

CALIFORNIA COURT OF APPEAL, FIRST DISTRICT, DIVISION FOUR

Klinge v. Engelman

192 Cal. App. 3d 1482 (Cal. Ct. App. 1987) · No. A035785 · Decided May 29, 1987

SUMMARY

The California Court of Appeal affirmed judgment for the defendants in an action concerning foreclosure and the priority of deeds of trust on real property. The court held that a subordination agreement remained valid despite a clerical error misstating the amount of the underlying note, because the error was immaterial to the parties' intended reordering of lien priorities.

CASE DETAILS

COURT	California Court of Appeal, First District, Division Four
WRITING FOR THE COURT	Channell, J.; Anderson, P.J.; Sabraw, J.
JURISDICTION	California
DECIDED	May 29, 1987
DOCKET	A035785
DISPOSITION	affirmed
PROCEDURAL POSTURE	After a court trial, the trial court entered judgment for Engelman and the other respondents in Klinge's action for judicial foreclosure. Klinge appealed from the amended judgment, challenging the statute-of-limitations treatment of the cross-complaint, the consistency of the findings, and the validity of the subordination agreement.
STANDARD OF REVIEW	The interpretation of a written instrument is reviewed independently as a question of law.
PRECEDENTIAL VALUE	Published in part; parts II.A and II.B were excluded from publication, while the remainder was certified for publication.
PARTIES	Eugene H. Klinge v. Theodore Engelman, Mildred Engelman, Henry Brilliant, Adeline Brilliant, John Schick, Helga Schick, Joseph M. Schmitz, Fern K. Schmitz, Ruth Ann Giuliano, Loretta T. French, Leo Westen, Muriel Westen, Arthur B. Rosen, Florence H. Rosen, Glen A. Heimsoth, Bettye F. Heimsoth, Abraham Geller, Ida Geller, Richard Glenn Stirm, Florence Rockowitz

TOPICS

foreclosure

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the subordination agreement was invalid because it contained a clerical error misstating the value of Klingele's note.
2. Whether the trial court properly interpreted the subordination agreement as subordinating Klingele's lien to Engelman's later deed of trust.
3. Whether the appeal could be construed as taken from the amended judgment that superseded the original judgment.

HOLDINGS

1. A clerical error misstating the value of Klingele's note did not invalidate the subordination agreement because the error was not material to the parties' intended reordering of lien priorities.
2. The court could construe the appeal as taken from the amended judgment because that judgment superseded the original judgment and the notice of appeal was filed after the amended judgment issued.

KEY QUOTATIONS

"The interpretation of a written instrument presents a question of law for this court to determine anew." (192 Cal. App. 3d at 1485)

"In our independent judgment, we are satisfied that the subordination agreement was intended to reorder the priorities of the various liens and that the error in the agreement was not material." (192 Cal. App. 3d at 1485)

"Having concluded that the subordination agreement is valid, we need not consider any other issues." (192 Cal. App. 3d at 1486)

FACTUAL BACKGROUND

In March 1980, the Troutmans executed \$30,000 and \$10,000 promissory notes to Klingele, secured by deeds of trust on La Honda property. When Engelman agreed to make an additional \$126,000 loan only if his deed of trust received priority, Klingele executed a subordination agreement, which correctly reordered lien priorities but misstated the value of Klingele's note as \$126,000. After the Troutmans defaulted and Engelman foreclosed, Klingele sought judicial foreclosure on the remaining \$30,000 note, while Engelman and the other respondents relied on the subordination agreement and sought related declaratory and title relief.

PROCEDURAL HISTORY

Klingele held a \$30,000 note secured by a deed of trust on La Honda property. After the trial court bifurcated the proceedings, it first ruled that Engelman's cross-complaint was barred by the statute of limitations, then ruled on

Klingele's foreclosure complaint and found the subordination agreement valid despite a clerical error. The court entered judgment for Engelman on the grounds that the agreement remained valid and that equitable subrogation also made Klingele's deed subordinate. The appellate court construed Klingele's appeal as taken from the superseding amended judgment and affirmed.

DISPOSITION

affirmed

CASES CITED

- Parsons v. Bristol Development Co., 62 Cal. 2d 861, 865, 44 Cal. Rptr. 767, 402 P.2d 839 (1965)
- Medical Operations Management, Inc. v. National Health Laboratories, Inc., 176 Cal. App. 3d 886, 891, 222 Cal. Rptr. 455 (1986)
- Guthrie v. Times-Mirror Co., 51 Cal. App. 3d 879, 886, 124 Cal. Rptr. 577 (1975)
- Wood v. Kalbaugh, 39 Cal. App. 3d 926, 932, 114 Cal. Rptr. 673 (1974)
- Savings Union v. Myers, 72 Cal. 161, 163, 13 P. 403 (1887)
- Avery v. Associated Seed Growers, Inc., 211 Cal. App. 2d 613, 622, 27 Cal. Rptr. 625 (1963)
- Vibert v. Berger, 64 Cal. 2d 65, 67-70, 48 Cal. Rptr. 886, 410 P.2d 390 (1966)
- Shonkoff v. Dant Inv. Co., 258 Cal. App. 2d 101, 102-103, 65 Cal. Rptr. 463 (1968)