COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

21-P-764

U.S. BANK NATIONAL ASSOCIATION, trustee,[1]

vs.

ROBERT MENARD, JR. & others.[2]

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The defendant Robert R. Menard, Sr. (Robert Sr.) appeals from a judgment of the Land Court, entered following a trial, which, among other things, reformed a mortgage instrument granted by Robert Menard, Jr. (Robert Jr.) and Cheryl Menard (Cheryl), to include Robert Sr. as a mortgagor with respect to his life estate in a certain property in Northbridge. Because Robert Sr. was not a party to the mortgage transaction, and there is no indication that he was even aware of it, we reverse that portion of the judgment.[3]

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[1] Of the RMAC Trust, Series 2016-CTT.

[2] Cheryl Menard a/k/a Cheryl A. Menard; Robert R. Menard, Sr.; and 214 named individuals and unknown heirs of named individuals against whom judgment entered but who did not appeal and are not parties to this appeal.

[3] The plaintiff's complaint included counts against Cheryl, Robert Sr., and Robert Jr., seeking equitable subrogation and relief based on a theory of unjust enrichment. The judgment

We summarize the essential facts as found by the judge, which are not in dispute. On August 25, 2004, Robert Sr. became sole owner of property in Northbridge known as Parcel 2 on a plan of land dated June 18, 1977 (the property). That same day, Robert Sr. conveyed the property to Robert Jr. and Cheryl as joint tenants. Robert Jr. and Cheryl financed their purchase through a first mortgage granted to Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for Fremont Investment & Loan (Fremont), and a second mortgage granted to Robert Sr. Two days later, Robert Jr. and Cheryl granted to Robert Sr. a life estate in the property, and the life estate deed was recorded with the registry of deeds on October 28, 2005.

Thereafter, the mortgage was refinanced on three occasions from 2004 through 2008, and on each occasion the refinanced mortgage encumbered both Robert Sr.'s life estate and Robert Jr.'s and Cheryl's remainder interests, though only Robert Jr. and Cheryl were signatories and obligors on the related notes.[4]

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dismissed both claims, but Robert Sr. makes no argument in his brief about those portions of the judgment; those claims accordingly are not before us. Mass. R. A. P. 16 (a) (9) (A), as appearing in 481 Mass. 1628 (2019).

[4] Robert Sr. signed the mortgage granted to secure the refinancing by Equity One in 2007. The 2005 Option One refinancing did not include Robert Sr. as a signatory on the mortgage, but the deed conveying the life estate to him had not then been recorded and Option One had no knowledge of his life estate.

In 2008, Robert Jr. and Cheryl refinanced the then-outstanding loan from Equity One with a loan from First Horizon Home Loans (First Horizon). The First Horizon loan did not require Robert Sr. to join Robert Jr. and Cheryl as a signatory on the mortgage granted on the property to secure the loan.[5] There is no finding or evidence appearing in the record that Robert Sr. was aware of the First Horizon refinance. The plaintiff in the present action is the current holder of the First Horizon mortgage following a chain of assignments.

Discussion. "[A] court acting under general principles of equity jurisprudence has broad powers to reform, rescind, or cancel written instruments, including mortgages, on grounds such as fraud, mistake, accident, or illegality." Beaton v. Land Court, 367 Mass. 385, 392 (1975). "Reformation is available to parties where there has been a mutual mistake which is material to the instrument and where no rights of third persons are affected." McGovern v. McGovern, 77 Mass. App. Ct. 688, 699 (2010), quoting Beach Assocs. v. Fauser, 9 Mass. App. Ct. 386, 394-395 (1980). A mutual mistake occurs when "the language of a written instrument does not reflect the true intent of both

[5] We note that the trial judge found that it was "reasonable to infer that it [First Horizon] expected the same security on the property given in the 2007 Equity One mortgage."

parties." Polaroid Corp. v. Travelers Indem. Co., 414 Mass. 747, 756 (1993).

It was Robert Jr. and Cheryl's clear intention to refinance the 2007 Equity One mortgage with First Horizon under the same terms and (as the trial judge found) it was "reasonable to infer that it [First Horizon] expected the same security on the property given in the 2007 Equity One mortgage." However, there is no evidence that Robert Sr. knew about the mortgage transaction, received any proceeds of the loan, or otherwise benefitted from the loan, and he cannot be said to have intended to be a party. The case law on reformation is clear: reformation is not available where the rights of third persons will be affected -- as Robert Sr. clearly would be here. It is insufficient that Robert Jr., Cheryl, and First Horizon intended that Robert Sr.'s interest would be included in the mortgage conveyance; a mutual mistake by parties to a contract cannot impose obligations on a third nonparty simply because the parties to the contract shared an intent to bind the nonparty.[6]

[6] Though reformation may in rare circumstances be available based on unilateral mistake, no such circumstances are present here. An agreement may be reformed when it contains a mistake and that mistake was made by one party such that the other party involved in the agreement knew or had reason to know of it. See Nissan Autos. of Marlborough, Inc. v. Glick, 62 Mass. App. Ct. 302, 306 (2004). As we have observed, there is no evidence that Robert Sr. was aware of the transaction with First Horizon.

It accordingly was error to reform the mortgage to add Robert Sr. as a party.

The judgment on count two of the amended complaint is reversed. In all other respects, the judgment is affirmed.

By the Court (Green, C.J., Walsh & D'Angelo, JJ.[7]),

Joseph F. Stanton

Clerk

Entered: August 5, 2022.

[7] The panelists are listed in order of seniority.