

SOVEREIGN BANK, F.S.B.,	:	IN THE COURT OF COMMON PLEAS OF
Assignee of First Union National Bank	:	LYCOMING COUNTY, PENNSYLVANIA
Successor of CoreStates, N.A.,	:	
Plaintiff	:	
	:	
vs.	:	NO. 00-00809
	:	
THE MUNCY BANK & TRUST	:	CIVIL ACTION - LAW
COMPANY and JAN L. HALL and	:	
ROBIN C. HALL,	:	
Defendants	:	MOTION FOR SUMMARY JUDGMENT

Date: April 6, 2001

OPINION AND ORDER

Before the Court is Defendant Muncy Bank and Trust Company’s Motion for Summary Judgment. For the reasons to be discussed in this opinion, Defendant’s motion will be denied.

Facts

On April 3, 1997, Defendants Jan L. Hall and Robin C. Hall granted Defendant Muncy Bank and Trust Company (hereafter Muncy Bank) two mortgages to secure the payment of a note. Muncy Bank recorded the mortgages on April 10, 1997. The note and mortgages were in the amount of \$200,000.00. One mortgage described Defendant Hall’s residential property; the other mortgage described their commercial property.

On May 15, 1998, Muncy Bank executed a Subordination of Mortgage. The document states that Muncy Bank agreed to subordinate its mortgage of April 3, 1997 to CoreStates (and its successor or assigns) as of “the May day of 15, 1998, in the amount of \$100,000.00.” The Subordination of Mortgage was never recorded¹.

¹ Defendant’s motion states that the original document was lost and cannot be found. A photocopy was attached to the Motion for Summary Judgment.

On May 11, 1998, Defendants Hall executed a mortgage to Plaintiff CoreStates Bank (Sovereign Bank is the successor in interest) in the amount of \$108,836.32. This mortgage was recorded on June 12, 1998.

On January 27, 2000, Muncy Bank filed a mortgage foreclosure action against the Halls requesting a judgment in foreclosure against both the residential and commercial properties. On January 2, 2001, this Court granted a summary judgment in mortgage foreclosure in favor of Muncy Bank in the amount of \$233,777.57.

Sovereign Bank filed the within action seeking a judicial determination I) that the unrecorded subordination agreement is binding upon Muncy Bank, ii) that Sovereign Bank have a first lien mortgage upon the Residence, and iii) authorizing the Lycoming County recorder of Deeds Office to record a copy of the Subordination Agreement. 1) Muncy Bank now argues that it is entitled to judgment as a matter of law such that the Subordination Agreement should be voided because the Agreement references a \$100,000.00 Sovereign Bank mortgage, when in fact the Sovereign Bank mortgage as recorded is in the amount of \$108,836.32; 2) the subordination agreement is lost, was executed only by Muncy Bank and was not recorded.

Discussion

Summary judgment is granted when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits demonstrate that no material issue of fact exists. The moving party has the burden of proving that no genuine issues of fact exist. The non-moving party must demonstrate that there is a genuine issue for trial. The trial court must resolve all doubts against the moving party and examine the record in the light most favorable to the non-moving party. Summary judgment may only be granted in cases where it is clear

and free from doubt that the moving party is entitled to the judgment as a matter of law. *Hoffman v. Pellak*, 2000 WL 1782375 (Pa.Super 2000). Because Defendant Muncy Bank cannot demonstrate the non-existence of any genuine issues of material fact, the motion for summary judgment must be denied.

The Court notes with some interest that while this action involves many concepts associated with property law; i.e. mortgages, notes, and subordination, this case is, in essence, a contract dispute. Muncy Bank asserts that since the original subordination agreement was never recorded it is now without any legal effect. The Court agrees that 21 P.S. §654 mandates the recording of mortgage postponements. However, the Court also notes that the purpose of recording statutes is to protect by constructive notice, any subsequent purchasers, mortgagees and new judgment creditors, i.e. third parties. *Graham v. Lyons*, 546 A.2d 1129 (Pa.Super 1988). Furthermore, it is well settled law that an unrecorded mortgage is does not lose its legitimacy. The concept of recording speaks to priority, not validity. *Id.* at p. 1130. In this case, the contract was between two mortgage lenders who were fully aware of each other's existence. Nullifying a contract between disputants in this situation would be a misapplication of the recording statutes.

