

LENDER WAS ENTITLED TO EQUITABLE SUBROGATION AND SPOUSE RATIFIED MORTGAGE

The New Jersey Appellate Division recently affirmed a lower court's decision that **a lender would be equitably subrogated to the position of an earlier mortgage despite the mortgagee's spouse's claim that she was unaware of any mortgage, and that the spouse had ratified the mortgage.** See Reibman v. Myers, 164 A.3d 1080 (N.J. Super. Ct. App. Div. 2017). In the case, plaintiff's father-in-law purchased a house for plaintiff and her husband in 2001, and plaintiff contributed some of the down payment. In 2005, plaintiff's father-in-law conveyed the property to plaintiff's husband. The husband immediately obtained a \$225,000 loan, secured by a mortgage on the property. Six months later, the husband executed a deed conveying the property to himself and plaintiff jointly, and four months after that allegedly forged plaintiff's signature on a deed conveying it back to himself. He then mortgaged the property again and received a \$347,000 loan, which satisfied the first mortgage. In January 2006, he again executed a deed transferring the property back to himself and plaintiff. In June 2006, he obtained a mortgage of \$437,500, which paid off the prior mortgage. Although plaintiff held title to the property at this point and the husband stated he was married in the loan application, he later certified that he was the sole owner of the property and it was not his marital residence. Thus, plaintiff did not execute this mortgage. Plaintiff claims to have been unaware of all of these transactions until after they occurred. In 2012, she filed a complaint against her husband and the lender, alleging negligence, fraud, unjust enrichment, breach of fiduciary duty and other claims.

The trial court first granted the lender's motion for summary judgment that there was an equitable mortgage on the property in the amount of \$224,000 retroactive to the first mortgage, plus interest, taxes and other expenses. After trial, the court determined that plaintiff benefited from, acquiesced to and ratified the lender's mortgage and it equitably reformed the mortgage to include plaintiff. On appeal, the Appellate Division affirmed. First, it rejected plaintiff's argument that the mortgage was subject to her right to the property under New Jersey's Joint Possession Statute, which states that "[o]ne who acquires an estate or interest in real property from an individual whose spouse is entitled to joint possession thereof does so subject to such right of possession" unless the spouse agrees to subordinate. N.J.S.A. 3B:28-3. Although the Court acknowledged that she was protected by the

Statute when her father-in-law conveyed the property to her husband, it found that the deed conveying the property from her husband to plaintiff and her husband cancelled any right to joint possession under the Statute. Second, the Court agreed that the lender was entitled to equitable subrogation, even though it did not directly pay off the original \$225,000 mortgage that encumbered the property when plaintiff first acquired title. Equitable subrogation still applied because the lender paid off a prior lender who had paid off the first lender. Third, the Court affirmed that plaintiff was an equitable mortgagor because “she reaped the benefits of the mortgage by renovating the property, living in the marital home without paying tax or homeowner’s insurance, and never questioned where [the husband] obtained the significant funds to renovate the home[.]” Finally, the Court agreed that plaintiff had ratified the loan and mortgage because “it would have been impossible for plaintiff to participate in renovating the house to such an extent without knowing there was a source of funds coming into the household, which had not been earned[.]”