NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

M & T MORTGAGE CORPORATION, Appellee v. STAFFORD A. TOWNSEND AND BERYL R. TOWNSEND, Appellants	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1247 EDA 2012

Appeal from the Order entered April 2, 2012
in the Court of Common Pleas of Carbon County,
Civil Division, at No(s): 08-0238

BEFORE: PANELLA, ALLEN, and PLATT*

MEMORANDUM BY ALLEN, J.: **FILED MARCH 25, 2013**

Stafford A. Townsend and Beryl R. Townsend, ("Appellants"), appeal from the trial court's grant of an equitable lien in favor of M & T Mortgage Corporation ("M&T"). We affirm.

The trial court recited the facts and procedural history of this case as follows:

> On January 25, 2008, [M&T] filed a Complaint to Quiet Title against [Appellants]. The Complaint avers that [Appellants] purchased the real property located at 875 Towamensing Trail, Albrightsville, Pennsylvania (Property) with the proceeds of a loan from [M&T], in the amount of one hundred twenty-four thousand, eight hundred dollars ($124,800), which was made on December 9, 2004. This loan was to be evidenced by a note and secured by a mortgage on the Property. [M&T] avers that it

*Retired Senior Judge assigned to Superior Court.

recently discovered that the mortgage was not recorded in Carbon County. [M&T] alleges that [Appellants] intended to grant a mortgage to [M&T], and validated this intent by initially making monthly installments of principal and interest to [M&T].

[M&T] is seeking to record its unsigned copy of the mortgage, and requests that this Court order that an unsigned copy of the mortgage be recorded in the recorder of deeds office, and that [Appellants] and their heirs and assigns be enjoined from disputing that the mortgage is a valid and enforceable first lien against the Property.

The Complaint also includes a count for Declaratory Judgment, which seeks a judicial determination of the mortgage lien on the Property, in order to protect [M&T's] interest in the Property. The Complaint further includes a count for the imposition of an equitable lien/constructive trust against [Appellants] and the Property.

On March 5, 2008, [Appellants] filed an Answer and New Matter to the Complaint, denying the substance of [M&T's] allegations. [Appellants] assert that they borrowed money from Chase Home Finance, and not [M&T]. [Appellants] aver that recording a mortgage on the Property would violate the discharge instructions from the United States Bankruptcy Court. In the New Matter, [Appellants] aver that they filed for bankruptcy and were granted a discharge on September 6, 2006. Thus, [Appellants] submit that any loan taken out with [M&T] by [Appellants] was discharged. [Appellants] also aver that the instant action commenced by [M&T] violates the Statute of Frauds by attempting to place an interest in real estate that was not in writing or signed. Additionally, [Appellants] raise the equitable defense of laches. On March 28, 2010, [M&T] filed a Reply to the New Matter denying [Appellants'] allegations. []

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[On October 10, 2008, M&T moved for summary judgment, to which Appellants responded on October 24, 2008. On October 24, 2008, Appellants filed their own motion for summary judgment, to which M&T responded on November 24, 2008.]

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> On June 29, 2009, this Court denied both [M&T's] and [Appellants'] Motions for Summary Judgment. On December 7, 2010, [Appellants] filed a Pre-Trial Memorandum. [] On December 9, 2010, [M&T] filed a Pre-Trial Memorandum. The Memorandum avers that, at closing on December 4, 2004, the underlying note was executed by Stafford Townsend, and that the mortgage was executed by both [Appellants]. It also states that these acts were witnessed by Debra Sebelin, who also verified the parties' identities and notarized the mortgage.
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> [M&T] admits that the mortgage was never recorded in Carbon County, and that they have not been able to locate the original mortgage to be recorded. []
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> On December 10, 2010, a non-jury trial was held in this matter before the undersigned. On March 3, 2011, [Appellants] filed a Post Trial Memorandum. []
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> On March 21, 2011, this Court received a Letter Response from [M&T's] counsel, dated March 16, 2011, to [Appellants'] Post-Trial Memorandum. [] On April 5, 2011, [Appellants] forwarded a Response to [M&T's] March 21[, 2011] letter. []

Trial Court Opinion, 12/30/11, at 1-3; 4-5; 6-7.

