UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-2549
Summary Calendar

FEDERAL SAVINGS and LOAN INSURANCE CORPORATION, as Receiver for ALLIANCE SAVINGS AND LOAN ASSOCIATION,

Plaintiff-Appellee,

VERSUS

HAZEL R. TOWNSEND, Executrix of the Will and Estate of TIMOTHY ELWOOD TOWNSEND, Deceased,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-88-1967)

(June 3, 1994)

Before DAVIS, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:[1]

Appellant was the owner of real property in Houston, Texas encumbered by a first lien in favor of Continental Savings Association, and by a second lien in favor of Alliance Savings and Loan Association, now the FDIC. Appellant defaulted on both obligations. The FDIC foreclosed on the second lien and bought the property at judicial sale. It then paid the first lien and seeks

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[1] 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

to recover this payment from Appellant. The district court granted summary judgment for the FDIC and the former property owner appeals.

The parties agree that no issues of material fact exist.

The district court held that the FDIC was entitled to summary judgment based on the subrogation provisions of the second lien and, alternatively, on the basis of equitable subrogation. We find the district court was correct on the contractual subrogation issue so do not address the equitable issue.

Appellant acknowledges that the second lien contained the following subrogation provision:

> Lender shall be subrogated to any and all rights, superior titles, liens and equities owned or claimed by any owner or holder of any outstanding liens and debts, regardless of whether said liens or debt are acquired by assignment or are released by the holder thereof upon payment.

Appellant claims, however, that these subrogation rights were extinguished by virtue of the foreclosure sale through the doctrine of merger. This argument fails for at least two reasons. First, as the district court held, for merger to apply, Appellant must prove, inter alia, intent to merge and that merger would not disadvantage the FDIC. There is no evidence of intent to merge and the FDIC would clearly be disadvantaged by the operation of that doctrine. Second, Texas courts have regularly enforced contractual subrogation rights following foreclosure. See, e.g., Means v. United Fidelity Life Insurance Company, 550 S.W.2d 302 (Tex. Civ. App. El Paso, 1977). In rebuttal, Appellant attempts to distinguish Means because in that case funds to pay the first lien

were advanced prior to foreclosure. We do not find that distinction compelling. Appellant does not explain why that fact should change the analysis.

Appellant also contends that she is not bound by the subrogation agreement because, at the time the FDIC sought to enforce the agreement, the FDIC was the owner of the property and not a "lender". This argument ignores the fact that the term "lender" in the second lien is defined to mean Alliance Savings and Loan Association, the ancestor to the FDIC. The term does not describe the relationship to the property but simply identifies the party in whose favor the subrogation rights run.

AFFIRMED.