

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY  
CASE NO: 2016AP900116CAXXXMB  
L.T. NO: 2014CC012918XXXXMB

CORA B. MALLARD,  
Appellant,

v.

EAST COAST RECOVERY, INC,  
Appellee.

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Opinion filed: Feb. 07, 2017

Appeal from the County Court in and for Palm Beach County,  
Judge Reginald Corlew

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PER CURIAM.

Appellant/Defendant, Cora Mallard ("Mallard"), appeals a final judgment of foreclosure entered in favor of Appellee/Plaintiff, East Coast Recovery ("ECR") upon its motion for

summary judgment. ECR sought to foreclose a 2005 judgment lien against property owned by Mallard as a tenant in common at the time the judgment was recorded, and which property is now fully owned by Mallard. Mallard raises multiple issues on appeal, two of which have merit and the rest we reject without discussion. We find that ECR was not entitled to judgment as a matter of law because 1) ECR cannot foreclose upon Mallard's property to enforce a judgment lien recorded against Mallard's prior co-tenant when the property has continuously been Mallard's homestead since before the lien was recorded; and 2) the judgment lien had expired at the time judgment was entered, rendering the case moot.

On November 30, 2005, ECR obtained a final judgment ("2005 Judgment") against Archie McNish Jr. ("McNish"), for the sum of \$5,386.63 plus interest at a rate of 7% per year. ECR recorded the 2005 Judgment on January 3, 2006, in the public records in and for Palm Beach County, Florida and perfected a judicial lien on McNish's property, located at 17745 Cornelia Street, Jupiter, Florida, ("Cornelia Street Property") to satisfy the judgment. Mallard and McNish owned the Cornelia Street Property as tenants in common at the time ECR perfected the lien. Mallard declared the property as her homestead with the property appraiser's office, but McNish did not. In 2007, Mallard recorded a quitclaim deed indicating that she purchased McNish's interest in the Cornelia Street Property, so that Mallard was the sole owner and the entire property was her homestead.

On November 6, 2014, ECR filed a Complaint to Foreclose Judgment Lien ("Complaint") against Mallard and recorded a Notice of Lis Pendens in the Official Records of Palm Beach County. Mallard filed a motion for summary judgment arguing, *inter alia*, that ECR could not foreclose upon the property because it was protected from ECR's claim as her homestead. The trial court denied Mallard's motion. ECR subsequently filed its own motion for

summary judgment, asserting that ECR is entitled to foreclose on the 2005 Judgment lien and Mallard lacks standing to assert her homestead defense because the Cornelia Street Property was never McNish's homestead. The trial court entered a Final Summary Judgment of Foreclosure in favor of ECR for \$10,121.86 on April 29, 2016, from which Mallard filed the instant appeal.

"Summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to judgment as a matter of law." *Volusia Cnty v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000). Mallard argues, and we agree, that ECR is not entitled to judgment as a matter of law because 1) foreclosure of her property is unconstitutional under Florida's homestead provision, and 2) the lien expired prior to the entry of judgment and was therefore unenforceable.

### **I. Homestead**

Mallard argues that the final summary judgment of foreclosure is unconstitutional because the Cornelia Street Property is exempt homestead property protected by the Florida Constitution. "Florida protects homeowners' residences from forced sale except in limited circumstances." *Chames v. DeMayo*, 972 So. 2d 850, 851 (Fla. 2007). The homestead exemption is broadly construed and the forced sale of homestead property can only occur to satisfy taxes or assessments on the property, improvements or repairs to the property, and obligations contracted for labor performed on the property. *Butterworth v. Caggiano*, 605 So. 2d 56, 58-60 (Fla. 1992). Even "a one-half interest, the right of possession, or any beneficial interest in land gives the claimant a right to exempt it as homestead." *Coy v. Mango Bay Prop. & Inv., Inc.*, 963 So. 2d 873, 877 (Fla. 4th DCA 2007) (internal quotations omitted). "The exemptions from liens and forced sales accorded by the Constitution... do not require the owner of the exempt property to be the sole owner." *Milton v. Milton*, 63 Fla. 533, 536 (Fla. 1912)

(holding that a son's partial interest in his mother's property as homestead was exempt from a judgment obtained against the son before his mother's death).

The undisputed evidence demonstrates that the Cornelia Street Property has been Mallard's homestead since 1994. ECR recorded its lien on the property in 2006, while Mallard and McNish owned the property as tenants in common. ECR argues that Mallard's acquisition of McNish's interest in the Cornelia Street Property in 2007 was subject to ECR's lien, and that her homestead exemption cannot extinguish that pre-existing lien. ECR's argument ignores the fact that Mallard has claimed a homestead interest in her half of the property since 1994, and focuses exclusively on McNish's half of the property, which Mallard now also claims as homestead. Mallard's homesteaded half interest in the property protected the property from foreclosure while she co-owned the property with McNish. *See Engelke v. Estate of Engelke*, 921 So. 2d 693, 695 (Fla. 4th DCA 2006) (holding that one-half tenant in common interest was constitutionally protected homestead property and could not be used to pay claims and expenses of an estate).

