SUPREME COURT OF VERMONT

Charter One Bank v. Estate of Spillane

174 Vt. 490 (2002) · Decided August 14, 2002

SUMMARY

The Vermont Supreme Court affirmed summary judgment for Charter One Bank in a foreclosure action involving an intervening widow's homestead rights. The court held that mortgage liens created by future advances without the spouse's written consent were voidable rather than void ab initio, and that the widow's inchoate homestead interest was extinguished by divorce before her later remarriage. The court also held that the discovery dispute was moot because the requested loan-advance history could not affect the result.

CASE DETAILS

COURT	Supreme Court of Vermont
JURISDICTION	Vermont
DECIDED	August 14, 2002
DISPOSITION	affirmed
PROCEDURAL POSTURE	Interlocutory appeal from an order granting Charter One Bank summary judgment in a foreclosure action against intervenor Mary K. Spillane.
STANDARD OF REVIEW	The court reviewed the summary judgment ruling and the legal issues concerning homestead rights and the effect of the statutory consent requirements.
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Mary K. Spillane v. Charter One Bank

TOPICS

foreclosure · homestead · summary judgment · interlocutory appeal · mootness

PRACTICE AREAS

real estate · foreclosure · homestead · appellate procedure · civil procedure

QUESTIONS PRESENTED

1. Whether advances under a mortgage that included a homestead were void because the spouses had not given the written consent required by Vermont homestead statutes.
2. Whether divorce and death extinguished the spouses' inchoate homestead interests and thereby cured any defects arising from the lack of consent.
3. Whether Mary's homestead interest after her remarriage was subordinate to the mortgage because her interest was derivative of Phillip's interest.
4. Whether Mary's discovery dispute concerning the history of the loan advances remained justiciable after the court resolved her homestead claim.

HOLDINGS

1. Liens created by advances without the required spousal consent are voidable, not void ab initio.
2. Mary's divorce from Phillip extinguished her inchoate homestead interest, so she could no longer challenge the advances made during that marriage on the ground that she had not consented to them.
3. Janice's death extinguished her homestead rights, thereby curing any irregularities in advances that required her signature.
4. Mary's post-remarriage homestead interest was derivative of Phillip's interest and therefore subject to the mortgage, because all advances had occurred before the remarriage and the mortgage was a voluntary secured interest.
5. The discovery issue was moot because the requested history of the advances was no longer relevant after resolution of Mary's homestead claim.

KEY QUOTATIONS

> *“The homestead interest vests no title during the lifetime of the husband but is only a contingent and inchoate right which, if not released or otherwise barred, may be enforced if the wife survives him.”* (492)

> *“Therefore, debts legally charged within the lifetime of the decedent take priority over homestead interests, and the trial court’s decision must be affirmed.”* (492)

FACTUAL BACKGROUND

Phillip Spillane and his first wife, Janice, borrowed $38,500 in 1987 through a home equity line of credit secured by a nonpurchase money mortgage that also covered future advances. Janice died in 1988; Phillip married Mary in 1990, divorced her in 1995, remarried her in 1998, and died in 1999. Mary had occupied the property during both marriages but had not signed written consents to advances under the loan agreement. The last advance occurred before the 1995 divorce, and the bank later sought foreclosure on a defaulted principal balance of $26,040.49.

PROCEDURAL HISTORY

Charter One Bank brought a foreclosure action based on defaulted advances under a home equity line of credit secured by a mortgage. Mary K. Spillane intervened to assert homestead rights. The trial court granted the bank summary judgment, concluding that her inchoate homestead rights had been extinguished by divorce and that the mortgage had priority. The Supreme Court of Vermont affirmed and held that a discovery dispute concerning the loan advances was moot.

DISPOSITION

affirmed

CASES CITED

- Estate of Girard v. Laird, 159 Vt. 508, 517, 621 A.2d 1265, 1270 (1993)
- Martin v. Harrington, 73 Vt. 193, 50 A. 1074 (1901)
- Condosta v. Condosta, 142 Vt. 117, 122, 453 A.2d 1128, 1130 (1982)
- Cole v. Cole, 117 Vt. 354, 364-366, 91 A.2d 819, 824-826 (1952)