

17 Mass. L. Rep. 27; 2003 Mass. Super. LEXIS 398, *

Lynn M. Snowden et al. v. Chase Manhattan Mortgage Corp. et al.

03-0001B

SUPERIOR COURT OF MASSACHUSETTS, AT WORCESTER

17 Mass. L. Rep. 27; 2003 Mass. Super. LEXIS 398

November 5, 2003, Decided
November 6, 2003, Filed

SUBSEQUENT HISTORY: Later proceeding at Snowden v. Chase Manhattan Mortg. Corp., 2004 Mass. Super. LEXIS 97 (Mass. Super. Ct., Feb. 25, 2004)

DISPOSITION: [*1] Motion for summary judgment denied in part and allowed in part; case remanded for further proceedings.

CASE SUMMARY:

PROCEDURAL POSTURE: Plaintiff mortgagors filed suit, alleging that defendants, their mortgagee and an officer of the mortgagee, violated the law by engaging in unfair and deceptive acts and practices under Mass. Gen. Laws ch. 93A, §§ 2(a), 9, by refusing to postpone the foreclosure auction of their home in the face of evidence that the mortgagors had obtained a willing and financially capable buyer.

OVERVIEW: The mortgagors did not ask the mortgagee to alter the terms of the mortgage or note, nor to accept payment at a discounted rate, but simply to postpone the foreclosure sale for a reasonable period of time and to give further consideration to a transaction that would have resulted in funds in an amount sufficient to pay the balance due on the note and to fully reimburse the mortgagee for its costs while leaving a significant amount available for the mortgagors. There was nothing in the record that suggested that by postponing the sale, the mortgagee would have suffered any financial loss. Even though the mortgagee may have complied with the statutory provisions governing the foreclosure of real estate mortgages, its failure to postpone the auction to permit further inquiry into the viability of the prospective buyer obtained by the mortgagors was not in compliance with its duty to act in the utmost good faith, and was in violation of its fiduciary duty to the mortgagors to obtain for the property as large a price as possible, and constituted an unfair or deceptive act or practice in violation of Mass. Gen. Laws ch. 93A, § 2.

OUTCOME: The mortgagee's motion for summary judgment was denied, and summary judgment as to liability was allowed against the mortgagee as to the mortgagors.

CORE TERMS: mortgagee, mortgage, auction, buyer, summary judgment, foreclosure, default, power of sale, prospective buyer, postpone, mortgagor, unfair, foreclosure sale, utmost, reasonable period of time, moving party, real estate, ownership, financing, use reasonable diligence, equity of redemption, reasonable diligence, legally binding, willing to pay, purchase price, fiduciary duty, timely notice, full recovery, deceptive act, matter of law

LexisNexis(R) Headnotes

Civil Procedure > Summary Judgment > Standards > Appropriateness

