

STATE OF MICHIGAN
COURT OF APPEALS

HOMECOMINGS FINANCIAL NETWORK,

Plaintiff-Appellant,

v

CRYSTAL HOMES, INC.,

Defendant-Appellee.

UNPUBLISHED

April 24, 2007

No. 267095

Oakland Circuit Court

LC No. 04-060063-CH

Before: Donofrio, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

This action involves a dispute regarding the priority of two mortgages on residential property located in Oakland County. Plaintiff appeals by right from the trial court's order denying plaintiff's claims for equitable relief and finding that defendant's mortgage has priority because it was recorded first. We affirm.

Defendant built a house on property that it sold to Darryl and Erma Wood. The Woods obtained a loan for \$492,000 from Standard Federal Bank in exchange for a mortgage, which was recorded on or about January 18, 1995. A second mortgage was then obtained by defendant in the amount of \$224,227.60, and was recorded on March 8, 1995. In April 1997, the Woods refinanced the Standard Federal Bank mortgage by obtaining a loan from Worldwide Financial Services in the amount of \$660,000. The proceeds of the Worldwide loan were used to pay off the Standard Federal Bank mortgage, which was discharged. In addition, \$120,000 of the loan proceeds were paid to defendant, and the settlement statement indicated that the payment was a "payoff" of defendant's mortgage. Darryl Wood acknowledged, however, that he knew that the amount owed to defendant was substantially higher, and defendant did not provide a discharge of the mortgage. The Worldwide mortgage was recorded on June 19, 1997, and was later assigned to plaintiff. In November 1998, the Woods obtained another mortgage loan in the amount of \$113,000 from American Equity Mortgage, which was labeled "second mortgage."

It is undisputed that the county records list defendant's mortgage as the first mortgage of record. Plaintiff's mortgage is listed as the second mortgage of record. American Equity's mortgage is listed as third.

Plaintiff does not dispute that defendant's mortgage was recorded first, but argues that it is entitled to rely on equitable principles to allow its mortgage, granted as part of a refinancing

transaction in which the loan proceeds were used to pay off an original first mortgage, to take priority over defendant's intervening mortgage. We disagree.

This case is controlled by *Ameriquest Mortgage Co v Alton*, 273 Mich App 84; ___ NW2d ___ 2006, in which a special panel of this Court addressed the issue “whether the doctrine of equitable subrogation may be applied to grant the priority lien position of a prior lender to a mortgagee that loans money to finance a subsequent mortgage on real property, thereby giving the mortgagee a position superior to that held by an intervening junior mortgagee.” *Id.* at 92. The doctrine of equitable subrogation provides that one who pays a debt for which another is responsible is substituted to all the rights and remedies of the debtor. *Id.* at 94. The Court concluded that under MCL 565.25(4), “recordation of a mortgage charges third parties with constructive notice and serves to determine lien priority.” *Id.* The Court further held that in order to be entitled to rely on the doctrine of equitable subrogation, a party cannot voluntarily have paid the debt, but rather must have done so to fulfill a legal or equitable duty owed to the debtor, to preserve the property from foreclosure, or to protect a preexisting interest in the property. *Id.* at 94-98.

In this case, there is no dispute that defendant's mortgage was recorded before the Worldwide mortgage subsequently assigned to plaintiff. Thus, under MCL 565.25(4), plaintiff had constructive notice of defendant's earlier recorded mortgage and took subject to that mortgage.¹ *Ameriquest, supra* at 93-94.

Furthermore, plaintiff was not entitled to relief under equitable principles. The trial court correctly concluded on the basis of the stipulated facts that plaintiff's status was that of a “mere volunteer.” Neither plaintiff nor Worldwide had a preexisting interest in the property, and neither attempted to revive or obtain an assignment of the original first mortgage. Thus, neither was under a legal or equitable duty to undertake refinancing of the original mortgage with Standard Federal Bank. Therefore, plaintiff is not entitled to equitable subrogation. *Id.* at 94-98.

We also reject plaintiff's argument that the trial court was improperly influenced by defendant's argument that plaintiff could seek recovery from title insurance. The trial court made no reference to title insurance in its decision. In any event, given this Court's decision in *Ameriquest, supra*, the trial court properly resolved the priority dispute on the basis of the stipulated facts.

Finally, there is no merit to plaintiff's argument that the trial court's findings of fact and conclusions of law were insufficient. “Brief, definite, and pertinent findings and conclusions on contested matters are sufficient, without overelaboration of detail or particularization of facts.” MCR 2.517(A)(2). Here, the parties stipulated to the facts and the court referred to the parties' stipulated facts. Further, the court identified the statutory basis for its conclusion of law that defendant's mortgage had priority over plaintiff's mortgage, and also the legal basis for its conclusion that plaintiff was not entitled to rely on equitable principles, i.e., because plaintiff was

¹ We agree with plaintiff that MCL 565.29, which was cited by the trial court, does not control this case. Instead, MCL 565.25(4) establishes the priority of defendant's mortgage.

a stranger to the title and a mere volunteer. The court's findings and conclusions were sufficient to satisfy MCR 2.517(A)(2).

We affirm.

/s/ Pat M. Donofrio
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey