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Bayview Loan Servicing, LLC v. Providence Business Loan Fund, Inc., 200 A.3d 153 (R.I. 2019).

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Mortgages. *Bayview Loan Servicing, LLC v. Providence Business Loan Fund, Inc.*, 200 A.3d 153 (R.I. 2019). Pursuant to Rhode Island General Laws section 34-26-7, a mortgage will become void after “thirty-five (35) years from the date of the recording of the mortgage, or in the case of a mortgage in which the term or maturity date is stated, five (5) years from the expiration of the term or maturity date.”¹

FACTS AND TRAVEL

On June 2, 1992, Norris Waldron (Waldron) granted a mortgage to Providence Business Loan Fund (Defendant) “as security for a loan in the amount of \$70,660” with a stated term of ten years.² The mortgage was recorded in the Providence land evidence records on June 3, 1992, without a maturity date.³ Four years later, on December 20, 1996, Waldron and Defendant “entered into a ‘Modification Agreement’” which reduced the amount owed to \$44,016.75, “to be repaid over a period of 108 months, beginning on January 1, 1997.”⁴ This modification agreement was never recorded in the Providence land evidence records, but the two parties created an amendment to the original 1992 mortgage, which specified the reduction in the amount of debt owed.⁵ The newly amended 1992 mortgage, however, “failed to reflect the 108-month term listed in the modification agreement and it did not specify any other term or maturity date.”⁶

On January 23, 2004, “Waldron conveyed the property to Jocelyn Waldron by quitclaim deed,”⁷ and years later, on October

1. *Bayview Loan Servicing, LLC v. Providence Bus. Loan Fund, Inc.*, 200 A.3d 153, 157 (R.I. 2019).

2. *Id.* at 155.

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

29, 2014, Jocelyn conveyed the property to Broad Street, LLC by warranty deed.⁸ It was not until February 8, 2017, that “defendant gave notice to Broad Street LLC of its commencement of foreclosure proceedings on the 1992 mortgage.”⁹ Bayview Loan Servicing, LLC (Plaintiff), a lienholder on the property, filed a complaint in Superior Court on March 6, 2017, “seeking a declaration that defendant’s mortgage had been discharged under [Rhode Island General Laws] § 34-26-7 . . . and that, therefore, defendant had no right to foreclose on the property.”¹⁰

On May 17, 2017, Plaintiff filed a motion for summary judgment, arguing that the original mortgage had expired pursuant to section 34-26-7, and that even if the amendment filed in 1997 “had properly extended the mortgage,” the Defendant would still be barred from foreclosing the property.¹¹ The Defendant countered that since the original mortgage did not include a maturity date, that automatically created a “thirty-five-year lien,” as stated in the statute.¹² The Defendant argued in the alternative that because the amendment, which was recorded in the Providence land evidence records, did not include a term or maturity date, this meant the amendment extended the expiration period to thirty-five years from January 1, 1997.¹³

The hearing justice ultimately “found the 1997 amendment to be a ‘non-compliant mortgage extension, which is ineffective under the statute.’”¹⁴ She also found the 1992 mortgage to be the operative document, and as such, the Defendant’s mortgage had expired because the 1992 mortgage stated a term of ten years.¹⁵ The hearing justice, upon analyzing the “plain and ordinary meaning” of the statute, concluded that, since the mortgage contained an express term, the statute allowed for “exercise of the power of sale only five years following that term.”¹⁶ Further, because the term ended in 2002, the mortgage had expired in

8. *Id.* at 156.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

2007.¹⁷ Accordingly, the hearing justice granted the Plaintiff's motion for summary judgment.¹⁸ The Defendant timely filed a notice of appeal.¹⁹

ANALYSIS AND HOLDING

The Rhode Island Supreme Court (the Court) reviewed the hearing justice's grant of the motion for summary judgment *de novo*.²⁰ The Court stated it would only affirm the trial court's decision if it concluded that "no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law."²¹ The Defendant "[b]ore] the burden of proving by competent evidence the existence of a disputed issue of material fact."²²

During the hearing, the Defendant contended that "the hearing justice erred in granting [the] motion for summary judgment" because there was an issue of material fact over "whether the 1992 mortgage ha[d] expired."²³ Defendant argued that "the 1997 amendment [was] the only proper instrument to determine the validity of the 1992 mortgage."²⁴ Specifically, Defendant asserted that because the amendment was executed before the 1992 mortgage expired, it "created an extension of thirty-five (35) years."²⁵ Additionally, the Defendant argued that "at a minimum the mortgage [was] valid for thirty-five years from June 3, 1992."²⁶ Conversely, the Plaintiff "maintain[ed] that the 1992 mortgage ha[d] expired under the statute," and that the 1997 amendment, even if valid, "would not extend the original mortgage."²⁷

In deciding whether the 1992 mortgage ran for thirty-five years, the Court looked to the language of section 34-26-7 and

17. *Id.*

18. *Id.*

19. *Id.*

20. *Id.* (quoting *Pineda v. Chase Bank USA, N.A.*, 186 A.3d 1054, 1056 (R.I. 2018)).

