

Case Law Shorts

July 7, 2013

Case Law Shorts 7/7/13 *New York Appellate Division, Second Dept.*

MERS/Mortgage Foreclosure/Standing/Holder of Note and Mortgage: MERS, as nominee for lender, foreclosed and defendant countered with lack of standing. Defendant maintained that MERS did not own both the note and the mortgage when MERS filed the action. The Supreme Court, Suffolk County, granted summary judgment to MERS stating that the standing argument was "mere conclusory allegation, expression of hope or unsubstantiated claim.". On appeal, the Second Dept. reversed after searching the record, stating that MERS failed to prove ownership of both the note and the mortgage when it commenced the action. The Court was not persuaded by language in the mortgage that authorized MERS to foreclose and further stated that a subsequent assignment of the note to a substituted plaintiff did not prove that MERS owned both instruments when it commenced the action. Homecomings Fin., LLC v Guldi, Appellate Division, Second Department, 2013 NY Slip Op 05048, July 3, 2013

[opinion](#)

-Johnny D. Hall, Esq.

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Easement/Driveway/Subdivision/Over-Burdening: Defendant subdivided a dominant parcel into three subparcels and attempted to construct a driveway over a dedicated easement to a road. Plaintiff sued to prevent the driveway arguing "reasonable use". The Supreme Court, Nassau County, granted dismissed the case but the Second Dept. reversed stating that although the defendant documented the grant of the easement, it failed to "conclusively establish, as a matter of law, that the construction of the driveway constituted a reasonable use of the easement, necessary and convenient for the purpose for which it was created, and that the driveway did not materially increase the burden on the servient estate." Shuttle Contr. Corp. v Peikarian, Appellate Division, Second Department, 2013 NY Slip Op 05057, July 3, 2013

[opinion](#)

-Johnny D. Hall, Esq.

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