

LENDER NOT ENTITLED TO PRIORITY FOR ITS FIRST-RECORDED MORTGAGE WHEN IT WAS AWARE OF OTHER MORTGAGE, EVEN IF IT WAS NOT AWARE OF OTHER MORTGAGEE'S IDENTITY

The New Jersey Appellate Division recently affirmed that a lender who records a mortgage with knowledge of another unrecorded mortgage is not entitled to priority over the subsequently-filed mortgage, even if the lender was not aware of the identity of the other mortgagee. See Morgan Stanley Private Bank v. Earle, 2017 WL 5988070 (N.J. App. Div. Dec. 4, 2017). In the case, the defendant lender obtained a \$5,000,000 mortgage on the borrower's property in 2008. In 2011, it agreed to release its mortgage in exchange for a payment of \$3,900,000 and another mortgage on the property in the amount of \$1,100,000, "to be recorded after the refinancing of the first mortgage." Nonetheless, after receiving the payment, defendant recorded its mortgage before the plaintiff lender recorded its mortgage. Plaintiff filed a foreclosure action and defendant opposed, arguing that its first-recorded mortgage had priority. The trial court granted plaintiff's motion for summary judgment.

On appeal, the Appellate Division affirmed the trial court's decision. Although defendant acknowledged that it would not be entitled to priority if it had actual knowledge of plaintiff's lien, it argued that it was never aware of plaintiff's identity and instead was only aware that some other lender was involved in the refinancing. The Court rejected this argument, holding that there was no dispute that defendant knew a first mortgage existed and that defendant therefore was not entitled to priority.