IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

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No. 92-4938

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FARM CREDIT BANK OF TEXAS,

Plaintiff-Appellee,

versus

WARREN J. MOITY, SR., and LICOHO ENTERPRISES,

Defendants-Appellants.

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Appeal from the United States District Court for the
Western District of Louisiana
91 CV 2370

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April 7, 1993

Before WISDOM,[*] GARWOOD and HIGGINBOTHAM, Circuit Judges.[**]

PER CURIAM:

We find no error in the district court's grant of summary judgment in favor of appellees. The mortgage in question unambiguously includes Moity's usufruct. This appears to be the

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[*] Because of illness, Judge John Minor Wisdom was not present at the oral argument of this case; however, having had available the tape of the oral argument, he participated in this decision.

[**] Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

natural reading of the instrument, and is that given by the Louisiana Court of Appeal for the Third Circuit to a similar mortgage executed by Moity in a virtually identical setting. *See Warren J. Moity, Sr. v. New Iberia Bank, et al.,* No. 91-1257 (La. Ct. App., 3d Cir. Dec. 9, 1992). That case is on all fours with the present case, and it sustained a summary judgment for the mortgagee. We also note that in the present case Moity's deposition reflects that the mortgage was prepared by Moity's attorney of long standing, Moity having requested this attorney to prepare the mortgage for him, and that the attorney continued to represent Moity thereafter.

Accordingly, it is unnecessary to rely on the doctrine of *D'Oench, Duhme & Co. v. FDIC*, 62 S.Ct. 676 (1942), or related doctrines or statutory provisions, in order to sustain the summary judgment for appellee. These doctrines, however, do prevent any claim by Moity of an unwritten side agreement, or the like, to the effect that his usufruct would not be covered. His subjective intention not to cover the usufruct is likewise unavailable under Louisiana law as the above cited decision of the Third Circuit demonstrates.

The judgment of the district court is

AFFIRMED.