SUPREME COURT OF NEW HAMPSHIRE

Wayne Sabato v. Federal National Mortgage Association

210 A.3d 205 · No. 2018-0047 · Decided May 3, 2019

SUMMARY

The Supreme Court of New Hampshire affirmed orders concerning the plaintiff's homestead right after foreclosure of a second mortgage. The court held that the plaintiff's waiver of homestead rights in the second mortgage gave that mortgage priority over the first mortgage up to the value of the homestead exemption, while any remaining exemption continued in the property and was not extinguished by foreclosure.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	HICKS, J.; LYNN, C.J.; BASSETT, J.; HANTZ MARCONI, J.
JURISDICTION	New Hampshire
DECIDED	May 3, 2019
DOCKET	2018-0047
DISPOSITION	affirmed
PROCEDURAL POSTURE	The plaintiff appealed and the defendant cross-appealed from orders of the Superior Court entered on cross-motions for summary judgment in an action to establish the plaintiff's homestead right in property subject to successive mortgages and a foreclosure.
STANDARD OF REVIEW	The court reviews cross-motions for summary judgment by viewing the evidence in the light most favorable to each party as the nonmoving party and determining de novo whether a genuine issue of material fact exists and whether the moving party is entitled to judgment as a matter of law. The court also reviews the trial court's application of law to facts and statutory interpretation de novo.
PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion; precedential.
PARTIES	Wayne Sabato v. Federal National Mortgage Association

TOPICS

foreclosure · mortgages · real estate · appellate procedure · statutory interpretation

PRACTICE AREAS

real estate | foreclosure | mortgages | appellate procedure | statutory interpretation

QUESTIONS PRESENTED

1. Whether the plaintiff's failure to sign the first mortgage meant that the first mortgage did not encumber or obtain priority over his homestead right.
2. Whether the plaintiff's signature on the second mortgage waived his homestead right as to that mortgage.
3. Whether the waiver extended only to the amount necessary to enforce the second mortgage or instead extinguished the plaintiff's entire homestead exemption.
4. Whether the portion of the homestead exemption remaining after satisfaction of the second mortgage survived the foreclosure sale as an interest in the property.
5. Whether FNMA could obtain title free and clear of the plaintiff's remaining homestead interest without paying its value or partitioning the property.
6. Whether signing the second mortgage conveyed the plaintiff's title or estate through warranty covenants.

HOLDINGS

1. Because the plaintiff did not sign the first mortgage and it was not a purchase-money mortgage made at the time of purchase, the mortgage did not comply with RSA 480:5-a and did not convey or encumber his homestead interest. His homestead right therefore had priority over the first mortgage upon foreclosure.
2. The plaintiff waived his homestead right as to the second mortgage by signing it as the husband of the title owner.
3. The plaintiff's homestead waiver extended only as far as necessary to enforce the second mortgage; it did not waive the entire homestead exemption.
4. The second mortgage had priority over the first mortgage up to the value of the plaintiff's homestead exemption, but any portion of the exemption remaining after satisfaction of the second mortgage survived the foreclosure as an interest in the property and was not extinguished.
5. The plaintiff retained a homestead interest equal to $120,000 less the amount owed on the second-mortgage note at the time of foreclosure. To clear that interest from its title, FNMA must pay the value of the remaining interest or pursue partition.
6. The plaintiff's signing of the second mortgage did not deed or convey his interest in the property to the mortgagee because he did not own the property and had no title or estate to convey.

KEY QUOTATIONS

> *"Accordingly we affirm the trial court's ruling that the plaintiff's homestead waiver extended only so far as necessary to enforce the second mortgage."* (at 6)

> *"In other words, any portion of the exemption left after satisfying the second mortgage, which continues to exist in either the surplus, French, 105 N.H. at 409, or, we now hold, in the property, is not subordinate to the*

> *mortgage and is not extinguished by the foreclosure."* (at 7)

> *"Our decision here, however, does nothing more than recognize that the remainder of the plaintiff's homestead interest continues to exist in the property and that in order to clear that interest from its title, FNMA must either, as the trial court ruled, pay the plaintiff its value or partition the property."* (at 8)

FACTUAL BACKGROUND

Cheryl Sabato acquired the Pelham property in 2001 and lived there with her husband, Wayne Sabato, who was not a signatory to the purchase-money mortgage or the later first mortgage refinancing it. Wayne and Cheryl both signed a 2005 second mortgage securing a home-equity line of credit, which was later assigned to Situs Investments, LLC. Situs foreclosed in 2014, bought the property for $64,872.01 subject to the first mortgage, and later transferred its interest to FNMA, which held both title and the first mortgage. After FNMA notified the Sabatos of a possible eviction, Wayne sought to establish his homestead right.

PROCEDURAL HISTORY

The Superior Court initially denied both parties' summary-judgment motions, finding the record insufficient to resolve the issues as a matter of law. After the parties submitted additional evidence and FNMA made concessions at a hearing, the court denied FNMA's motion and granted the plaintiff's motion in part, ruling that the plaintiff had an unencumbered homestead right before the second mortgage, had waived that right as to the second mortgage, and retained the statutory homestead value exceeding the amount owed on that mortgage. The Supreme Court of New Hampshire affirmed the trial court's orders.

DISPOSITION

affirmed

CASES CITED

- Murphy v. Financial Development Corp., 126 N.H. 536, 541 (1985)
- Maroun v. Deutsche Bank Nat'l Trust Co., 167 N.H. 220, 224-28 (2014)
- Polonsky v. Town of Bedford, 171 N.H. 89, 93 (2018)
- Leroux v. Bank of N.H., 132 N.H. 547, 549 (1989)
- Manchester Sav. &c. Ass'n v. Emery-Waterhouse, 102 N.H. 233, 238 (1959)
- Walpole Savings Bank v. French, 105 N.H. 407, 408-09 (1964)
- Browning et al. v. Harris et al., 99 Ill. 456, 460, 462 (1881)
- Acadian Bank v. Foret, 602 So. 2d 1097, 1098-99 (La. Ct. App. 1992)
- Hess v. Eselin, 194 N.W. 469, 470-71 (Neb. 1923)
- In re Butler, 271 B.R. 807, 810 (Bankr. E.D. Tenn. 2001)
- Virgin v. Virgin, 91 Ill. App. 188, 204 (App. Ct. 1900)
- Gordon v. Deavitt, 78 A. 113, 115-16 (Vt. 1910)
- Shaver v. Williams, 87 Ill. 469, 473 (1877)

- Boissonnault v. Savage, 137 N.H. 229, 230, 232-33 (1993)
- Land America Commonwealth Title Ins. Co. v. Kolozetski, 159 N.H. 689, 692 (2010)
- Lake v. Page, 63 N.H. 318, 319 (1885)