

Pennsylvania Superior Court Decides What Constitutes A “First Mortgage”

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In a foreclosure action, what is a first mortgage? This is a question that does not seem too difficult to answer, but that is the question presented to the Pennsylvania Superior Court which, on December 31, 2024, reversed a trial court’s decision clarifying that a first mortgage is the first mortgage lien of record at the time of a foreclosure action even if that mortgage was not the original mortgage lien having been recorded against the property. The issue was presented by Wilentz, Goldman & Spitzer, P.A. in the matter of *Foxfield at Naaman’s Creek Homeowner Association v. Eventoff; Appeal of Reverse Mortgage Funding, LLC*, No. 1017 EDA 2024.

Factual Background

The matter was brought before the court when Foxfield, a condominium association, brought an action for the failure of Eventtoff to pay her homeowner’s association dues. Foxfield, which was formed in 2007, filed its declaration which by operation of the Uniform Planned Community Act (“UPCA”) 68 Pa. C.S.A. § 3801 et seq., perfects a statutory lien for certain fees and assessments. To purchase the property, Eventtoff obtained a mortgage from Morgan Stanley in the amount of \$259,900. In 2011, Eventtoff refinanced the property and obtained a reverse mortgage from Bank of America in the amount of \$427,500 which paid off the original mortgage with Morgan Stanley. The reverse mortgage was assigned several times ultimately being assigned to Reverse Mortgage Funding (RMF)

Eventtoff fell behind in her assessments and an *in rem* foreclosure action was commenced by Foxfield, resulting in the entry of a default judgment in the amount of \$51,778.20 in September 2016. The property was sold at Sheriff’s Sale in May 2022 for \$75,000. RMF did not attend the sale and it was sold to a third-party.[\[1\]](#)

In accordance with Pa. R.C.P. 3136, the Sheriff posted a Schedule of Distribution where after the payment of taxes and costs the Association received funds to satisfy its debt. The Schedule also identified the RMF lien as surviving the foreclosure sale. The Association filed exceptions seeking to have the Schedule amended to divest RMF of its lien. The Purchaser intervened and joined the Association’s exceptions and RMF intervened seeking to maintain its lien.

Trial Court Rulings

The UPCA grants a condominium lien priority over all liens except those securing a first mortgage recorded prior to the first default of payment of HOA assessments. 68 Pa. C.S.A. § 5319(b) (ii)(A). In its first ruling on September 27, 2023, the trial court granted the exceptions holding that the Association’s lien primed RMF’s lien because the RMF lien was not a purchase money mortgage lien and thus under the UPCA was therefore not a first mortgage. A Motion for Reconsideration was granted and after re-argument, the trial court agreed that it was not necessary the first mortgage be a purchase money mortgage, but that to be a “first mortgage,” it must be the original mortgage on the property. RMF’s mortgage was not as it was a refinance of the original mortgage. The UPCA does not specifically define a “first mortgage” and the Association argued that the term “first mortgage” did not mean “first priority,” but had to be the original mortgage, not a refinanced mortgage to have priority under the UPCA. The trial court affirmed its prior order divesting RMF of its lien.

The Superior Court Opinion

Interestingly, Pennsylvania is not the first state to confront a contest between homeowner associations or condominiums who seek to hold that their liens have priority over mortgage liens (other than purchase money mortgages) even if the association's or condo's judgment occurs after the recording of a prior mortgage arguing the association's lien is perfected upon filing of the Declaration (in this case in 2004). The equitable argument is that the mortgagee can always pay the delinquent assessments to protect its interests.

In reversing the trial court, the Superior Court noted that under the Judicial Code, a judicial sale of real estate does not affect the lien of a mortgage if the mortgage lien is prior to all other liens on the property. 42 Pa.C.S.A. § 8152(a). Under certain circumstances a statutory lien such as one under the UPCA may affect this general rule. The exception to that exception is "mortgages securing first mortgage holders and recorded before due date of the assessment." 42 Pa.C.S.A. § 8141(b)(ii)(A). The recording of the Association's Declaration constitutes notice and perfection of any lien under the statute, however, an association's lien does not become effective until the time for payment becomes delinquent. So, if the mortgage is a "first mortgage" recorded before the lien becomes effective, it will have priority over the HOA lien.

The term "first mortgage" not being defined, the Superior Court, consistent with rules of statutory construction looked to its normal meaning and as found in Black's Law Dictionary, a "first mortgage" is defined as "a mortgage that is senior to all other mortgages on the same property." The Court rejected the Association's argument that first mortgage meant only the original initial mortgage. If that is what the Legislature intended, it would have so stated.

Support was found in an 143 year old Pennsylvania Supreme Court case, *Appeal of Green*, 97 Pa. 342 (1881) wherein the Court held that "a first mortgage has come to be very well understood to be one prior to all other liens." The Court found that anyone dealing with first mortgages who does not understand that meaning to be incredible further stating, "[T]hat when we speak of lending money on first mortgage, no thought of anything but a first lien is entertained."

The Superior Court further accepted RMF's position that the analysis of lien priority is as of the time of the sale, not as the Association and trial court advocated, namely, the entire history of the property. Further support for this was found in the Mortgage Satisfaction Act, 21 P.S. § 721-4, which notes that upon payment, a mortgage satisfaction piece forever discharges and releases the lien of the mortgage. Thus the RMF mortgage discharged the original mortgage and was the first mortgage lien at the time of the sale. The Superior Court therefore reversed the trial court and reinstated RMF's first mortgage lien.

The case was presented on behalf of RMS by **Daniel S. Bernheim, Esq.** and **Jonathan J. Bart, Esq.** of Wilentz, Goldman & Spitzer, P.A.

References:

[1] There was an issue that Foxfield failed to comply with the notice requirements and did not properly inform RMF of the sale. An email was sent to a clerk of the loan officer, but no notice was sent by mail to RMF as strictly required by Pa. R.C.P. 3129.2. The Superior Court did not address this issue having ruled that the RMF lien was not discharged by the foreclosure sale.

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