[J-124-1997]

IN THE SUPREME COURT OF PENNSYLVANIA
WESTERN DISTRICT

THOMAS B. O'DONOGHUE and MARGARET T. O'DONOGHUE,	:	No. 0048 W.D. Appeal Docket 1997
Appellants	:	Appeal from the Order of the Superior Court entered August 19, 1996 at No. 2144PGH95 affirming the Judgment of the Court of Common Pleas of Allegheny County, Civil Division, entered November 1, 1995 at No. GD 93-11894.
v.	:	
LAUREL SAVINGS ASSOCIATION, a Pennsylvania Chartered Savings Association,	:	
Appellee	:	Submitted: September 8, 1997

OPINION OF THE COURT

MADAME JUSTICE NEWMAN DECIDED: APRIL 21, 1999

Thomas and Margaret O'Donoghue (collectively, Appellants) appeal from the Superior Court's Order affirming a summary judgment Order entered in the Court of Common Pleas of Allegheny County (trial court) in favor of Appellee Laurel Savings Association (Laurel). Appellants request this Court to decide whether Laurel violated Sections 681 and 682 of the Mortgage Satisfaction Law (the Law), 21 P.S. §§ 681 and 682, by not recording their satisfaction of their mortgages within forty-five days of full payment. We hold that Laurel did not violate the Law because it marked the mortgages satisfied within forty-five days of Appellants' request as required by Sections 681 and 682.

Therefore, we affirm.

FACTS

Thomas O'Donoghue owns several businesses, each of which operate on property that he and his wife own together. Appellants obtained three loans from People's Savings Association (People's) secured by mortgages on their various properties: Loan 1 - March 15, 1978, in the amount of $379,000.00; Loan 2 - March 30, 1980, in the amount of $29,000.00; and Loan 3 - December 23, 1980, in the amount of $190,000.00.

On or about May 30, 1986, a flood damaged the properties that secured Loans 1, 2, and 3. Consequently, on June 2, 1988, Appellants refinanced the loans with Laurel, which succeeded People's.[1] The refinancing resulted in Laurel issuing a fourth loan in the amount of $343,635.00 to pay off Loan 1, and secured by a mortgage on one of Appellants' properties (Loan 4). On the Settlement Sheet for Loan 4, Charles Ott, Executive Vice President of Laurel, wrote "Satis. Mortgage 1-1-2866," which was Laurel's mortgage number for Loan 1.

In addition, Laurel issued a fifth loan to satisfy Loan 2 and Loan 3, in the amount of $212,800.00, which was also secured by a mortgage on Appellants' properties (Loan 5). Mr. Ott similarly wrote on the Settlement Sheet for Loan 5 "Satis. Mtge. 1-12-3320" and "Satis. Mtge. 1-12-3219," which respectively correspond to Laurel's mortgage numbers for

[1] People's merged into Laurel on January 1, 1986, assuming all assets and

Loans 2 and 3.

In July or August of 1992, Appellants discovered that Loans 1, 2, and 3 appeared on their credit report as outstanding debt even though those loans had been paid in full. Appellants notified their attorney, who confirmed that Laurel had never marked the loans satisfied as of record. By letter dated November 17, 1992, Appellants' attorney informed Laurel of their failure to record the satisfaction of the mortgages for Loan 1, Loan 2, or Loan 3, and demanded that Laurel immediately mark each loan satisfied. Laurel complied within eight days of the demand letter.

Appellants filed a complaint on September 10, 1993, and an amended complaint on November 19, 1993, alleging, inter alia, that they had suffered damages as a result of Laurel's negligence. In Count I, of twelve,[2] Appellants claimed that Laurel violated Sections 681 and 682 by not marking Loans 1, 2, or 3 satisfied within forty-five days of their

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liabilities.

[2] Appellants raised the following twelve claims:

Count I - statutory fine for failure to satisfy mortgages, 21 Pa.C.S. '' 681 and 682;
Count II - breach of contract for failure to satisfy mortgages;
Count III - negligence in failing to satisfy mortgages;
Count IV - gross negligence;
Count V - breach of contract for violating escrow agreement;
Count VI - breach of contract for violations of notice provisions of mortgage;
Count VII - fraudulent misrepresentation;
Count VIII - negligent misrepresentation;
Count IX - lack of consideration;
Count X - negligence for failure to disclose;
Count XI - violations of the Unfair Trade Practices Act and Consumer Protection Law; and
Count XII - violations of the Debt Collection Trade Practices Act.

refinancing agreement on June 22, 1988; thus, Appellants were entitled to a fine pursuant to 21 P.S. § 682.

