COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

21-P-150

CITIZENS BANK, N.A.[1]

vs.

CAROLYN M. TEEHAN.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The defendant appeals from a summary judgment of the Land Court, which equitably subrogated a mortgage granted by her mother in 2011 to the plaintiff bank to the position of a mortgage her mother and brother previously had granted to the plaintiff in 2006 to secure a note on which the plaintiff was obligated.[2]

As the motion judge observed, equitable subrogation "is an exception to the basic principle that determines priority among mortgages, 'first in time is first in right.'" East Boston Sav. Bank v. Ogan, 428 Mass. 327, 329 (1998). Under the doctrine of equitable subrogation, when proceeds of a mortgage loan satisfy a note secured by a prior mortgage, resulting in a discharge of

[1] Formerly known as RBS Citizens, N.A.

[2] In a cross appeal, the plaintiff asks us to amend the judgment to include an award of certain accrued interest.

the prior mortgage, the later mortgage may be subrogated to the position held by the prior mortgage, if "(1) the subrogee made the payment to protect his or her own interest, (2) the subrogee did not act as a volunteer, (3) the subrogee was not primarily liable for the debt paid, (4) the subrogee paid off the entire encumbrance, and (5) subrogation would not work any injustice to the rights of the junior lienholder" (footnote omitted). Id. at 330, quoting Mort v. United States, 86 F.3d 890, 894 (9th Cir. 1996).

In the present case, as the motion judge also observed, the plaintiff bank "(1) paid off the 2006 [m]ortgage to protect its own interest; (2) did not act as a volunteer because it was protecting its own interest, Ogan, 428 Mass. at 330 n.4; (3) was not liable for the debt; and (4) paid off the entire remaining balance of the 2006 [m]ortgage." The motion judge further concluded that subrogation would not work any injustice to the defendant (whose ownership position is equivalent to that of the intervening junior lienholder in Ogan) because the defendant's obligation on the 2006 note was satisfied by application of the proceeds of the 2011 loan.

We agree with the analysis articulated by the motion judge. In response to the defendant's contention that the case should be resolved in her favor by the holding in Wells Fargo Bank, N.A. v. Comeau, 92 Mass. App. Ct. 462 (2017), we observe, like

the motion judge, that the holding in that case turned on the fact that the surviving spouse was not obligated on the note made by her husband to secure the earlier mortgage, and that was satisfied by the subsequent loan. Id. at 468. In the present case, by contrast, the defendant was obligated on the note secured by the 2006 mortgage, the outstanding balance of which was satisfied by proceeds of the 2011 loan.

We also agree with the motion judge that the plaintiff's mortgage is subrogated only to the extent of the balance outstanding on the 2006 note at the time it was satisfied by proceeds of the 2011 loan (and that the subrogated mortgage secures the 2011 note rather than the 2006 note which was paid in full and satisfied from proceeds of the 2011 note). The subrogated mortgage confers on the plaintiff security for the 2011 note, but only to the extent of the outstanding balance on the 2006 note that is the source of the plaintiff's entitlement to subrogation. While it is of course true that the 2011 note includes the right to collect accrued interest and other penalties resulting from nonpayment, that obligation arises under the note, and does not change the extent of the plaintiff's right to equitable subrogation to the position of its earlier mortgage. Any action by the plaintiff to recover amounts due on the 2011 note in excess of those secured by subrogation to the 2006 mortgage are properly directed to the

maker of the 2011 note (or, in this case, her estate), and do not enjoy the benefit of the security of the 2006 mortgage.

Judgment affirmed.

By the Court (Green, C.J., Wolohojian & Hershfang, JJ.[3]),

Joseph F. Stanton

Clerk

Entered: December 8, 2021.

[3] The panelists are listed in order of seniority.