

Massachusetts Introduces Title Insurance Law

29 Jun 2017

On March 16, 2017, the U.S. District Court for the Eastern District of Pennsylvania entered an order in the related cases of *In re Richard T. Moore* (Civil Action No. 15-1853) and *In re Timothy C. Moore* (Civil Action No. 15-2007). This lien priority dispute turns on a simple issue: did First Niagara Bank (First Niagara) release its mortgage on the subject property before Embassy Bank for the Lehigh Valley (Embassy) recorded its security interest in the same property? The issue is complicated by the fact that the release recorded by First Niagara s predecessor, Harleysville National Bank (the Release), contained conflicting descriptions of the land being released.

After granting a mortgage to First Niagara s predecessor, the debtors subdivided the subject property into two lots and recorded a subdivision map designating the two lots as Lot 1A and Lot 1. The Release was executed thereafter. The body of the Release describes the property being released as Lot 1A but the deed attached to the Release describes the land as including both Lot 1 and Lot 1A. Two years later, the debtors took out a loan from Embassy, secured by a first position mortgage lien on Lot 1. Needless to say, Embassy did not run a full title search or obtain title insurance and, as a result, did not uncover the pre-existing lien on Lot 1.

The debtors filed for bankruptcy, and the proceeds from the sale of their property proved insufficient to cover the claims of both First Niagara and Embassy. The court determined that the description in the actual body of the Release was controlling and that the subject property, *i.e.*, Lot 1, was not covered by the Release. Accordingly, the court entered an order directing the proceeds from the sale to be distributed to First Niagara. Embassy appealed the order, and the U.S. District Court for the Eastern District of Pennsylvania remanded the case, asking the bankruptcy court to explain its decision. The bankruptcy court opined that a more specific description trumps a less specific description, and a metes and bounds description trumps a street address. It also explained that where, as here, the document is ambiguous, the court must look to the intent of the parties. The bankruptcy court did just that and concluded that the parties had only intended to release Lot 1A and had attached the metes and bounds description of Lot 1 erroneously.

Embassy appealed for the second time. Affirming the bankruptcy court s decision, the court found that the bankruptcy court had given proper consideration to the circumstances surrounding the execution of the Release. The bankruptcy court had considered several factors demonstrating the parties intent to release only Lot 1A. For example, Lot 1A was vacant while the debtors lived on Lot 1. Likewise, e-mail exchanges between employees of First Niagara s predecessor clearly showed that both parties intended to release only Lot 1A. Thus, the U.S. District Court for the Eastern District of Pennsylvania concluded that the bankruptcy court had not erred in finding that the Release did not cover Lot 1.

The takeaway? Don t overlook the importance of conducting a full and proper title search. The court will have no sympathy for such a rookie mistake.

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