The trial court dismissed several counts in response to Laurel's preliminary objections. Laurel then moved for partial summary judgment on a number of the remaining claims, including Count I relating to Sections 681 and 682. Appellants likewise filed a motion for partial summary judgment regarding Count I, or, in the alternative, they opposed Laurel's motion for summary judgment on Count I, claiming that a genuine issue of material fact existed.

By Order dated May 24, 1995, the trial court granted summary judgment in favor of Laurel and denied Appellants' motion for summary judgment. Appellants filed a petition for reconsideration, which the trial court denied on July 18, 1995.

The case proceeded to trial and the jury found in favor of Appellants on the remaining counts, including breach of contract regarding escrow notification, and satisfaction of the mortgages, and awarded them $10,000.00 in damages. The court entered judgment on November 1, 1995, and Appellants appealed the May 24, 1995 Order granting summary judgment on Count I.

The Superior Court affirmed the summary judgment Order, and determined that a

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Only Count I is at issue in this appeal.

written request for satisfaction was necessary before a mortgagee was obligated to record satisfaction of a mortgage. Relying on the trial court's finding that there were no discussions during the restructuring of the loans and mortgages on June 2, 1988 concerning the recordation of satisfaction of the mortgages securing Loans 1, 2, and 3, the Superior Court held that the November 17, 1992-demand letter was the first written request for satisfaction. Because Laurel recorded the satisfaction of the loans within eight days of receiving the demand letter, the Superior Court affirmed the trial court's Order granting summary judgment in favor of Laurel. Judge Hester concurred in the result, without opinion.

Appellants filed a Petition for Allowance of Appeal, which this Court granted. The questions before us are: (1) what constitutes a "request" to mark a mortgage satisfied for purposes of 21 Pa.C.S. §§ 681 and 682; and (2) did a genuine issue of material fact exist on this issue.

DISCUSSION

Our review of a trial court's order granting or denying summary judgment is plenary. Summary judgment may be granted only when the facts, viewed in the light most favorable to the non-moving party, make it clear that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Marks v. Tasman, 527 Pa. 132, 589 A.2d 205 (1990). "[A]n adverse party may not rest on the mere allegations or denials of his pleading, but his response, by affidavits or [] otherwise . . . , must set forth

specific facts showing that there is a genuine issue for trial." Pa.R.C.P. No. 1035(d).[3]

Appellants allege that they reached an agreement with Laurel on June 22, 1988, that Laurel would mark as satisfied the mortgages securing Loans 1, 2, and 3, and that Laurel failed to comply with this agreement within forty-five days of full payment of the loans. Sections 681 and 682, respectively, of the Mortgage Satisfaction Law, provide as follows:

> § 681. Satisfaction of mortgage on margin of record or by satisfaction piece
>
> Any mortgagee of any real or personal estates in the Commonwealth, having received full satisfaction and payment of all such sum and sums of money as are really due to him by such mortgage, shall, at the request of the mortgagor, enter satisfaction either upon the margin of the record of such mortgage recorded in the said office or by means of a satisfaction piece, which shall forever thereafter discharge, defeat and release the same; and shall likewise bar all actions brought, or to be brought thereupon.
>
> § 682. Fine for neglect
>
> And if such mortgagee, by himself or his attorney, shall not, within forty-five days after request and tender made for his reasonable charges, return to the said office, and there make such acknowledgement as aforesaid, he, she or they, neglecting so to do, shall for every such offence, forfeit and pay, unto to party or parties aggrieved, any sum not exceeding the mortgage-money, to be recovered in any Court of Record within this Commonwealth, by bill, complaint or information.

