas
(Deutsche Bank), appeals a decision of the Butler County Court of Common Pleas
granting partial summary judgment to the Butler County Child Support Enforcement

Agency (CSEA) on the issue of lien priority.¹ We affirm the trial court's decision.

{¶2} Brandie and Daniel Weber, then co-owners of the subject property, granted a mortgage on their home to First Franklin Financial Corporation (First Franklin), which subsequently recorded it in the Butler County Recorder's Office on August 26, 2004. CSEA filed two child support enforcement liens on real property against Daniel Weber, on March 31, 2006 and April 18, 2006 respectively. In December of 2006, Brandie, who was then sole owner of the property, decided to refinance with Saxon Mortgage, Inc. (Saxon). TranStar National Title (TranStar) prepared the closing paperwork for the loan between Saxon and Brandie; however TranStar did not discover the two CSEA liens during its title search. Saxon filed the mortgage with the Butler County Recorder's Office on January 30, 2007. The loan proceeds from the Saxon mortgage were used to pay off the prior mortgage with First Financial.

{¶3} Saxon subsequently assigned the mortgage to Deutsche Bank. On April 22, 2008, Deutsche Bank filed a foreclosure complaint against Brandie. CSEA was named a defendant in the action, and in its answer asserted its interest pursuant to the two child support enforcement liens on the property. Both Deutsche Bank and CSEA filed motions for partial summary judgment with each maintaining its lien had priority. Deutsche Bank argued that although CSEA's liens were prior in time, Deutsche Bank's mortgage was prior in right based on the doctrines of equitable subrogation and/or unjust enrichment. CSEA's motion was predicated on Deutsche Bank's admission that CSEA's liens were recorded prior in time, and CSEA asserted it had followed all applicable statutes and administrative code

1. Pursuant to Loc.R. 6(A), we have sua sponte removed this case from the accelerated calendar and placed it on the regular calendar for purposes of issuing this opinion.

sections in filing its liens.

{¶14} In its August 14, 2009 decision granting CSEA's motion for partial summary judgment and denying Deutsche Bank's motion for the same, the trial court found CSEA had priority and that neither equitable subrogation nor unjust enrichment was applicable to the case at bar. On September 22, 2009, an Agreed Judgment and Decree in Foreclosure, which incorporated the court's partial summary judgment decision by reference, was signed by the trial court and all parties except Brandie, and entered into the record by the court. Deutsche Bank filed an appeal on the issue of priority, raising three assignments of error.

{¶15} Assignment of Error No. 1:

{¶16} "THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY HOLDING THAT THE DEFENDANT BUTLER COUNTY CHILD SUPPORT ENFORCEMENT AGENCY HOLDS A FIRST AND BEST LIEN PRIOR TO THE MORTGAGE OF PLAINTIFF."

{¶17} Assignment of Error No. 2:

{¶18} "THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY FAILING TO APPLY EQUITABLE SUBROGATION FOR THE BENEFIT OF PLAINTIFF."

{¶19} Assignment of Error No. 3:

{¶110} "THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY FAILING TO APPLY UNJUST ENRICHMENT FOR THE BENEFIT OF PLAINTIFF."

{¶111} In its first assignment of error, Deutsche Bank argues the trial court should have granted its motion for partial summary judgment by applying equitable principles. In its second assignment of error, Deutsche Bank contends the doctrine of equitable subrogation

is applicable to the case at bar. Finally, in its third assignment of error, Deutsche Bank maintains the doctrine of unjust enrichment should be applied in order to deny CSEA first priority. We find Deutsche Bank's assignments of error are not well-taken, as Deutsche Bank agreed to the trial court's priority finding.

{¶12} As CSEA points out, the court and parties signed an agreed judgment and decree in foreclosure. CSEA argues that the entry and its contents, including the finding that CSEA has a "first and best lien on the subject real estate, prior to that of Plaintiff [Deutsche Bank]," are both binding and conclusive on the signatory parties.

