MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. Mem-11-123
Docket No. Yor-10-611

CHASE HOME FINANCE LLC

v.

JOHN H. HIGGINS et al.

Submitted on Briefs June 30, 2011
Decided August 2, 2011

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD, and GORMAN, JJ.

MEMORANDUM OF DECISION

John H. and Valarie A. Higgins (Higgins) appeal from a judgment of the Superior Court (York County, *Fritzsche, J.*) following a trial on Chase Home Finance LLC's complaint for foreclosure. Higgins raises eight issues on this appeal, several of which we address collectively.

First, the court did not err in applying the provision contained in 14 M.R.S. § 6111(5)(B) (2008) (an exception to the applicability of the notice requirements stated in 14 M.R.S. § 6111(1) (2008)) to conclude that Chase's March 20, 2007, notice met the notice of default and right to cure requirements contained in Higgins's mortgage agreement, notwithstanding Chase's issuance of previous notices.[1] *See* 14 M.R.S. § 6111(5)(B); *Lloyd v. Estate of Robbins*, 2010 ME 59, ¶ 12, 997 A.2d 733, 738 ("We review the interpretation and application of a statute de novo . . . ."); *see generally Portland Co. v. City of Portland*, 2009 ME 98, ¶ 31, 979 A.2d 1279, 1290 ("We review the interpretation of a contract de novo.").

[1] Title 14 M.R.S. § 6111 (2008) has since been amended by P.L. 2009, ch. 402, §§ 10-14 (effective June 15, 2009)) and P.L. 2009, ch. 476, §§ A-2, B-2, B-9 (emergency, effective Feb. 24, 2010).

Second, the court did not err when it determined, as an alternative to the governing provisions of section 6111(5), that Chase's March 20, 2007, notice complied with the notice of default and right to cure requirements of 14 M.R.S. § 6111(1), again, notwithstanding Chase's issuance of previous notices. *See* 14 M.R.S. § 6111(1); *Lloyd*, 2010 ME 59, ¶ 12, 997 A.2d at 738.

Third, the court did not err in permitting Chase to demonstrate that the March 20, 2007, notice met the requirements of 14 M.R.S. § 6111 (2008) because: (1) the court-ordered limitation on the scope of pre-trial depositions did not preclude Chase from advancing that theory at trial; and (2) the court correctly determined that the doctrine of judicial estoppel did not apply in this case and did not err in denying Higgins's motion in limine based on judicial estoppel, *see HL 1, LLC v. Riverwalk, LLC*, 2011 ME 29, ¶ 30, 15 A.3d 725, 736 (discussing the doctrine of judicial estoppel). Additionally, the law of the case doctrine did not apply, based on our decision in *Chase Home Finance LLC v. Higgins (Higgins II)*, 2009 ME 136, 985 A.2d 508, to preclude Chase from relying upon the March 20, 2007, notice at trial.[2] *See Raymond v. Raymond*, 480 A.2d 718, 720, 722 (Me. 1984) (discussing the "law of the case" doctrine and stating that "[w]here the appellate court does not address a particular issue, it does not establish the law of the case on that issue."); *accord Office of Pub. Advocate v. Pub. Utils. Comm'n*, 2005 ME 15, ¶ 40, 866 A.2d 851, 861.

Finally, under the facts of this case, with the parties having agreed that Chase properly possessed the mortgage and the note during the litigation, the court did not err in concluding that the March 20, 2007, notice given by Chase to Higgins was valid and met the requirements of section 6111 and of the terms of the mortgage agreement, even though the mortgage was not formally assigned to Chase until shortly after March 20, 2007. *See, e.g.*, *JPMorgan Chase Bank v. Harp*, 2011 ME 5, ¶¶ 3, 9-14, 19, 10 A.3d 718, 719-21, 722; *Mortg. Elec. Registration Sys. v. Saunders*, 2010 ME 79, ¶ 11, 2 A.3d 289, 295-96 (defining "mortgagee" for purposes of the foreclosure statute, 14 M.R.S. §§ 6321-6325, as "a party that is entitled to enforce the *debt obligation* that is secured by a mortgage").

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[2] *Higgins II*, vacating the summary judgment entered in favor of Chase and remanding the matter for fact-finding at trial, was decided at a different stage in the proceedings and applied a standard of review that is very different from that now applicable. *See generally Chase Home Fin. LLC v. Higgins (Higgins II)*, 2009 ME 136, 985 A.2d 508. We dismissed Higgins's first appeal in this matter as interlocutory. *See Chase Home Fin. LLC v. Higgins*, 2008 ME 96, ¶¶ 1, 12, 953 A.2d 1131, 1132, 1134.

The entry is:

Judgment affirmed.

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