21 Pa.C.S. §§ 681, 682 (emphasis added).

Satisfaction of a mortgage and marking the mortgage satisfied are two separate and

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[3] Rule 1035 was effective at the time that the trial court entered its order granting summary judgment in favor of Laurel. It was rescinded Feb. 14, 1996, effective July 1, 1996, and replaced by Pa.R.C.P. Nos. 1035.1-1035.5, enacted Feb. 14, 1996, effective

distinct actions. "Satisfaction of a mortgage" occurs when all sums due and owing are tendered to the mortgagee. "Marking a mortgage satisfied" takes place when the mortgagee physically notes in the margin of the official mortgage papers, or by a satisfaction piece, that the mortgage has been paid in full. 21 P.S. § 681. Once the mortgage is marked satisfied, all interested parties are on notice that the obligation of the loan has been fulfilled.

The statute does not automatically obligate a mortgagee to mark the mortgage satisfied upon receipt of all money due pursuant to the loan. Instead, a mortgagor has an affirmative duty to make his or her desire to have the mortgage marked satisfied known to the mortgagee before an obligation arises. 21 P.S. § 682. Thus, to prove entitlement to the fine pursuant to 21 P.S. § 682, a mortgagor must demonstrate the following: (a) he has paid all sums due and owing pursuant to the mortgage; (b) he requested the mortgagee to satisfy the mortgage; and (c) the mortgagee failed to mark the mortgage satisfied within forty-five days of the request.

The parties do not dispute that the proceeds from Loans 4 and 5 were used to discharge the obligations on Loans 1, 2, and 3. Nor do they dispute that Laurel failed to mark the mortgages for Loans 1, 2, or 3 satisfied as of record within forty-five days of the restructuring agreement. The only issue in dispute is whether, during the restructuring agreement discussions, Appellants requested that Laurel mark the mortgages satisfied.

July 1, 1996.

The Superior Court held that an oral request for satisfaction would not be sufficient to commence the running of the forty-five-day period for satisfaction. Instead, the Superior Court read a writing requirement into the statute. It reasoned as follows:

> More than an unstated presumption or expectation must exist before the harsh and penal sanctions of the statute can be imposed. . . . Strictly construed, the statute may not require that notification be formal and in writing, but holding that financial institutions need not receive written notification would subject them to untold penalties for failure to satisfy a mortgage which may or may not be warranted.

Superior Court Op. at 9-10. We conclude that the Superior Court's concerns are unfounded and it was error to read a writing requirement into the statute when one does not exist.

Where the language of a statute is unambiguous, we must not ignore the plain language under the guise of pursuing the spirit of the law. 1 Pa.C.S. §1921. Words and phrases are to be given their common and approved meaning unless they are technical words that have acquired special meaning. 1 Pa.C.S. § 1903. Request is commonly defined as an "attempt to obtain (something) by making one's wants or desires known in speech or writing; to attempt to get (someone) to do or give something that one wants by making this known in speech or writing." THE NEW LEXICON WEBSTER'S DICTIONARY 846 (1988). Black's Law Dictionary defines a request as "[t]he expression of a desire to some person for something to be granted or done, particularly for the payment of a debt or performance of a contract." BLACK'S LAW DICTIONARY 1304 (6th ed. 1990). The ordinary meaning of the term request, therefore, encompasses either verbal or written expression.

In discussing the limits of the statutory construction act, the Superior Court has stated:

> [W]e may not add provisions which the legislature has omitted unless the phrase is necessary to the construction of the statute. Commonwealth v. Reeb, 406 Pa.Super. 28, 593 A.2d 853 (1991); Commonwealth v. Scott, 376 Pa.Super. 416, 546 A.2d 96 (1988), allocatur denied, 522 Pa. 612, 563 A.2d 497 (1989). See Commonwealth v. Rieck Investment Corporation, 419 Pa. 52, 213 A.2d 277 (1965) (it is not for courts to add to a statute, by interpretation, a requirement which the legislature did not see fit to include); Kusza v. Maximonis, 363 Pa. 479, 70 A.2d 329 (1950) (court cannot supply omissions in a statute by its powers of construction where it appears the omission was intentional). If a phrase is necessary, it may be added but only if the addition does not affect the scope of the statute. Id. See also Commonwealth v. Fisher, 485 Pa. 8, 400 A.2d 1284 (1979). See Garcia v. Community Legal Serv. Corp., 362 Pa.Super. 484, 524 A.2d 980 (1987), allocatur denied, 517 Pa. 623, 538 A.2d 876 (1988) (adding the word "physical" to the term "injury" improperly limited the scope of the statute).

Commonwealth v. Berryman, 437 Pa.Super. 258, 267-68, 649 A.2d 961, 965-66 (1994). The legislature has specifically mandated written requests in other notice requirement statutes, but omitted such a restriction in Sections 681 and 682. See, e.g., 42 Pa.C.S. § 8104 (written notice required to begin running of period in which judgment creditor must mark judgment satisfied).[4] Interpreting Sections 681 and 682 to demand a written request

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[4] § 8104. Duty of judgment creditor to enter satisfaction

> (a) General rule.--A judgment creditor who has received satisfaction of any judgment in any tribunal of this Commonwealth shall, at the written request of the judgment debtor, or of anyone interested therein, and tender of the fee for entry of satisfaction, enter satisfaction in the office of the clerk of the court where such judgment is outstanding, which satisfaction shall forever discharge the judgment.
>
> (b) Liquidated damages.--A judgment creditor who shall fail or refuse for more than 30 days after written notice in the manner prescribed by

would require us to read a limitation into the statute that is not present. The language of the statute and the common and ordinary meaning of the word "request" lead us to conclude that the Mortgage Satisfaction Law does not mandate a written request, and that a verbal request will suffice.

Next, we must decide whether an agreement between a mortgagor and a mortgagee will constitute a request. Again referring to the common usage, a request is an expression of one's desire for another to do something. When interpreting the request requirement of 42 Pa.C.S. § 8104, this Court has held that an agreement that another will perform a certain action will constitute a request. Woodstown Construction Inc. v. Clarke, 362 Pa.Super. 119, 523 A.2d 804, rev'd on other grounds, 516 Pa. 519, 533 A.2d 708 (1987). This agreement necessarily includes an expression by the mortgagor to have the mortgage marked satisfied. A formal demand separate and apart from a general discussion and understanding, thus, is frivolous. Id. Accordingly, a verbal agreement that the mortgagee will record the payment of the mortgage fulfills the request requirement of Section 681 and 682.

Having decided what will constitute a request, we next determine if a genuine issue

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> general rules to comply with a request pursuant to subsection (a) shall pay to the judgment debtor as liquidated damages 1% of the original amount of the judgment for each day of delinquency beyond such 30 days, but not less than $250 nor more than 50% of the original amount of the judgment.

42 Pa.C.S. § 8104.

of material fact exists regarding whether Appellants requested Laurel to mark their mortgages satisfied prior to the November 17, 1992-demand letter. Appellants contend that as part of the restructuring discussions, Laurel agreed to mark the mortgages for Loans 1, 2, and 3 satisfied. They assert that the agreement is evidenced by Laurel's notation on the settlement sheets of Loans 4 and 5 that those loans satisfied the mortgages for Loans 1, 2, and 3. As further evidence of the agreement, Appellants refer to the deposition testimony of Charles Ott, Executive Vice-President for Laurel at the time of the execution of Loans 4 and 5. The following exchange took place between Appellants' attorney and Mr. Ott during Mr. Ott's deposition:

> Q. In the right-hand column [of the settlement sheet] it says STATIS. [sic] mortgage, and a number after that. Is that your handwriting?
>
> A. Yes.
>
> Q. What does that mean?
>
> A. That's payoff of the mortgage.
>
> Q. Does that mean satisfy mortgage?
>
> A. What I have there. 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. That figure would have been the balance of the mortgage to pay it off.
>
> * * *
>
> Q. Did you agree to satisfy the prior mortgage?
>
> A. Pardon me?
>
> Q. Did you agree to satisfy the mortgage which this was paying off?
>
> A. We always do that, yes.

Charles Ott Deposition, Reproduced Record at 000351.

As further confirmation of the parties' understanding that Laurel was to mark the mortgages satisfied, Appellants point to a letter dated November 20, 1992 from Bernard Prazer, Laurel's Vice President of Lending. In his letter, Mr. Prazer stated, in part, the following:

> The mortgages in question where 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.
>
> Please be advised that all mortgages in question will be satisfied immediately. . . .