{¶13} A judgment entry to which the parties voluntarily agree and/or consent is essentially a contract between the parties. See *Ohio State Medical Bd. v. Zwick* (1978), 59 Ohio App. 2d 133, 139; *Spercel v. Sterling Industries, Inc.* (1972), 31 Ohio St.2d 36, 39. As such, the parties are bound by its terms.

{¶14} Furthermore, "[a] party to a consent decree or other judgment entered by consent may not appeal unless it explicitly reserves the right to appeal. The purpose of a consent judgment is to resolve a dispute without further litigation, and so would be defeated or at least impaired by an appeal. The presumption, therefore, is that the consent operates as a waiver of the right to appeal. It is because the parties should not be left guessing about the finality and hence efficacy of the settlement that any reservation of a right to appeal should be explicit." *Tradesmen Internatl., Inc. v. Kahoe* (Mar. 16, 2000), Cuyahoga App. No. 74420, 2000 WL 283081, at *7, quoting *Assn. of Community Orgs. for Reform Now v. Edgar* (C.A.7, 1996), 99 F.3d 261, 262. See, also, *Bromley v. Hinton and Keith Development*, Summit App. No. 20730, 2002-Ohio-1249, ¶10; *Chase v. Chase* (May 31, 2001), Franklin App. No. 00AP-951, 2001 WL 579804, at *2-4; *Sharp v. Sharp*,

Franklin App. No. 01AP-665, 2002-Ohio-1040, ¶13; *Miklovic v. Shira*, Knox App. No. 04-CA-27, 2005-Ohio-3252, ¶31; *Wasson v. Brumbaugh* (June 26, 1981), Wood App. No. WD-80-70, 1981 WL 5686, at *2.

{¶15} The agreed judgment and decree of foreclosure states in pertinent part:

{¶16} "The Court finds that the defendant, Butler County Child Support Enforcement Agency, has filed an Answer herein asserting an interest in the real estate which is the subject of this action. The issue of priority between the mortgage of Plaintiff and the liens of CSEA were briefed fully in cross Motions for Summary Judgment filed by each party. The Court hereby incorporates by reference its Order filed on August 18, 2009, denying the Motion for Partial Summary Judgment of Plaintiff and granting the Motion for Partial Summary Judgment of Defendant CSEA. *The Court finds that the liens of CSEA constitute a first and best lien on the subject real estate, prior to the Plaintiff, and subject only to County property taxes.*" (Emphasis added.)

{¶17} Deutsche Bank argues that the word agreed is a "misnomer." Although Deutsche Bank states the language of the entry was agreed upon, Deutsche Bank asserts that it never agreed to the issue of priority. Because the entry contains Civ.R. 54 language indicating it is a final and appealable order, and because the Supreme Court of Ohio has indicated a preference for deciding cases on the merits when an error is inadvertent and a party acted in good faith, Deutsche Bank urges this court to decide the substantive issues of this case.

{¶18} CSEA in turn maintains that Deutsche Bank is essentially asking for a judicial "mulligan" at CSEA's expense. CSEA argues that the language of the entry was agreed upon by the parties, and constitutes a contract which is binding on the signatories. In addition, CSEA asserts that the language of the contract is clear and

unambiguous, including the finding that CSEA has priority over Deutsche Bank, and that Deutsche Bank has not demonstrated any valid basis for relief from the agreement.

{¶19} We find Deutsche Bank voluntarily consented to the language and terms within the agreed judgment. Deutsche Bank is thus precluded from asserting error with regard to priority when it is clear that the terms of the agreed entry include the trial court's finding that CSEA has a first and best lien. Moreover, after careful review of the agreed entry we find no language reserving the right to appeal the issue of priority, thus we presume Deutsche Bank has waived its right to appeal the priority decision. Accord *Tradesmen Internatl.*, 2000 WL 283081, at *7.

{¶20} For the foregoing reasons, Deutsche Bank's assignments of error are without merit and are hereby overruled.

{¶21} Judgment affirmed.

BRESSLER and HENDRICKSON, JJ., concur.