Franklin County Legal Journal

Vol. 32, No. 7 August 15, 2014 Pages 29 - 36

Designated by Order of the Court for the publication of court and other legal notices, the Franklin County Legal Journal (USPS 378-950), 100 Lincoln Way East, Chambersburg, Franklin County, PA 17201–2291, contains reports of cases decided by the various divisions of the Franklin County Branch of the Court of Common Pleas of the 39th Judicial District of Pennsylvania and selected cases from other counties.

The Columbia Bank, Successor by Merger to Hagerstown Trust Company, Plaintiff v. Jesse Mills, Brandy Merchant Mills, Michael Cox, and U.S. Bank N.A., As Trustee for the RMAC Trust, Series 2011-2T, Defendant

Court of Common Pleas of the 39th Judicial District of Pennsylvania, Franklin County Branch, Civil Action No. 359-2013

HEADNOTES

Equitable Interpleader; Mortgagee's Right to Insurance Proceeds after Foreclosure; Right to Counsel Fees

1. In equity, the Court strives to achieve a fair and just result.

2. "A sheriff's sale is made without warranty; the purchaser takes all the risk, and the rule of caveat emptor applies in all its force." *CSS Corp. v. Sheriff of Chester Cnty.*, 507 A.2d 870, 872 (Pa. Super. 1986).

3. Examining a mortgagee's right to insurance proceeds, under a policy containing a standard mortgage clause; a mortgagee's interest is protected before or after foreclosure.

4. A mortgagee's right to claim such insurance proceeds depends on whether the mortgage indebtedness has been fully satisfied. When the mortgage indebtedness is not fully satisfied after loss by foreclosure, then the mortgagee is entitled to receive the insurance proceeds to the extent necessary to fully satisfy the debt. However, when the mortgage indebtedness is fully satisfied, the mortgagee may not recover any proceeds under the insurance policy.

5. A standard mortgage clause creates a separate contract between the insurer and the mortgagee.

6. "A possessor of property claimed by two or more other persons, if the possessor interpleads the rival claimants, disclaims all interest in the property and disposes of the property as the court may direct," shall be entitled to a reasonable counsel fee as part of the taxable costs of the matter. 42 Pa.C.S. § 2503(4)

Appearances:

Michael D. Cox, *pro se Defendant*

Robert W. Cusick, Esq., *Counsel for U.S. Bank*

Matthew M. Hennesy, Esq., *Counsel for Columbia Bank*

OPINION AND ORDER OF COURT

Before Van Horn, J.

STATEMENT OF THE CASE

Plaintiffs, Columbia Bank, Successor by Merger to Hagerstown Trust Company [hereinafter "Columbia Bank"] filed a Petition for Equitable Interpleader on October 10, 2013 to determine which Defendant is properly entitled to the proceeds of Insurance Policy #ATK890165 [hereinafter "insurance proceeds or policy"]. Columbia Bank named Jesse Mills, Brandy Merchant Mills, Michael Cox [hereinafter "Cox"], and U.S. Bank N.A., As Trustee for RMAC Trust, Series 2011-2T [hereinafter "U.S. Bank"] Defendants in the action. Columbia Bank also requested that it be fully and finally discharged from all further liability with respect to the insurance policy and be awarded reasonable and proper attorney's fees in connection with the action.

