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Rich May Client Prevails on Issue of First Impression Involving the Homestead Statute

By: Rich May

The Massachusetts Land Court recently issued an Order in ReadyCap, LLC v. Alexander, 17 MISC 384-MDV, 2018 WL 503966, granting ReadyCap's Motion for Summary Judgment and entering Judgment in its favor in a case that involved an issue of first impression with respect to the current version of the Massachusetts Homestead Statute (MGL c. 188).

The issue before the Court was whether ReadyCap was entitled to Judgment in its favor that James Alexander's Homestead Rights were subordinate to the Mortgage held by it pursuant to the plain reading of MGL c. 188 § 9 that "[a]n estate of homestead shall be subordinate to a mortgage encumbering the home executed by all the owners of the home" where Donna Alexander was the sole owner of the home and she executed the mortgage now held by the Plaintiff encumbering the home.

In what was a matter of first impression with respect to the Homestead Statute, ReadyCap argued and the Court agreed that based on the plain reading of the statute, the current provisions of Chapter 188 (added by the enactment of Chapter 395, Section 3 of the Acts and Resolves of 2010) apply even though the Mortgage and the Homestead were recorded prior to its enactment. It was also not relevant that Mr. Alexander did not sign the release that would have been required of him at the time that the Mortgage was executed and recorded. Massachusetts General Laws Chapter 188, Section 8 states that no homestead "shall affect a mortgage…except as provided in this statute." The Land Court agreed with ReadyCap's argument that there is nothing in the statute or the enabling legislation that would even hint that the completely re-written Homestead Statute was only to have prospective application. To the contrary, the Judgment entered by the Land Court makes it clear that Mr. Alexander's interest in the home (whatever it may be) is subordinate to the Mortgage.

A copy of the Land Court's decision can be accessed here.

Rich May attorney Jeff Loeb represented ReadyCap in this matter.

Related Attorneys

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