SUPREME COURT OF IOWA

Wood v. Swan

221 N.W. 791, 206 Iowa 1198 (Iowa 1928) · Decided November 13, 1928

SUMMARY

The case concerns a dispute over the priority of mortgages on the same real estate. The plaintiff held a first mortgage that was assigned to him but the assignment was not recorded until after the defendant bank took assignments of later mortgages. The court held that the bank had constructive notice of the recorded first mortgage and that the mortgagor's payments to the original mortgagee did not bind the assignee because the original mortgagee was not the assignee's agent.

CASE DETAILS

COURT	Supreme Court of Iowa
WRITING FOR THE COURT	De Graff; Stevens; Albert; Morling; Wagner
JURISDICTION	Iowa
DECIDED	November 13, 1928
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a decree in a mortgage foreclosure and quiet title action.
PRECEDENTIAL VALUE	Published
PARTIES	William Swan; Zoe Swan; Scott County Savings Bank v. Wood

TOPICS

mortgages · foreclosure · recording acts · real estate

PRACTICE AREAS

Real Estate · Contracts

QUESTIONS PRESENTED

1. Whether Wood's failure to record the assignment of his mortgage subordinated his lien to the bank's later-acquired mortgages.
2. Whether Allfree was Wood's agent so that payment or settlement with Allfree discharged the Swans' obligation.

HOLDINGS

1. The prior mortgagee retains priority despite the assignee's failure to record the assignment, because the recorded mortgage itself gave constructive notice to subsequent mortgagees.
2. No agency relationship existed between Wood and Allfree; the Swans paid at their peril to a non-holder, so the mortgage was not discharged.

KEY QUOTATIONS

> *"He [Allfree] would see what could be done about settling the Swan mortgage, after I had seen him two or three times in regard to it. I went in there, and I also took with me another mortgage that I held, and he said: `What is that you have got there?' I told him [Carter loan], and he said: `That is the one I want to pay off, and I will pay off the Swan mortgage next week.' He never tendered me the amount due on the Swan mortgage. His intentions might have been [to do so] that day I went in there, but he switched, or re-applied the funds, — I don't know."* (*Page 1202)

FACTUAL BACKGROUND

In 1924, William and Zoe Swan mortgaged 34.5 acres to Harry B. Allfree, who assigned the note and mortgage to Wood. Wood did not record the assignment until later. Swan subsequently refinanced by executing two additional mortgages to Allfree, who assigned them to the Scott County Savings Bank. Allfree failed to pay off the first mortgage as promised. Swan believed Allfree had paid or would settle with Wood. Wood sought to foreclose; the bank claimed priority because Wood's assignment was unrecorded; the Swans claimed payment or agency estoppel.

PROCEDURAL HISTORY

The trial court entered a decree foreclosing Wood's mortgage and quieting title against the Swans and the Scott County Savings Bank, finding Wood's first mortgage senior and not discharged. The Swans and the bank appealed.

DISPOSITION

affirmed

CASES CITED

- James v. Newman, 147 Iowa 574
- Huismann v. Althoff, 202 Iowa 70
- Security Co. v. Graybeal, 85 Iowa 543
- Baumgartner v. Peterson, 93 Iowa 572
- Ritter v. Plumb, 203 Iowa 1001
- Shoemaker v. Ragland, 202 Iowa 947

INSTRUCTIONS FOR AN AI ASSISTANT