

[Cite as *Sovereign Bank v. Edwards*, 2009-Ohio-4106.]

IN THE COURT OF APPEALS OF MONTGOMERY COUNTY, OHIO

SOVEREIGN BANK	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 23131
vs.	:	T.C. CASE NO. 08CV05779
MYRA R. EDWARDS, et al.	:	(Civil Appeal from Common Pleas Court)
Defendants-Appellants	:	

. . . . .

O P I N I O N

Rendered on the 14<sup>th</sup> day of August, 2009.

. . . . .

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Attorney for Plaintiff-Appellee

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Defendant-Appellant, Pro Se

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GRADY, J.:

{¶ 1} On November 10, 1998, Annie Mae Moore executed a note in favor of Firststar Bank, N.A., in the amount of \$35,000. The note was secured by an open-end mortgage on Moore's real property at 3009 Edison Avenue, in Dayton. The mortgage was delivered to and duly recorded by the Montgomery County Recorder.

{¶ 2} The note and mortgage were subsequently assigned by

Firststar Bank, N.A., to Plaintiff-Appellee, Sovereign Bank, N.A.

On September 5, 2006, Moore conveyed her interest in the real property at 3009 Edison Avenue to Defendant-Appellant, Myra R. Edwards, by warranty deed, which was recorded on September 6, 2006. Moore died on December 13, 2007. Edwards notified Sovereign Bank, N.A., of Moore's death.

{¶ 3} Because payments on the note on which Moore was obligated had ceased, Sovereign Bank, N.A., commenced an action on June 20, 2008, to foreclose on its mortgage interest in the property at 3009 Edison Avenue. Edwards and others are defendants in the action. Edwards filed an answer, admitting that payments on the note had not been made. Sovereign Bank, N.A. filed a motion for summary judgment on September 18, 2008.

After Edwards filed a memorandum in opposition, the court granted summary judgment to Sovereign Bank, N.A. Edwards appeals.

{¶ 4} Edwards argues that the trial court erred in granting summary judgment for Sovereign Bank, N.A. Edwards makes a number of contentions in support of the error she assigns. Principal among them are that (1) Edwards never executed any documents obligating her to Sovereign Bank, N.A. or its predecessor, and (2) no proceeding to probate the estate of Annie Mae Moore has ever been commenced.

{¶ 5} It is immaterial with respect to the claim of Sovereign Bank, N.A. against Edwards that no decedent's estate proceeding for Moore has been filed. Moore conveyed her interest in the real property to Edwards before Moore died. That conveyance terminated any interest Moore had in the real property which could be a part of Moore's probate estate. Neither Moore's subsequent death nor the failure to probate her estate has any bearing on the interests in the property Edwards acquired as a purchaser for value.

{¶ 6} A purchaser for value who acquires an interest in real property with notice that another person acquired a prior lien interest takes an interest subject to that prior lien. Recording of an instrument by a county recorder is constructive notice to subsequent purchasers. American Jurisprudence 2d, Records and Recording Laws, §87. An open-end mortgage is a lien on the premises from the time it is filed for record until the balance owed is paid in full. R.C. 5301.232(B).

{¶ 7} Because Firststar Bank, N.A.'s open-end mortgage on the property at 3009 Edison Avenue was of record when Moore conveyed her interest in the property to Edwards, the interest Edwards acquired is subject to the lien on the property that the mortgage created. Firststar Bank, N.A. assigned that interest to Sovereign Bank, N.A. Because installments Moore

promised to pay have not been paid when due, Sovereign Bank, N.A. is entitled to foreclose any other interests in the real property, including Edwards', to secure payment of monies Sovereign Bank, N.A. is owed on the note Moore executed.

{¶ 8} Edwards makes several other contentions regarding the foreclosure action Sovereign Bank, N.A. filed. All of them fail for the reasons set out above.

{¶ 9} The error assigned is overruled. The judgment of the trial court will be affirmed.

DONOVAN, P.J. And BROGAN, J., concur.

Copies mailed to:

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Myra R. Edwards  
Hon. Mary Katherine Huffman