

Florida Appellate Court Holds Lender Not Entitled to Summary Judgment on Bona Fide Lender Claim Because of “Series of Suspicious Documents” in Records

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A Florida appellate court reversed a trial court and held that a reverse mortgage lender was not entitled to summary judgment on the claim that it was a bona fide lender for value because there was a series of irregularities in the public records. See CitiMortgage, Inc. v. Porter, 261 So. 3d 739 (Fla. Dist. Ct. App. 2018). In 2005, the borrower executed a mortgage on his property that eventually was assigned to CitiMortgage. In 2010, CitiMortgage initiated a foreclosure action and filed a notice of lis pendens. During the course of the action, however, “a series of suspicious documents” were filed in the public records that affected the chain of title. First, on February 6, 2012, a satisfaction of the mortgage was recorded. This satisfaction purportedly was executed in 2009 by one of CitiMortgage’s predecessors, but it was not recorded until almost three years later. The borrower paid the recording fee on this document. The company that supposedly prepared the satisfaction filed an affidavit claiming that none of its employees had done so. Second, the law firm originally representing CitiMortgage withdrew from the action but, after the withdrawal, the firm allegedly executed a voluntary dismissal with prejudice and release of lis pendens that were recorded on June 8, 2012. On June 26, 2012, CitiMortgage moved to strike these documents, arguing that CitiMortgage did not authorize their filing, and the trial court granted the motion on July 10, 2012. CitiMortgage did not immediately record this order in the public records. Finally, in May 2012, the borrower’s mother applied for a reverse mortgage on the borrower’s property. The borrower conveyed the property to her on June 13, 2012, the reverse mortgage closed on August 21, 2012, and it was recorded in September 2012. In 2014, CitiMortgage amended the action to add the reverse mortgagee as a junior lienholder. The reverse mortgagee moved for summary judgment seeking an order that its lien had priority. The motion was based on the claim that it was a bona fide lender for value because CitiMortgage’s action had been dismissed and the mortgage had been satisfied at the time of the reverse mortgage transaction. The trial court granted the motion, finding that CitiMortgage was the “least innocent” of the parties.

On appeal, the Court reversed and found that the suspicious records put the reverse mortgagee on “notice of irregularities” and that “the recording of a void or forged instrument cannot create legal title or protect those who may claim under it.” First, the Court found that the satisfaction of mortgage was dated October 30, 2009, which was inconsistent with the 2010 assignment of the same mortgage to CitiMortgage. Second, a review of the CitiMortgage foreclosure docket would show that CitiMortgage had moved to vacate the dismissal and release of lis pendens three weeks after those documents were recorded, and that there was an order entered July 10, 2012. Likewise, the docket revealed that CitiMortgage’s original foreclosure firm withdrew and another firm substituted in, yet the original firm filed the dismissal and release after it

withdrew. Third, there is no question the borrower was aware of the foreclosure action at the time he conveyed the property to his mother, and the borrower was also the one who apparently filed the satisfaction earlier that year. Based on these factors, the Court found there are genuine issues of material fact as to whether the reverse mortgagee should have known about the prior mortgage and reversed the trial court.

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