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The Docket: Homestead Exemption Defeats Equitable Subrogation

May 7, 2019

The Docket is a monthly TitleNews Online feature provided by ALTA's Title Counsel Committee which reviews significant court rulings and other legal developments and explains the relevance to the title insurance industry.

Lance Pomerantz, a New York-based sole practitioner who provides expert testimony, litigation consulting and strategic advice in land title disputes, reviews a recent New Hampshire case that gave the statutory homestead exemption priority over a mortgage lien. He can be reached at lance@landtitlelaw.com.

Citation: *Deutsche Bank National Trust Company v. Pike*, Nos. 17-1815 and 17-1936 (U. S. C. A., First Circuit, Feb. 19, 2019).

Facts: Bill and Jennifer Pike were married in 2000. In 2001, Bill bought their residence in his own name, but Jennifer has continuously resided there since the purchase. In 2003, Bill gave a mortgage to New Century Mortgage Corporation. Both Bill's and Jennifer's signatures were on this mortgage, which included a provision stating that "[b]orrower[] and [b]orrower's spouse . . . release all rights of homestead in the Property."

In late 2004, Bill gave a junior mortgage to First Franklin Financial Corporation, pursuant to which he again waived his homestead right. Jennifer did not sign the First Franklin note or mortgage. A few months later, the New Century loan was paid off and that mortgage was discharged. The First Franklin mortgage was assigned to Deutsche Bank in 2009.

The Pikes were divorced by decree on July 3, 2013. The decree awarded Jennifer "the exclusive use and possession of the marital homestead ... free and clear of any interest of William Pike." Eight days later, Deutsche Bank began foreclosure proceedings. About two weeks after that, Bill deeded the property to Jennifer, and the deed states, "[t]his conveyance is in conformance with [the] divorce decree in the Matter of Jennifer Pike and William T. Pike, Jr."

Jennifer then filed a complaint in state court asserting a homestead right in the property and seeking to enjoin Deutsche Bank from foreclosing. The state court declined to enter the injunction, finding "that Jennifer's assertion of a homestead right was premature," and the New Hampshire Supreme Court affirmed. Shortly after the conclusion of the litigation in state court,

Deutsche Bank filed suit in federal court seeking a declaratory judgment either 1) that its interest in the Property is not subject to Jennifer's homestead right, or 2) that it is entitled to equitable subrogation "as to the amount it paid to discharge the prior mortgage." The federal district court ruled against Deutsche Bank on both counts.

Holding: The court of appeals affirmed the determinations. It employed detailed analyses of the New Hampshire homestead exemption, the self-executing nature of the divorce decree award, the state law requisites for equitable subrogation, and possible exceptions thereto.

The panel determined that Jennifer's homestead rights accrued when she first entered into residence in 2001 and continues through the present day. Even though she unequivocally waived her rights under the New Century mortgage, there was no evidence to suggest she waived her rights under the First Franklin (now Deutsche Bank) mortgage.

Deutsche Bank argued that the proceeds of the First Franklin mortgage were used to pay off the New Century mortgage, equitably subrogating First Franklin *to the homestead waiver* contained in the New Century mortgage, not just the lien thereof. Rather than get into the merits of this argument, both the district court and the first circuit held that Deutsche Bank had not proven all the elements that would entitle it to equitable subrogation, or that the First Franklin mortgage was procured through "fraud, deception, or other misconduct," which would permit application of subrogation despite the Bank's failure to prove all the elements.

Relevance to the Title Industry: In jurisdictions with homestead protections or similar doctrines, a title insurer must proceed with the utmost diligence *at the time of origination*, especially when not all potentially protected parties are giving the insured mortgage. Because of wide variation in the nature and extent of state law protections, underwriting personnel must be thoroughly familiar with local law and carefully review the proposed mortgage documents to verify that all interests are subordinated to the mortgage lien.

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