21. *Id.* (quoting *Cancel v. City of Providence*, 187 A.3d 347, 350 (R.I. 2018)).

22. *Id.* (quoting *Newstone Dev., LLC v. East Pac. LLC*, 140 A.3d 100, 103 (R.I. 2016)).

23. *Id.* at 157.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.*

stated that it “give[s] the words their plain and ordinary meaning” when the language is “clear and unambiguous.”²⁸ It continued that it has held that “the words ‘or’ and ‘and’ are not the equivalent of each other and should not be considered as interchangeable unless reasonably necessary in order to give effect to the intention of the enacting body.”²⁹ The Court applied that principle when reviewing section 34-26-7, specifically the provision stating

that foreclosure proceedings may not be brought “after the expiration of a period which shall be thirty-five (35) years from the date of recording of the mortgage, or in the case of a mortgage in which the term *or* maturity date is stated, five (5) years from the expiration of the term of the maturity date.”³⁰

The Court held that, in light of the plain language of the statute, “the 1992 mortgage ran for the ten-year term, plus five years following expiration of that term.”³¹

Lastly, the Court addressed the 1997 amendment and its consequences. The Court again looked to section 34-26-7, which provides “[t]he period [in which a power of sale may be exercised] shall not be extended by nonresidence nor disability of any person interested in the mortgage or the real estate, or by any partial payment, agreement, extension, acknowledgment, affidavit or other action not meeting the requirements.”³² It was clear to the Court that any change to the original mortgage was required to “be indexed in the land evidence records under the name of the present landowner.”³³ Since the amendment did not list the 108-month term, it failed to extend the term of the 1992 mortgage.³⁴ Though the language of the amendment clearly indicated that the parties intended to amend the 1992 mortgage to include the amount owed, it did not affect the mortgage in any other way.³⁵

28. *Id.* (quoting *Rein v. ESS Grp., Inc.*, 184 A.3d 695, 702 (R.I. 2018)).

29. *Id.* at 158 (quoting *Earle v. Zoning Bd. of Review of Warwick*, 191 A.2d 161, 164 (R.I. 1963)).

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.* (quoting 34 R.I. GEN. LAWS § 34-26-7).

34. *Id.* at 155, 158.

35. *Id.* at 159.

COMMENTARY

The Court properly found that the Defendant did not meet the requirements of section 34-26-7 in order to extend the 1992 mortgage, and thus the mortgage expired in 2007.³⁶ The Court's reasoning in upholding the judgment of the hearing justice was sound because after giving the words of the statute their plain and ordinary meaning, there was no genuine dispute of material facts in the case at bar.³⁷

However, one could argue that based upon the clear language of the modification to the mortgage, the parties' failure to include a specific date could have been intentional.³⁸ If the Court had taken this perspective, the portion of the modification which states, "has been modified . . . by agreement of even date herewith, to modify the terms and to extend the maturity date," coupled with the absence of a specific date, could have modified the previous mortgage to rid it of its specified term.³⁹ Under this view, the Defendant would have been correct that the mortgage was still valid under section 34-26-7, and that the mortgage would have been extended thirty-five years from the January 1, 1997 modification.⁴⁰ While such an interpretation of the modification may be plausible, it nevertheless does not coincide with general standards of contract interpretation. As such, the Defendant failed to prove "by competent evidence the existence of a disputed issue of material fact."⁴¹

CONCLUSION

The Court held that pursuant to section 34-26-7, the mortgage granted to the Defendant expired on June 3, 2007, and that "summary judgment in favor of the plaintiff was appropriate."⁴² The Court affirmed the judgment of the Superior Court.⁴³

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36. *Id.*

37. *Id.* at 157.

38. *See id.* at 155.

39. *Id.*

40. *Id.* at 155, 157.

41. *Id.* at 156.

42. *Id.* at 158.

43. *Id.* at 159.