SUPREME COURT OF ALABAMA

Certain Underwriters at Lloyd's, London v. Kirkland

69 So. 3d 98 (Ala. 2011) · No. 1091122 · Decided January 7, 2011

SUMMARY

The Supreme Court of Alabama considered the priority of mortgage interests after an insurer paid a first mortgagee under a standard mortgage clause and received an assignment of part of that mortgage interest. The court held that the Kirklands' assigned interest in the remaining portion of the first mortgage retained priority over the insurer's assigned interest, but that the insurer's assigned first-mortgage interest retained priority over the Kirklands' second mortgage. The judgment was affirmed in part, reversed in part, and rendered in favor of the insurer on the second-mortgage issue.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Woodall, Justice; Cobb, Chief Justice; Lyons, Justice; Stuart, Justice; Smith, Justice; Bolin, Justice; Parker, Justice; Murdock, Justice; Shaw, Justice
JURISDICTION	Alabama
DECIDED	January 7, 2011
DOCKET	1091122
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from a summary judgment declaring that the Kirklands' mortgage interests had priority over Underwriters' mortgage interest acquired by assignment under an insurance-policy mortgage clause.
STANDARD OF REVIEW	Summary judgment is reviewed de novo under the same standard applied by the trial court. Because the material facts were essentially undisputed, the court reviewed de novo whether the trial court misapplied the law to those facts.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of Alabama
PARTIES	Certain Underwriters at Lloyd's, London v. Voris E. Kirkland, Connie Ruth Kirkland, Charles Edward Kirkland II, Karen Kirkland Ochoa

TOPICS

insurance coverage | mortgages | contract interpretation | appellate procedure | standard of review

PRACTICE AREAS

insurance | real estate | contracts | commercial litigation | appellate procedure

QUESTIONS PRESENTED

1. Whether the Kirklands' interest in the first mortgage, acquired by assignment from Vision Bank, had priority over Underwriters' interest in the same first mortgage, also acquired by assignment from Vision Bank.
2. Whether the Kirklands' interest in the second mortgage had priority over Underwriters' assigned interest in the first mortgage under the insurance policy's nonimpairment clause.

HOLDINGS

1. The Kirklands' interest in the first mortgage had priority over Underwriters' assigned interest because the insurance policy expressly preserved Vision Bank's right to recover the full amount of its claim, and the Kirklands acquired Vision Bank's retained interest by assignment.
2. Underwriters' interest in the first mortgage retained priority over the Kirklands' interest in the second mortgage.

KEY QUOTATIONS

> *"Pursuant to the plain terms of the mortgage clause, the assignment to Underwriters of part of Vision Bank's interest in the first mortgage could not impair "[Vision Bank's] right to recover the full amount of [its] claim.""* (at 102)

> *"Therefore, we hold that Underwriters' interest in the first mortgage retains priority over the Kirklands' interest in the second mortgage; thus, the trial court erred in granting the Kirklands' motion for a summary judgment with respect to their rights in the second mortgage."* (at 106)

FACTUAL BACKGROUND

Lunceford and Kelly purchased a restaurant from the Kirklands using a first-priority mortgage from Vision Bank and a second-priority mortgage held by the Kirklands. An insurance policy covering the restaurant's real and personal property listed Vision Bank and the Kirklands as first and second mortgagees, respectively, and contained a standard mortgage clause permitting transfer of a mortgageholder's rights to the insurer after payment. After a fire apparently caused by Lunceford's wrongful act, Underwriters paid Vision Bank for the covered real-property loss and received an assignment of part of Vision Bank's first-mortgage interest; Vision Bank retained an approximately $80,000 balance and later assigned that remaining interest to the Kirklands. The dispute concerned whether the Kirklands' assigned first-mortgage interest and their second mortgage had priority over Underwriters' assigned first-mortgage interest.

PROCEDURAL HISTORY

The Kirklands sued Underwriters for a declaratory judgment concerning the priority of competing mortgage interests. After the fire loss, Underwriters paid Vision Bank and received an assignment of part of Vision Bank's first-mortgage interest; Vision Bank later assigned its remaining first-mortgage interest to the Kirklands. The trial court denied Underwriters' summary-judgment motion and granted the Kirklands' motion. Underwriters appealed.

DISPOSITION

reversed

REMAND INSTRUCTIONS

No remand was ordered as to the decided issues. The judgment was affirmed regarding priority of the Kirklands' first-mortgage interest and reversed with judgment rendered for Underwriters regarding priority of Underwriters' first-mortgage interest over the Kirklands' second mortgage.

CASES CITED

- American Gen. Life & Accident Ins. Co. v. Underwood, 886 So. 2d 807, 811 (Ala. 2004)
- Elliott v. Montgomery, 59 So. 3d 663, 668 (Ala. 2010)
- Continental Nat'l Indem. Co. v. Fields, 926 So. 2d 1033, 1034-35 (Ala. 2005)
- Twin City Fire Ins. Co. v. Alfa Mut. Ins. Co., 817 So. 2d 687, 691-92 (Ala. 2001)
- Attorneys Ins. Mut. of Alabama, Inc. v. Smith, Blocker & Lowther, P.C., 703 So. 2d 866, 870 (Ala. 1997)
- Atlantic Nat'l Trust, LLC v. McNamee, 984 So. 2d 375, 378 (Ala. 2007)
- Nissan Motor Acceptance Corp. v. Ross, 703 So. 2d 324, 326 (Ala. 1997)
- Money Store/Massachusetts, Inc. v. Hingham Mutual Fire Insurance Co., 430 Mass. 298, 718 N.E.2d 840 (1999)
- National Union Fire Insurance Co. v. Price, 211 Ala. 155, 99 So. 848 (1924)
- Tarrant Land Co. v. Palmetto Fire Insurance Co., 220 Ala. 428, 125 So. 807 (1930)
- Perretta v. St. Paul Fire & Marine Insurance Co., 106 Misc. 91, 174 N.Y.S. 131 (N.Y. Sup. Ct.), aff'd, 188 A.D. 983, 177 N.Y.S. 923 (1919)
- Mutual Fire Insurance Co. v. Dilworth, 167 Md. 232, 173 A. 22 (1934)
- First Federal Savings & Loan Ass'n of Hammonton v. Hartford Fire Insurance Co., 100 N.J. Super. 252, 241 A.2d 653 (1968)

Canonical source: https://lawtools.ai/cases/state/alabama-supreme-court-of-alabama/2011/certain-underwriters-at-lloyd-s-london-v-kirkland-wzfmgcc0