

WHOSE LIEN IS IT ANYWAY: APPELLATE COURT ADDRESSES PRIORITY AS IT RELATES TO FORECLOSED REAL PROPERTY

Woodhaven Dr. 1401 Land Trust v. Citibank, No. 05-17-10393-CV,

2018 WL 6629586 (Tex. App.—Dallas Dec. 19, 2018).

By Shelby L. Huffman*

In the recent appellate decision *Woodhaven Dr. 1401 Land Trust v. Citibank*, the Dallas Court of Appeals addressed the issue of priority in regard to competing liens on foreclosed real property.¹ More specifically, the court was called upon to settle a title dispute between Woodhaven Dr. 1401 Land Trust (“Woodhaven”), who purchased the property at issue from a foreclosure sale initiated by the homeowners’ association’s (“HOA”) enforcement of an assessment lien, and Citibank, which held the First Lien of Deed to Trust (“first lien”) on the property purchased by Woodhaven.² Focusing on the facts, the express language of the HOA’s declaration of covenants, conditions and restrictions (“the Declaration”), case law precedent, and the straightforward definition of “mortgage,” found in *Black’s Law Dictionary*, the court affirmed the holding below.³ The HOA’s assessment lien was clearly subordinate to Citibank’s first lien and as a result, Woodhaven purchased the property subject to the first lien.⁴

The parties’ reliance on the HOA’s declarations of covenants, conditions and restrictions (“the Declaration”) led the court, for purposes of this analysis, to disregard the “first in time is first in right” rule that typically governs the priority of liens on real property.⁵ Instead, the court turned the discussion upon the words contained in the declaration itself.⁶ While the declaration confirmed that any assessments deemed unpaid were to become a continuing lien on the property, it also expressly indicated they were to be subordinate to a handful of other various liens and encumbrances.⁷ Specifically, the assessment liens were to be junior to “[b]ona-fide first mortgage or deed of trust liens for purchase money and/or home improvement purposes placed upon a Lot, **including without limitation, Institutional Mortgages and Eligible Mortgages . . .**”⁸ Woodhaven argued that Citibank’s lien was not for purchase money and/or home improvement purposes, nor was it an institutional mortgage. Thus, the question germane to this particular appeal was whether Citibank’s first lien qualified as an “institutional mortgage” as described and defined in the HOA’s declaration.⁹ The court held that it was.¹⁰

Institutional mortgage was expressly defined in the declaration as “any bona-fide mortgage, lien or security interest held by a bank, . . . or other recognized lending institutions[.]”¹¹ This definition on its own, reasoned the court, did not intend to limit the scope of an institutional mortgage to consist solely of mortgages for the purpose of home-improvement or purchase money as Woodhaven had contended. Additionally, the court noted, a deed of trust is merely “deed conveying title to real property to a trustee as security until the grantor repays the loan, ‘more simply’ stated as ‘a mortgage with power to sell on default.’”¹² Thus, the first lien held by Citibank was, in fact, a deed of trust within the bounds of the definition of institutional mortgage.¹³ To further its position, the court pointed to the *Black’s Law Dictionary’s* definition of mortgage, opining that similar to the definition included in the declaration, *Black’s* definition also did not limit mortgage debt to include only purposes of purchase money or home-improvement.¹⁴

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¹ No. 05-17-10393-CV, 2018 WL 6629586 (Tex. App.—Dallas Dec. 19, 2018).

² *Id.* at *1.

³ *Id.* at *3-4.

⁴ *Id.*

⁵ *Id.* (quoting *AMC Mortg. Servs., Inc. v. Watts*, 260 S.W.3d 582, 585 (Tex. App.—Dallas 2008, no pet.).

⁶ *Id.* at *3.

⁷ *Id.*

⁸ *Id.* (emphasis added by the court).

⁹ *Id.* at *3.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 4 (quoting *Riner v. Neumann*, 353 S.W.3d 312, 318 (Tex. App.—Dallas 2011, no pet.)).

¹³ *Id.* at *4.

¹⁴ *Id.*

Definitions aside, the court noted the existence of precedent that acknowledged deeds of trust to include home-equity security interests¹⁵ like that being held by Citibank in this case.¹⁶

Because Citibank's first lien was a security instrument to secure repayment of the debt, it followed that it was a valid deed of trust or mortgage.¹⁷ Not to mention, it evidenced the lender's lien on the property, and granted the property to the trustee in trust as security, as well as conveying to the trustee the power to sell and convey the property in the event of default.¹⁸ Thus, the court determined that the trial court's judgment was correct, and the first lien held by Citibank was superior to that of Woodhaven.¹⁹

¹⁵ See *id.* at *3 (referring to the title "Texas Home Equity Security Instrument," of the first lien deed of trust held by Citibank).

¹⁶ *Id.* at *4.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*