After a December 17, 2013 hearing on the Petition, and the resolution of some confusing procedural issues, the Court granted Columbia Bank's Petition for Equitable Interpleader in part, and Ordered Columbia Bank to pay the proceeds of the insurance policy, $38,386.48, by depositing said sum with the Prothonotary of Fulton County. (Order of Court, 1/30/2014). Upon such payment, Columbia Bank was discharged from any liability as to the Defendants' competing claims to the insurance policy, and the Defendants were enjoined and restrained from institution or prosecuting any further proceedings in pursuit of the insurance policy against Columbia Bank. (Order of Court, 1/30/2014). Brandy Merchant Mills was dismissed from the action, and the remaining Defendants, Jesse Mills,[1] Cox, and U.S. Bank, were named adverse claimants to the proceeds of the insurance policy and ordered to interplead and settle among themselves any rights and claims. (Order of Court, 1/30/2014). Referencing the Pennsylvania Rules of Civil Procedure relating to Interpleader by Defendants, the Court ordered the adverse claimants to file Statements of Claim, Answers, and Additional Matter if applicable. (Order of Court, 1/30/2014). After the filing of multiple, confusing pleadings, the Court held an in-chambers conference call on April 17, 2014. Upon conclusion of the call, the Court ordered a briefing schedule to resolve the two outstanding issues; the merits of the interpleader action, and Columbia Bank's Motion for counsel's fees and costs.[2] The issues are now ripe for decision in this Opinion and Order of Court.

BACKGROUND

The facts disclosed by the pleadings reveal that on or about June 30, 2006, Jesse Mills and Brandy Merchant Mills executed and delivered

1 Although Jesse Mills remains a party to the action, he has failed to file any pleadings.

2 Michael Cox raised Additional Matter which the Court declines to consider in light of the narrow scope of the interpleader action.

a Note to Columbia Bank[3] in the original principal sum of $395,000.00. The Note was secured and accompanied by a Mortgage dated June 30, 2006. The Note was recorded with the Office of the Recorder of Deeds of and for Fulton County, Pennsylvania on July 3, 2006 as an encumbrance against the property located at 2108 Green Lane Road, Warfordsburg, Fulton County, PA [hereinafter "the premises or property"]. Pursuant to the terms of the Mortgage, the Mills were required to obtain and maintain property insurance, and if they failed to do so, the lender could obtain insurance. (*See* Petition for Equitable Interpleader, 10/10/2013, Ex. A ¶ 5, subparagraphs 1 & 2). Consequently, the Mills failed to maintain property insurance, and Columbia Bank exerted its rights to purchase insurance to protect the premises. Columbia Bank procured force placed insurance on the premises through American Modern Homes Ins. Co., [hereinafter "American"] which issued the insurance policy #ATK8901625. The Mills also defaulted under the Note and Mortgage for failure to make monthly payments which were due beginning April 1, 2009 and every month thereafter.

On or about May 27, 2011, the house and several outbuildings on the premises were damaged by a hail storm. The American insurance policy was in force on that date. On or about December 27, 2011, Columbia Bank sold the Note and Mortgage to Roosevelt Mortgage Acquisition Company. The assignment was recorded on April 2, 2012. The present successor to the Columbia Bank's interest in the Note and Mortgage is U.S. Bank. Therefore, U.S. Bank is the assignee of Columbia Bank's mortgage rights.

On an unknown date, Jesse Mills got a hail damage estimate of $52,292.15. He contacted American by phone to file a claim and was informed that Columbia Bank had to file the claim because Columbia Bank was the named insured. Jesse Mills then contacted Columbia Bank, but Columbia Bank refused to file a claim because it had sold the loan to another party. On June 27, 2012, Jesse Mills assigned the benefits of any insurance proceeds he may be entitled to Leslie Mills for value. (*See* Claimant Michael Cox's Amended Statement of Claim, 2/26/2014, Exhibit D).

As the Mills had defaulted under the Note and Mortgage, on July 20, 2012, a judgment was entered against Jesse Mills and Brandy Merchant Mills in the amount of $331,249.32. In early 2013, an insurance claim was asserted by Columbia Bank against the American insurance policy. A Sheriff's Sale occurred in March of 2013, where Cox was the successful third-party purchaser of the premises for $202,000.00. On April 4, 2013, Cox made demand upon Columbia Bank to claim for the hail damage on their insurance policy with American. On May 13, 2013, American sent a letter to Columbia Bank explaining that it would pay money as a result

3 In Cox's pleadings, he asserts that the Mills executed a note and Mortgage to Hagerstown Trust Company, and Columbia Bank acquired all rights under the mortgage by merger with Hagerstown Trust Company.

of the hail damage, and on May 16, 2013, American sent Columbia Bank a Statement of Loss and a check for $38,386.48 as payment. On June 24, 2013, Leslie Mills assigned any and all insurance benefits assigned to her by Jesse Mills to Cox. (*See* Claimant Michael Cox's Amended Statement of Claim, 2/26/2014, Exhibit E).

