

LESTER F. THOMAS INTER VIVOS TRUST

v.

PRISCILLA WHITE HUTCHINSON

Submitted on Briefs April 30, 2008

Decided May 15, 2008

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

MEMORANDUM OF DECISION

Priscilla White Hutchinson appeals from a judgment of foreclosure and order of sale entered after a nonjury trial in the District Court (Farmington, *Jabar, J.*) concerning Hutchinson's real property in Farmington encumbered by Hutchinson's mortgage to Stanwood Tingley, which he assigned to Lester F. Thomas in exchange for the discharge of his own mortgage of that property to Thomas. Contrary to Hutchinson's contentions, the court did not err in ruling in favor of Lester F. Thomas's successor in interest, the Lester F. Thomas Inter Vivos Trust, because (1) Hutchinson's title to the property is not paramount to the Trust's mortgagee interest because "[a] mortgage is a conditional conveyance vesting the legal title in the mortgagee, with only the equity of redemption remaining in the mortgagor," *Johnson v. McNeil*, 2002 ME 99, ¶ 10, 800 A.2d 702, 704 (quotation marks omitted); and (2) the outcome of the foreclosure is unaffected by the provision of 33 M.R.S. § 201 (2007) that "[n]o conveyance . . . is effectual against any person except the grantor . . . and persons having actual notice thereof unless the deed or lease is acknowledged and recorded in the registry of deeds" because Hutchinson's warranty deed from Tingley was expressly subordinated to Tingley's mortgage to Thomas and it is therefore immaterial to the foreclosure whether Thomas had actual notice of the conveyance and mortgage between Hutchinson and Tingley.

The entry is:

Judgment affirmed.

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