In a similar vein, Defendant Muncy Bank argues they should prevail because the subordination agreement was not recorded within six months after signing. Defendant Muncy Bank argues that since a mortgage should be recorded within six months of conveyance, by inference a subordination agreement should also be recorded within six months. To support this position, Defendant Muncy Bank cites 21 P.S. §621. Once again, "the recording of a deed is not essential to its validity or to the transition of title." *Id.* at 1130. Furthermore, the Court

can find nothing in either 21 P.S. § 654 or 21 P.S. § 621 that mandates the recording of a subordination agreement within six months of the transaction.

Since the recording statutes do not control, the Court now turns to Defendant Muncy Bank's contentions that the contract cannot be enforced. Defendant Muncy Bank offers five reasons why the contract is not valid. The Court will address these arguments in the same order that Defendant Muncy Bank presented them in its brief in support of a motion for summary judgment.

Courts Enforce Contracts As They Are Written

Defendant Muncy Bank argues that the language of the subordination agreement is clear as to what the intent of Defendant Muncy Bank was when the document was executed. "It agreed to subordinate its \$200,000.00 mortgage on the residential property of Defendants Hall to a new mortgage to CoreStates Bank, if, and only if, the new mortgage was in the amount of \$100,000.00, and it was dated May 15, 1998." Defendant Muncy Bank's Brief in Support of Summary Judgment, 3-12-01, p.8. Since the new mortgage between the Hall's and CoreStates was actually for \$108,836.32, Defendant Muncy Bank argues that this is an attempt to change the terms of the subordination agreement. The Court agrees that the agreement clearly states that Muncy Bank agreed to subordinate its mortgage in the amount of \$100,000.00. The Court, however, disagrees with Defendant Muncy Bank's conclusion that the mortgage between the Halls and CoreStates is an attempt to alter the subordination agreement. The Court can find no language in the subordination agreement that indicates that Muncy Bank agrees to the subordination, if and only if, CoreStates agree to lend the Halls precisely \$100,000.00. Granted the additional \$8,836.52 would have an impact on Defendant Muncy Bank's interest should CoreStates decide to foreclose on the Halls, however the Court

views the CoreStates' mortgage as essentially a matter between the Halls and CoreStates. By Defendant Muncy Bank's logic, if for some reason CoreStates lent the Halls \$99,000.00, then the subordination agreement is void because it is not exactly \$100,000.00 even though in this scenario the discrepancy would work to Defendant Muncy Bank's advantage. It may be ultimately that the subordination agreement can only be enforced to the extent of \$100,000; however, it is not clear as a matter of law that difference in the mortgage amount causes the agreement to subordinate to become invalid.

Ascertain the Intent of the Parties at the Time of the Agreement

Defendant Muncy Bank contends that the best method to ascertain the intention of the parties is to review the writing itself². The Court agrees with this proposition. When the Court reviews the writing, it concludes that Muncy Bank agreed to subordinate its \$200,000.00 to CoreStates in the amount of \$100,000.00. The document itself is abundantly clear in this regard. In his brief, Defendant Muncy Bank argues that “[w]hen that intent is clearly expressed there is no need for oral evidence.” *Id.* at p.9. It is with some interest that the Court notes that the only way Defendant Muncy Bank can demonstrate that there is a difference in terms

² The document in question reads:

SUBORDINATION AGREEMENT

KNOW ALL MEN BY THESE PRESENTS THAT Muncy Bank and Trust on the 21st day of April 1998 for a valuable consideration to it in hand paid, the receipt whereof is hereby acknowledged, hereby agrees that the mortgage, heretofore given to it by Jan L. Hall and Robin C. Hall (“Debtor”) dated April 3, 1997 and duly recorded in Lycoming County, Pennsylvania, in Mortgage Book Volume 2775, page 323, on April 10, 1997, on premises located at R.R.#4, Box 152B, Muncy, Lycoming County, Pennsylvania, 17756 or a real debt of \$200,000.00 and therein more particularly described, said description incorporated herein by reference, which said mortgage constitutes a lien upon said premises, shall be subordinate in lien, priority and distribution to a certain mortgage upon said premises, dated the May day of 15, 1998, in the amount of \$100,000.00 given by the Debtor to CoreStates Bank, N.A. its successors and or assigns as their interests may appear, and that the aforesaid mortgage of the undersigned shall in all respects be and be deemed to be a junior mortgage.