The damage to the premises remains unrepaired. Cox argues that he is entitled to the insurance proceeds and U.S. Bank argues that it is entitled to the insurance proceeds. Columbia Bank has refused to pay the proceeds due to the possibility of multiple liabilities, and filed the instant equitable interpleader action to determine which party is entitled to the proceeds.

DISCUSSION

I. $38,386.48 Insurance Proceeds

U.S. Bank's argument is two-fold. First, it argues that it is entitled to the proceeds because the rights of a mortgagee to claim insurance proceeds originates principally from the nature of the contract between the insurer and the insured. *See Guarantee Trust and Safe Deposit Company v. Home Mutual Fire Insurance Co.*, 117 A.2d 824, 825-26 (Pa. Super. 1955). The only exception to this rule is when the mortgage indebtedness is fully satisfied after the loss. *Id*. U.S. Bank asserts that Columbia Bank was the only named insured, and U.S. Bank was its successor in interest and was not fully satisfied by the foreclosure. Comparatively, neither the Mills nor Michael Cox were named insureds under the policy and therefore have no privity of contract with the parties to the policy. U.S. Bank also asserts that the assignments of the insurance proceeds from Jesse Mills to Leslie Mills to Michael Cox are invalid because Jesse Mills did not possess the ability to transfer the benefits in the first place as he was not a named insured. Ultimately U.S. Bank argues that it is entitled to the insurance proceeds as a matter of privity of contract. Moreover, as U.S. Bank was not fully satisfied by the foreclosure, it elects to apply the insurance proceeds to the balance on the loan.

Second, U.S. Bank argues that Cox is not entitled to the insurance proceeds as he purchased the property at a sheriff's sale subject to all defects, damages, and clouds on title. U.S. Bank asserts that a sheriff's sale is made without warranty under the doctrine of caveat emptor, a purchaser takes all risks. *Juniata Valley Bank v. Martin Oil Co*., 736 A.2d 650 (Pa. Super. 1999).

Cox's argument is also two-fold.[4] First, he asserts that Jesse Mills

4 Cox also makes additional arguments in his pleadings which the Court does not find valid. Moreover, Cox alleges that U.S. Bank filed a false or fraudulent insurance claim which reduced the insurance available to be paid on Columbia

is entitled to the proceeds as he was the owner of the premises at the time of the hail damage. However, due to the assignment by Jesse Mills to Leslie Mills, who then made an assignment to Cox, Cox argues that he is entitled to the proceeds as the the bona fide holder of the assignment.

Second, Cox argues that as a matter of law, U.S. Bank is barred from asserting any claim because the Doctrine of Merger applies, and any claims that could have been brought at the time of Judgment have since merged into the judgment. Cox cites *Lance v. Mann,* 60 A.2d 35 (1948) in support. Cox argues that prior to the July 20, 2012 Judgment, U.S. Bank could have claimed the insurance proceeds, but now, post-judgment, U.S. Bank has no claim as the assignment and the mortgage in its original form have merged into the judgment, which evidences a new obligation. Cox asserts that all that exists now is the default judgment held by U.S. Bank reduced by the Sheriff's Sale to a deficit judgment of $139,374.34.

As the present action is equitable, the Court strives to achieve a fair and just result. Columbia Bank filed the instant matter in equity to determine which party has a valid and superior claim to the $38,386.48 insurance proceeds.

