

Tenancy by Entirety Not Defense to Mortgage Foreclosure Case When Both Spouses Signed Letter of Direction to Trustee of Land Trust

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In ***Marquette Bank v. Gesiakowski***, et al., 2015 IL App (1st) 142627, the ***Illinois*** First District Appellate Court recently ruled in favor of a lender in a mortgage foreclosure case that resolved interesting issues regarding a mortgagor's ability to foreclose on real estate held in a land trust, with the beneficial interest in that land trust held by spouses as tenants by the entirety.

Lawrence Gesiakowski obtained a loan from ***Marquette Bank*** to support his business, and as security for the loan, granted Marquette Bank a mortgage on his business's real estate, as well as his residential real estate. The residential real estate, however, was held in a land trust. Mr. Gesiakowski and his wife owned the sole beneficial interest in the land trust in tenancy by the entirety.

Tenancy by the entirety is a form of ownership available only to a husband and wife. Unlike other forms of joint ownership, tenancy by the entirety offers an added level of protection from creditors. Creditors may not use real estate held in tenancy by the entirety to satisfy a debt unless both husband and wife are obligated on the debt.

In this case, under the land trust agreement, the trustee could not act without the direction of both Mr. and Mrs. Gesiakowski. Consequently, both of the Gesiakowskis instructed the trustee to sign the mortgage by a written letter of direction when the mortgage was given as collateral to Marquette Bank. The letter of direction stated that Mrs. Gesiakowski had read the mortgage, everything in it was true and correct, and that she desired the land trust trustee to execute the mortgage in favor of Marquette Bank.

The court focused on the letter of direction as evidence that Mrs. Gesiakowski agreed to pledge her interest in the real estate as collateral for Mr. Gesiakowski's debt. Because the court held that both spouses had agreed to pledge the real estate as collateral, Marquette Bank was permitted to foreclose the mortgage lien.

The Takeaway

: Land trusts and tenancy by the entirety can complicate the foreclosure process. When real estate subject to a mortgage is held in tenancy by the entirety, both spouses should sign the note and mortgage. When real estate held in a land trust is pledged as collateral, all beneficiaries of the land trust should be identified and all beneficiaries should sign the letter of direction to the trustee acknowledging their consent to place a mortgage on the real estate.

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