On December 30, 2011, the trial court issued an opinion and verdict granting M&T an equitable lien on Appellants' property. On January 26, 2012, Appellants filed exceptions to the trial court's verdict, which M&T opposed on February 3, 2012, and which the trial court denied on March 30, 2012. The trial court's March 30, 2012 Order was docketed on April 2, 2012. Appellants filed their notice of appeal on April 24, 2012. Appellants and the trial court have complied with Pa.R.A.P. 1925.

Appellants present the following issues for our review:

> Did the Court commit an error when it found that [M&T] had standing to impose an equitable lien against the real property despite not having an interest in any alleged underlying debt obligation?
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> Did the Court commit an error when it conferred standing on [M&T] without having suffered an injury in fact or being an aggrieved party?
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> Did the Court commit an error of law when it held that [M&T] has an equitable lien on real property held by [Appellants] despite the fact that [M&T] acknowledged that the wife had never signed the purported Note and a discharge in bankruptcy was entered?

Appellants' Brief at 4.

We will review Appellants' third issue first, followed by a combined analysis of Appellants' first and second issues. In doing so, we are mindful:

> Our appellate role in cases arising from non-jury trial verdicts is to determine whether the findings of the trial court are supported by competent evidence and whether the trial court committed error in any application of the law. The findings of fact of the trial judge must be given the same weight and effect on appeal as the verdict of a jury. We consider the evidence in a light most favorable to the verdict winner. We will reverse the trial court only if its findings of fact are not supported by competent evidence in the record or if its findings are premised on an error of law. However, [where] the issue…concerns a question of law, our scope of review is plenary.
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> The trial court's conclusions of law on appeal originating from a non-jury trial are not binding on an appellate court because it is the appellate court's duty to determine if the trial court correctly applied the law to the facts of the case.

Wyatt, Inc. v. Citizens Bank of Pennsylvania, 976 A.2d 557, 564 (Pa. Super. 2009) ***citing Wilson v. Transp. Ins. Co.***, 889 A.2d 563, 568 (Pa. Super. 2005) (citations omitted).

In their third issue, Appellants contend that the trial court erred in granting M&T an equitable lien despite the Appellants' bankruptcy discharge. Appellant's Brief at 11.

The trial court explained:

> An equitable "lien arises either from a written contract which shows an intention to charge some particular property with a debt or obligation, or is implied and declared by a court of equity out of general considerations of right and justice as applied to the relations of the parties and the circumstances of their dealings." Baranofsky v. Weiss, 182 A. 47, 48-49 (Pa. Super. 1935). To establish a right to an equitable lien, the evidence "'must be clear, precise and indubitable as to the intention of the parties." Mermon v. Mermon, 390 A.2d 796, 799 (Pa. Super. 1978). "There must be an obligation owing by one person to another, a Res to which that obligation attaches, and an intent by all parties that the property serve as security for the payment of the obligation." Id. at 800. Before an equitable lien may be imposed upon real estate as security for a debt, there must be an unambiguous and clear agreement evidencing an intent to impose an equitable lien. Id. The mere borrowing of money to pay the purchase price for real estate does not in itself give rise to an equitable lien in favor of the lender, absent a showing of an intention to create it. Id.
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> In this case, the evidence supports the imposition of an equitable lien upon [Appellants'] Property. [Appellants] admitted to borrowing money from [M&T] and granting [M&T] a mortgage on their Property. [Appellants] also admitted to making payments on the mortgage from 2005 through 2008. The mortgage lien was also listed on the [Appellants'] bankruptcy schedules. [Appellants] were also observed by the notary executing mortgage and loan documents in relation to the claims made by [M&T] in this matter. Thus, the evidence shows that [Appellants] clearly intended to grant [M&T] a security interest in their Property. The evidence also establishes the existence of an obligation owed by [Appellants] and a res to which that obligation attaches. Accordingly, the requirements of Baranofsky and Mermon have been satisfied in this case, and

> [M&T] will be granted an equitable lien on the Property in the amount of the outstanding loan balance of one hundred twelve thousand, four hundred fifty-five dollars and seventeen cents ($112,455.17).

Trial Court Opinion, 12/30/11, at 14-15, 18.

