

BANK'S CAN FORECLOSE DESPITE ALLEGEDLY FORGED DEED

The Appellate Court of Illinois recently affirmed a lower court's decision to grant a lender's motion for summary judgment to foreclose on a property despite an allegedly forged deed, based on the doctrine of equitable subrogation. See Deutsche Bank Nat'l Trust Co. v. Payton, 2016 IL App (1st) 160305-U (Ill. App. 2017). In the case, the owners of a residential property fell behind on their mortgage payment and entered into an agreement with a "foreclosure rescue" entity in an attempt to save their home. Soon thereafter, a deed purportedly containing the owners' signatures was executed, transferring the property to defendants. Defendants obtained a mortgage on the property, the proceeds of which paid off the owners' prior mortgages. Further, the excess proceeds allegedly went to the owners. Defendants eventually defaulted, and plaintiff brought a foreclosure action. The owners intervened in the action, arguing that the deed to defendants was forged and they never transferred title to the property. They further argued that plaintiff lacked standing to foreclose because it did not have any mortgage with the owners and therefore could not foreclose out the owners' alleged interest in the property. Plaintiff moved for summary judgment and the lower court granted the motion.

On appeal, the appellate court affirmed. First, it held plaintiff was equitably subrogated to the position of the owners' mortgages on the property because there was no dispute that the proceeds from plaintiff's mortgage had paid them off. Accordingly, "the [owners'] interest in the subject property was subordinate to [plaintiff's]." Second, it found that plaintiff had an equitable right to foreclose out the owners' alleged interest in the property, even if it did not have a written mortgage with the owners. "[E]ven if [defendants] acquired the subject property through a forged deed and, even if the bank and its assignor had no written mortgage with [the owners], [plaintiff's] assignor acquired standing when it paid off [the owners'] mortgages and [plaintiff] as trustee, had a right to predicate its foreclosure action against [the owners] on the fact that it was the legal holder of [the owners'] indebtedness."