Cox's argument that U.S. Bank cannot, post-judgment, use the mortgage and the assignment as a basis for its entitlement fails. Although the case law is minimal, some of our courts have addressed the effect of foreclosure on a mortgagee's right to insurance proceeds. *See Harleysville Ins. Co. v. Robert Lacontora & Dora Lacontora, Nicholas V. Pinto, Esquire, Joseph Funaria, P.A., Joseph Nicotera,* No. 0922, 1997 WL 1433772 (Ct. Com. Pl. June 19, 1997). Our Superior Court has stated:

> A general rule may be formulated to establish that under a policy containing a standard mortgage clause, the *mortgagee's interest is protected as it may appear before or after foreclosure or other methods of change of ownership or title for the insurance follows the property.* The exception to this general rule is that if the mortgage indebtedness is fully satisfied after loss by foreclosure or other means, the mortgagee may not recover any proceeds under the insurance policy.

Laurel Nat. Bank v. Mut. Ben. Ins. Co., 444 A.2d 130, 134 (Pa. Super. 1982) (emphasis added). None of the parties attached the full insurance policy as an exhibit to their pleadings so the Court cannot determine whether the policy contained a standard mortgage clause protecting the mortgagee's interest. Such a clause would, in effect, establish a separate contract

Bank's insurance claim by $2,871.00. The Court declines to consider Cox's Additional Matter in light of the narrow and limited scope of this interpleader action and the primary purpose of disbursing of the $38,386.48 insurance proceeds.

between the mortgagee and the insurer. However, the original mortgagee, Columbia Bank, was the actual named insured. Therefore, a contract between Columbia Bank and American was clearly established and any proof of a standard mortgage clause in the policy is unnecessary.

Further, as in the instant case, when a foreclosure is initiated after the date of loss or damage:

> [T]he mortgagee's right [to claim insurance proceeds] depends on whether the mortgage indebtedness has been fully satisfied. . . . The reasoning is that after suffering a loss, the mortgagee has two possible means by which he may protect his interest and recoup the mortgage indebtedness: either by accepting an insurance payment as mortgagee under the standard mortgagee clause, or by foreclosure. . . . If the mortgage indebtedness is fully satisfied by foreclosure initiated after loss, the insurance company has no further obligation to the mortgagee.

Harleysville Ins. Co, No. 0922, 1997 WL 1433772, at 264 (internal citations omitted). Of utmost importance in the instant proceedings is the fact that U.S. Bank received a judgment against the Mills in the amount of $331,249.32 but Cox purchased the property by Sheriff's Sale for $202,000.00, thus leaving a deficient judgment of $139,374.34. As the mortgage judgment remains unsatisfied, U.S. Bank is clearly entitled to the insurance proceeds. In a similar case, the Delaware County Court of Common Pleas reasoned that, "if the mortgagee was not paid the full amount of the mortgage debt, interest and costs, then [the mortgagee] would have been entitled to receive the insurance proceeds to the extent necessary to fully satisfy the debt." *Pub. Fed. Sav. & Loan Ass'n v. Societa Operaia Mutuo Soccorso,* 50 Pa. D. & C.2d 473, 476 (Ct. Com. Pl.. May 5, 1970).

Additionally, as Cox argues that U.S. Bank cannot now claim the proceeds, than who is entitled to them? Cox's assignment argument in support of his own entitlement fails outright. First, as U.S. Bank accurately argues, neither the Mills nor Cox were ever named insureds under the policy and therefore have no privity of contract with the parties to the policy. This reality was caused by the Mills' failure to obtain and maintain insurance in contravention of the requirements of the mortgage. Columbia Bank insured the property to protect its interest in the mortgage and to protect the property itself. Second, even if the Mills had obtained their own insurance, they would not necessarily be entitled to the proceeds as the mortgage required all insurance policies to include a standard mortgage clause, and to "name Lender as mortgagee and/or as an additional loss payee." (Petition for Equitable Interpleader, 10/10/2013, Ex. A ¶ 5, subparagraph 3); *see also*