In granting equitable relief to M&T despite the Appellants' bankruptcy discharge, the trial court determined:

> [Appellants] argue that attempting to record the mortgage violates the automatic stay provisions of the United States Bankruptcy Code. While the automatic stay provisions contained in 11 U.S.C. § 362 protect debtors from acts to create, perfect or enforce a lien against their property or bankruptcy estate property, the automatic stay does not exist in perpetuity. Against estate property, the stay continues until the property in question is no longer estate property, and against the debtor's property, the stay continues until the earliest of the closing of the case, dismissal of the case, or the granting/denying of a discharge under Chapter 7. 11 U.S.C. § 362(c). In either case, the automatic stay terminated in this matter when [Appellants'] personal liability on the note was discharged in bankruptcy on September 6, 2006, or when the Property was abandoned to them upon the closing of the bankruptcy case. See 11 U.S.C. § 554(c). Thus, the automatic stay provisions of the United States Bankruptcy Code do not prohibit an attempt to record the mortgage or impose an equitable lien on [Appellants'] Property.
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> [Appellants] also argue that attempting to record the mortgage violates the discharge injunction contained in 11 U.S.C. § 524. However, Section 524(a) (2) only operates as an injunction against further attempts at collection to enforce a discharged debt as a personal liability against the debtor. In Pennsylvania, an action in mortgage foreclosure is an *in rem* proceeding which imposes no personal liability on the mortgagor. In re Reed, 274 B.R. 155, 158 (W.D. Pa. 2002). Thus, as the court concluded in Reed, "Section 524(a)(2)...does not prohibit the holder of an unavoided lien from enforcing it against a debtor in an *in rem* proceeding. It prohibits only the commencement or continuation of an action to collect debtor's personal liability that arose in connection with the lien." Id.

> Additionally, in In re Pecora, 297 B.R. 1 (W.D. NY 2003), the Court concluded that a post-discharge recordation of a mortgage to preserve the mortgagee's equitable lien rights, as opposed to recovering the discharged debt as a personal liability, did not violate the Chapter 7 discharge injunction. See also Estate of Lellock, 811 F.2d 186 (3d Cir. 1987) (holding that liens against property to secure debt which are created before the discharge of the underlying debt in bankruptcy survive the discharge).

Trial Court Opinion, 12/30/11, at 11-13.

Our review of the record and applicable case law supports the trial court's grant of an equitable lien in M&T's favor. "Typically, courts look to the existence of an agreement or to the attendant circumstances to determine whether an equitable lien arises." ***In re CS Associates,*** 121 B.R. 942, 955 (Bankr.E.D.Pa. 1990) (internal citations omitted). "An equitable lien arises from a contract indicating an intent to make certain property security for an obligation or from a situation which otherwise would result in an unjust enrichment." ***R.M. Shoemaker Co. v. Southeastern Pennsylvania Development Corp.,*** 419 A.2d 60, 63 (Pa. Super. 1980).

Here, the record shows that on January 27, 1992, Appellants entered into a mortgage with Franklin First Federal Savings Bank ("Franklin"), M&T's predecessor. N.T., 12/10/10, at 9-10. The Franklin mortgage was secured by Appellants' property located at 875 Towamensing Trails, Albrightsville, PA. *Id.* Therefore, there is a lengthy mortgagee/mortgagor history between M&T/Franklin and Appellants, involving Appellants' home, which predates the subject 2004 note and mortgage. This history weighs in favor of finding

attendant circumstances giving rise to an equitable lien. ***See CS Associates, supra.***

Moreover, Appellants do not dispute that they are still in possession of the marital home located at 875 Towamensing Trails, Albrightsville, PA. Mr. Townsend does not deny that he borrowed monies from M&T, and that he used those monies to satisfy the Franklin mortgage. N.T., 12/10/10, at 71-73; 80. Further, Appellants admitted that they entered into a mortgage with M&T on December 9, 2004. *Id.* at 71-73; 90. M&T never recorded the December 9, 2004 mortgage. Accordingly, there is a showing that Appellants have been unjustly enriched by possessing a home purchased with monies secured from M&T, and regarding which there is no recorded mortgage. Were the equitable lien to be denied due to Appellants' bankruptcy discharge, Appellants would be unjustly enriched. ***See Deichert v. Deichert,*** 587 A.2d 319, 324 (Pa. Super. 1991) ***citing In re Wilson,*** 85 B.R. 722, 725 (Bankr.E.D.Pa. 1988) (other internal citations omitted) (recognizing that courts have traditionally sought "to prevent a party from receiving 'a windfall merely by reason of the happenstance of bankruptcy'"); ***see also R.M. Shoemaker Co.,*** 419 A.2d at 63.

