

FIRST CITIZENS BANK

v.

MARK A. SMITH

Submitted on Briefs April 30, 2009

Decided May 28, 2009

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

MEMORANDUM OF DECISION

Mark A. Smith appeals from a judgment entered in the District Court (Presque Isle, *Griffiths, A.R.J.*) ordering the sale of his property in Mars Hill. Smith argues that he had previously mortgaged the property to David and Kimberly Ellis for \$50,000, and that the Ellises therefore have an interest in the property that should preclude its sale. Smith further contends that First Citizens Bank failed to notify the Ellises of the action prior to the order of sale, and that the court therefore erred in ordering the sale of the property. Smith argues that, as a result, the Ellises' due process rights were violated. The bank argues that it complied with 14 M.R.S. § 3131 (2008) by providing proper notice to the Ellises, and that the Ellises received due process of law.

The District Court did not err by ordering the sale of the property. Despite any security interest held in the property by the Ellises, section 3131 requires only that they receive notice prior to the sale of the property. *Id.* § 3131(3). Smith fails to demonstrate that the notice requirement was not met. In addition, any issue with respect to the Ellises' due process rights is moot because the order of sale recognizes the Ellises as superior priority lien holders, permitting them to recover any sum due to them prior to the bank recovering any money. Furthermore, Smith

lacks standing to allege violations of the Ellises' due process rights. *See Tornesello v. Tisdale*, 2008 ME 84, ¶ 8, 948 A.2d 1244, 1248.

The entry is:

Judgment affirmed.

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