Harleysville Ins. Co., No. 0922, 1997 WL 1433772, at 261-262 ("a standard mortgagee clause . . . creates a separate, distinct and independent contract between the insurer and the mortgagee. . . . Disregarding a mortgagee clause stipulating payment to the mortgagee, and paying a settlement to the insured, does not absolve an insurer of its liability to the mortgagee."). Ultimately, as Jesse Mills was never a named insured, he never had the ability to transfer the insurance benefits in the first place. This is evidenced by Jesse Mills' repeated inability to file a claim with American. There is no validity in Jesse Mills' assignment to Leslie Mills, and there is no validity in Leslie Mills' assignment to Michael Cox.

As Cox's assignment of the insurance proceeds is invalid, any interest he may have must derive from his position as the third-party purchaser of the premises at the Sheriff's Sale. Unfortunately for him, "[a] sheriff's sale is made without warranty; the purchaser takes all the risk, and the rule of caveat emptor applies in all its force." *CSS Corp. v. Sheriff of Chester Cnty*., 507 A.2d 870, 872 (Pa. Super. 1986). Cox purchased the property subject to the hail damage and must take it as is. Accordingly, U.S. Bank is entitled to the insurance proceeds.

II. Counsel Fees

Columbia Bank filed a Motion for Counsel Fees and Costs pursuant to 42 Pa.C.S. § 2503(4) and Pa.R.C.P. § 2307. 42 Pa.C.S. § 2503(4) provides that "[a] possessor of property claimed by two or more other persons, if the possessor interpleads the rival claimants, disclaims all interest in the property and disposes of the property as the court may direct," shall be entitled to a reasonable counsel fee as part of the taxable costs of the matter. 42 Pa.C.S. § 2503(4). Columbia Bank also argues that Pa.R.C.P. 2307(b) entitles it to counsel fees. Pa.R.C.P. 2307(b) applies to defendant interpleader actions and states that once a petition for interpleader is granted and a defendant has paid any money in controversy into the court, the court "shall allow the defendant the costs incurred by him or her in the action, to be paid from such money or property in the first instance and taxed as costs in the action." Pa.R.C.P. No. 2307(b). Columbia Bank asserts that it has incurred reasonable counsel fees and costs in the amount of $7,197.25 and requests payment of such from the $38,386.46 previously deposited with the Prothonotary of Fulton County.

U.S. Bank and Cox both initially opposed any award of counsel fees to Columbia Bank; however, Cox does not oppose an award in his most recent filling. (*See* Supplement to Memorandum of Law, 5/8/2014). Despite the opposition, 42 Pa.C.S. § 2503(4) is applicable, and the Court finds that reasonable counsel fees are appropriate in the matter.

CONCLUSION

For the aforementioned reasons, Columbia Bank is entitled to counsel fees in the amount of $7,197.25, to be disbursed from the $38,386.46 previously deposited with the Prothonotary of Fulton County. The remaining balance shall be disbursed to U.S. Bank.

ORDER OF COURT

AND NOW, this 16th day of June, 2014, upon consideration of the pleadings filed in the above-captioned matter, and the applicable law:

IT IS HEREBY ORDERED THAT,

1. Counsel fees (balance of $7,197.25) shall be paid in full to the Columbia Bank, Successor by Merger to Hagerstown Trust Company by the Fulton County Prothonotary from the $38,386.46 previously deposited in the interpleader action.

2. The remaining balance shall be disbursed to U.S. Bank N.A., As Trustee for RMAC Trust, Series 2011-2T.

Pursuant to the requirements of Pa. R.C.P. 236, the Prothonotary shall give written notice of the entry of this Order of Court, including a copy of this Order of Court and the attached Petition to each party's attorney of record and shall note in the docket the giving of such notice and the time and manner thereof.