In their first and second issue, Appellants contend that the trial court erred in finding that M&T was an aggrieved party who had suffered an injury, and conferring M&T standing to seek an equitable lien. Appellants' Brief at 10. Appellants assert that "the only party who would have standing is a present holder in due course of the debt obligation who could demand

payment from Mr. Townsend under the inadmissible and purported Note." *Id.* We disagree.

The trial court recognized:

> "A party has standing if he is aggrieved, i.e., he can show a substantial, direct, and immediate interest in the outcome [.]" Irwin [Union Nat. Bank and Trust Co. v. Famous], 4 A.3d [1099][,] 1106 [(Pa. Super. 2010)]. "To establish an 'aggrieved' status, a party must have a substantial interest, that is, there must be some discernible adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law." Stilp [v. Commonwealth of Pennsylvania], 927 A.2d [707][,]710 [(Pa. Cmwlth. 2007)]. "Also, an interest must be direct, which means that the person claiming to be aggrieved must show causation of the harm to his interest by the matter of which he complains." Id. "Further, the interest must be immediate and not a remote consequence of the judgment..." Id. "An immediate interest is shown 'where the interest the party seeks to protect is within the zone of interests sought to be protected by the statute or the constitutional Guarantee in question.'" Unified Sportsmen of Pennsylvania ex rel. Their Members v. Pennsylvania Game Comm'n, 903 A.2d 117, 123 (Pa. Cmwlth. 2006) (citations omitted).
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> In this case, even though they do not currently hold the note or mortgage, [M&T] has standing to bring this action based upon their contractual obligation to record the mortgage, and the apparent injury they will suffer by being required to repurchase the loan if it is not recorded. Cathleen Martin testified on behalf of [M&T] that, while they do not own the loan, they must record the mortgage because they warranted it as a valid first lien when it was sold, (N.T., Non-Jury Trial, 12/10/2010, pp. 16-17). She also testified that if it is not recorded, [M&T] would be obligated to repurchase the loan. (N.T., Non-Jury Trial, 12/10/2010, p. 17). Thus, [M&T] has a substantial and direct interest in ensuring that the mortgage is recorded or an equitable lien is imposed on the Property.
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> While Ms. Martin acknowledged that no demand has presently been made upon [M&T] to repurchase the loan (N.T., Non-Jury Trial, 12/10/2010, p. 26), [M&T] nonetheless has an immediate interest in this matter because Pa. R.C.P. 1061(b)(3)

> protects their right to bring an action to quiet title in order to compel an adverse party to record any document, obligation, or deed affecting any right lien, title, or interest in land.

Trial Court Opinion, 12/30/11, at 9-11.

Our review of applicable case law comports with the trial court's determination that M&T has standing to bring this quiet title action. ***See Kean v. Forman,*** 752 A.2d 906, 908 (Pa. Super. 2000) (where case involves a "cloud" on property, but does not involve a possessory interest, an action to quiet title may be maintained under Pa.R.C.P. 1061(b)(3)); ***see also Grossman v. Hill,*** 122 A.2d 69, 71 (Pa. 1956) (liberally construing Pa.R.C.P. 1061 and indicating that "where an action in ejectment is not available[,] an action to quiet title may be maintained").

In all, to be entitled to an equitable lien, the "potential lienor must satisfy the chancellor that in equity and good conscience he is entitled to a lien." ***Mermon v. Mermon,*** 390 A.2d 796, 800 (Pa. Super. 1978) (internal citation and footnote omitted); ***see also Hoza v. Hoza,*** 448 A.2d 180, 184 (Pa. Super. 1982). Here, M&T has so satisfied the trial court, and we find no basis to reverse the trial court's grant of equitable relief. ***See Wyatt,*** 976 A.2d at 564; ***see also Wilson***, 889 A.2d at 568.

Order affirmed.

Judgment Entered.

Prothonotary

Date: 3/25/2013