between the subordination agreement and the amount of the CoreStates' mortgage is to introduce evidence not contained in the writing at issue. If the Court were only to look to the writing as Defendant Muncy Bank urges, then the inevitable conclusion is that Muncy Bank agreed to subordinate its original mortgage to the Halls in the amount of \$100,000.00 to CoreStates – period. This may mean the Plaintiff is the party entitled to summary judgment. The Court cannot permit Defendant Muncy Bank to evoke the parol evidence rule against Plaintiffs and yet allow Defendant to introduce parol evidence. Furthermore, the Court believes parol evidence is admissible to show if the agreement was intended to embody the parties complete intent, or to show an error exists in the document which was the effect of misleading the reader as to the parties' intent.

Further Investigation is only Permitted When Terms are Ambiguous

Defendant Muncy Bank states that only when the terms of an agreement are ambiguous that a court should investigate evidence outside of the document to attempt to determine the intent of the parties. As this is essentially the same argument raised in the previous point no further elaboration is necessary. In addition, the ambiguity arises not in the wording of the document but from the events surrounding its enforceability and application. In other words, the ambiguity is latent, not patent, thus allowing admitting parol evidence to explain the ambiguity.

Muncy Bank Did Not Prepare the Agreement

Defendant Muncy Bank asserts that it is clear that they did not prepare the written agreement. Consequently any doubtful meanings or ambiguities are to be construed against the preparing party. The Court has two observations about this point. The first one is that while it may be so that Defendant Muncy Bank did not type the agreement, it is not at all

clear who filled in the dates. All parties deny making the “May day of 15 1998” entry into the provided blanks. This appears to the Court to be a factual dispute. It probably does not need to be stated that a Court cannot grant a motion for summary judgment if there exists genuine issues of material fact. The second observation is that if the Court construes the contract against the preparing party, it is likely that the Court will find that there was an agreement between Plaintiff and Defendant Muncy Bank for Muncy Bank to subordinate its mortgage to the Halls to that of CoreStates in the amount of \$100,000.00. The Court simply does not see any ambiguities on the face of the document. The Court suggests that this is probably not the result Defendant Muncy Bank desires.

If There is no Mutual Assent, There is no Agreement

Defendant Muncy Bank maintains that because they agreed to subordinate in the amount of \$100,000.00 and the actual mortgage amount was \$108,836.32; there was no agreement due to a lack of mutual assent. The Court is at a loss to understand how to demonstrate that there was no mutual assent yet exclude parol evidence. There is simply no way for the Court to determine on the face of these documents that there was no mutual assent between the parties.

In short, Defendant Muncy Bank is in a precarious position. On one hand, they ask the Court to concur that the document does not reflect the intention of the parties. They demonstrate this by referencing the mortgage note between Defendant Halls and Plaintiff. However, in nearly the same breath, Defendant Muncy Bank argues that Plaintiff not be allowed to introduce parol evidence. Earlier in this opinion, the Court stated that a motion for summary judgment could only be granted in cases that are clear and free from doubt. Because

Defendant Muncy Bank is not entitled to a judgment as a matter of law and because there are disputed issues of genuine fact, this case falls short of that standard.

ORDER

Defendant Muncy Bank's Motion for Summary Judgment is DENIED.

BY THE COURT,

William S. Kieser, Judge

cc: J. Howard Langdon, Esquire
Thomas A. Capehart, Esquire
One Windsor Plaza, Ste 101, 7535 Windsor Drive, Allentown, PA 18195
Mark L. Taylor, Esquire
Judges
Jeffrey L. Wallitsch, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)
Honorable Kenneth D. Brown