

### Including Wife's Name On Deed But Not On Mortgage Held Not To Be A "Mistake"

*Husband and wife purchased a property and title was placed in both of their names. However, only the husband signed the mortgage which funded the purchase of the property. After the husband's death, the lender brought a quiet title action to reform the deed to remove the wife's name, claiming that the wife's name was included by "mistake". The trial court ruled in the lender's favor and reformed the deed and the wife appealed. HELD: There was no evidence that the wife's name was included on the deed by "mistake" and, therefore, the wife holds title to property free and clear of the lender's mortgage. Regions Mortgage, Inc. v. Muthler, 2004 Pa.Super.Ct. 52 (March 2, 2004).*

Joseph and Susan Muthler, husband and wife, purchased a property in Clinton County from Elwood Bennett in 1999. Title to the property was placed in both of their names.

To purchase the property, the Muthlers obtained a mortgage from CTX Mortgage Company which later assigned the mortgage to Regions Mortgage, Inc. For reasons unknown, CTX did not want Susan Muthler on the loan and, therefore, only Joseph Muthler signed the mortgage.

Shortly after the purchase of the property, Joseph Muthler died. Thereafter, Susan Muthler attempted to have the mortgage billing transferred to her, but Regions ignored her requests. Unclear about what her rights and duties regarding the property and mortgage were, Susan Muthler consulted a lawyer. Thereafter, Susan Muthler took the position that title to the property had passed to her absolutely upon the death of her husband and that, because she never signed the mortgage, she was not obligated on the mortgage and the mortgage did not constitute a lien against the property.

Susan Muthler's new stance "got Regions' attention" and, thereafter, it filed a quiet title action to reform the deed to remove Susan Muthler's name.

Following a trial, the trial court held in Regions' favor and reformed the deed to remove Susan Muthler's name after it determined that a "mistake" had been made and that "equity demanded the protection of Regions' interest in the property." Susan Muthler then appealed to the Pennsylvania Superior Court.

The Superior Court initially noted that Pennsylvania law is clear that courts have the right to reform a transaction where a mutual or unilateral mistake has been made. If the mistake alleged is unilateral (i.e. where only one of the parties to the transaction makes the mistake), "the party seeking reformation must show, by clear and convincing evidence, that the party against whom reformation is sought had such knowledge of the mistake as to justify

an inference of fraud or bad faith."

The Superior Court also noted that the trial court "has basically said that a mistake must have been made and it would be unfair to allow Muthler the windfall of keeping the property." According to the Superior Court, the trial court's conclusion was based solely upon the facts that Muthler attended the closing, paid for insurance on the property prior to the closing, and made payments on the property for a short time after the death of her husband. However, the Superior Court stated that those facts were "insufficient to show mistake as to justifying inference of fraud or bad faith."

The Superior Court pointed out that the evidence at trial demonstrated that Bennett intended to sell the property to Joseph and Susan Muthler. Both the agreement of sale and the deed indicated that the title was to be placed in both of their names.

The Superior Court found it noteworthy that no one from CTX testified at the trial regarding the mortgage application process. As a result, the Superior Court stated that "we have no true idea why CTX wanted Susan Muthler off the mortgage." The Superior Court noted that had someone from CTX testified that the mortgage was contingent upon title being placed in Joseph Muthler's name only, "there might then be some indication that the Muthlers knew of a mistake and proceeded with the closing in bad faith."

Lacking such testimony, the Superior Court stated that "we are left only with the mortgage documents themselves", which documentation clearly shows that "CTX knew that the deed to the property was in both Susan and Joseph Muthler's names, the mortgage was solely in Joseph Muthler's name, and yet [CTX] proceeded with the closing anyway." According to the Superior Court, while CTX "erred in doing so, this is not a mistake in the legal sense." CTX simply "failed to properly secure its loan." Having drawn up the documents, CTX "clearly knew or should have known what it was doing." Absent any evidence of bad faith or fraud on the part of the

Muthlers, according to the Superior Court, Susan Muthler "cannot be held responsible for CTX's shoddy business practices."

In reversing the order of the trial court, the Superior Court found that Regions failed to meet its burden of proving a mutual or unilateral mistake by clear and convincing evidence. Consequently, the Superior Court held that Susan Muthler holds title to the property free and clear of Region's mortgage.

This case highlights a very common problem in the title industry (i.e. where the parties to the mortgage do not match the parties to the deed). Because most mortgage loans are sold in the secondary mortgage market, mortgage lenders and brokers do not want borrowers on the loan who have bad credit which will impede their ability to sell the loan following closing. However, title agents must make sure that all parties in title sign the mortgage to ensure that the mortgage constitutes a proper lien against the property. ■

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