Bernard W. Prazer, Letter dated November 20, 1992, R.R. at 000359 (emphasis added). Furthermore, Appellants submitted a copy of their November 17, 1992-demand letter that Laurel had received, and on which someone had handwritten "apparently a clerical error." R.R. at 000357.

Laurel, on the other hand, argues that Mr. O'Donoghue conceded during his deposition that he neither requested nor discussed marking the mortgage satisfied with any Laurel personnel from the date of the closing on June 2, 1988 until the November 17, 1992-demand letter. During his deposition, Mr. O'Donoghue stated the following:

[Defense Counsel]. Prior to Attorney Kelly sending the [November 17, 1992] letter to Laurel Savings or making a demand to Laurel Savings, had you verbally by phone or otherwise made a request of Laurel Savings to satisfy those three mortgages?

[Mr. O'Donoghue]. I don't remember if I did. My guess is no, I didn't.

[Defense Counsel]. Do you recall any conversations with anyone at Laurel Savings Association prior to July or August of 1992 where satisfaction of those three mortgages was discussed?

[Plaintiff's Counsel]. Are you talking about that period?

[Defense Counsel]. I want to know prior to July [of 1992].

[Plaintiff's Counsel]. But how far back?

[Defense Counsel]. From June 2nd, 1988 until July of 1992 --

[Plaintiff's Counsel]. In other words, your question includes the closing and all the way forward to July -- the closing on June 2nd, 1988 and all the way through to [] July, 1992.

[Defense Counsel]. That's correct. I want to know during that time period from June 2nd, 1988 up until July of 1992 when he was contacted by West View and the credit agency whether he had had any conversations with anyone at Laurel Savings about satisfying those three mortgages.

[Mr. O'Donoghue]. No.

Thomas O'Donoghue Deposition, R.R. at 000130-131 (emphasis added).

Sections 681 and 682 do not impose a duty or a penalty on a mortgagee for failing to mark a mortgage satisfied unless there is a request and the mortgagee does not comply with the request within forty-five days. Here, based on Mr. O'Donoghue's undisputed testimony, he did not request that Laurel mark the mortgages satisfied until the November 17, 1992-demand letter. Mr. Ott testified that it is Laurel's normal practice to consider

mortgages "satisfied" upon full payment, however, Laurel did not have an affirmative duty to record the payment of the loans until they received the November 17, 1992-demand letter.

As discussed previously, the terms "satisfy a mortgage" and "mark a mortgage satisfied" have two distinct meanings. Mr. Ott acknowledged this distinction in his deposition:

> Q. So [] the mortgage[s] described in Exhibit 6 and Exhibit 10A [settlement sheets for Loans 4 and 5] were paid off in full. Is that correct?
>
> A. Those were paying off the principal balances owing on those loans, yes.
>
> * * *
>
> Q. And because it was paid off in full, you put this -- you put on Exhibit 6 and Exhibit 10A satisfy mortgage three times.
>
> A. That's what's on there, yes.
>
> * * *
>
> Q. So those mortgages were satisfied, right?
>
> A. Well, that's -- the fact that I used satisfy mortgage doesn't -- that's not the relationship that -- in other words, to me that doesn't mean I'm going down and satisfy that mortgage, this particular statement here. Now, both of those [are] the principal balance that was owing on those mortgages. Satisfying the mortgage is another procedure.

Charles Ott Deposition, R.R. 000175-177. Thus, when viewed in the light most favorable to Appellants as the non-moving party, the facts show that Loans 4 and 5 paid in full the sums due and owing pursuant to Loans 1, 2, and 3 and Laurel recognized that Loans 1, 2, and 3 were satisfied. However, the uncontradicted deposition testimony also reveals that Appellants never requested and Laurel never agreed to record the satisfaction of those

loans. Consequently, the trial court was correct in granting summary judgment in favor of Laurel because no genuine issue of material fact exists.

CONCLUSION

Accordingly, we hold that the trial court properly entered summary judgment in favor of Laurel and affirm the Superior Court.

Mr. Chief Justice Flaherty did not participate in the consideration or decision of this case.

Mr. Justice Zappala files a dissenting opinion in which Mr. Justice Nigro joins.