It is well-settled that courts are to liberally construe the homestead exemption in favor of the party claiming the exemption. *Butterworth*, 605 So. 2d at 58-60. "As a matter of public policy, the purpose of the homestead exemption is to promote the stability and welfare of the state by securing to the householder a home, so that the homeowner and his or her heirs may live beyond the reach of financial misfortune and the demands of creditors who have given credit under such law." *Public Health Trust of Dade County v. Lopez*, 531 So. 2d 946, 948 (Fla. 1988). Given the requirement to liberally construe the exemption in favor of Mallard, we conclude that permitting ECR to foreclose on Mallard's homestead was error. It thwarts the goal of Florida's constitutional homestead provision if Mallard could enjoy a homestead exemption and protect

the property from foreclosure when she only owned a one-half interest, yet lose the homestead protection upon obtaining the other half-interest in the property. We therefore find that the foreclosure cannot be enforced against the Cornelia Street Property because it is Mallard's homestead and exempt from forced sale.

## **II. Expiration of Lien**

Mallard claims that ECR's lien had expired at the time the final summary judgment of foreclosure was entered because, pursuant to Florida Statute section 55.10, a properly recorded judgment lien is valid for ten years unless renewed for an additional ten years. §§ 55.10(1), (2), Fla. Stat. (2004). ECR recorded its judgment lien on January 3, 2006, thus the lien was valid through January 3, 2016. ECR filed the instant claim on November 6, 2014, within the initial ten-year time period of the judgment lien; however, the final judgment was not entered until April 29, 2016, more than three months after the expiration of the ten-year time period. ECR did not file any evidence in support of its Motion for Summary Judgment establishing that it had renewed the lien in accordance with section 55.10. Rather, ECR argues that because it initiated the suit within the ten-year time period, the trial court had jurisdiction to enter the final judgment.

The lien at issue in this case ceased to exist on January 3, 2016. *See Betaco, Inc. v. Countrywide Home Loans, Inc.*, 752 So. 2d 696, 697 (Fla. 2d DCA 2000) (holding that because the execution sale occurred outside the 20-year time period, the deed was a "legal nullity because the lien expired before the sheriff held the sale."); *Franklin Fin., Inc. v White*, 932 So. 2d 434, 437 (Fla. 4th DCA 2006) (holding that senior lienholder loses its priority upon expiration of the lien if it does not re-record; "the judgment lien ceases to exist" upon expiration). ECR filed its Motion for Summary Judgment on February 26, 2016, and final judgment was entered on April

29, 2016. Notably, section 55.10 does not provide for the tolling of the lien upon the filing of a cause of action, unlike other lien statutes. *See, e.g.*, §§ 713.22, 713.825, Fla. Stat. (2016). “A case is ‘moot’ when it presents no actual controversy or **when the issues have ceased to exist.**” *Godwin v. State*, 593 So. 2d 211, 212 (Fla. 1992) (emphasis added). When the lien expired on January 3, 2016, the only issue in this case became moot. Therefore, the trial court erred when it determined that ECR was entitled to judgment as a matter of law. The record does not contain any evidence that the lien was re-recorded,<sup>1</sup> therefore there does not appear to be a question of fact on the face of the record.

For these reasons, we find that the trial court reversibly erred in granting final summary judgment in favor of ECR. As the trial court also denied Mallard’s motion for summary judgment in which she raised the homestead issue, we REVERSE the lower court’s Final Summary Judgment of Foreclosure and REMAND for the trial court to grant Mallard’s motion for summary judgment.

HAFELE, GILLEN, and ROWE, JJ., concur.

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<sup>1</sup> It is likely that ECR did not re-record the lien because McNish no longer owns an interest in the subject property. Thus, under Chapter 55 it does not appear that ECR could re-record the judgment lien against Mallard’s property.

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Judge Reginald Corlew

Appealed: May 9, 2016

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DATE OF PANEL: DECEMBER 13, 2016

PANEL JUDGES: HAFELE, GILLEN, ROWE

AFFIRMED/REVERSED/OTHER: REVERSE and REMAND

PER CURIAM OPINION/DECISION BY: PER CURIAM

DATE CONCURRING:	)	DISSENTING:	)	CONCURRING SPECIALLY:	)
	)	With Opinion	)	With/Without Opinion	)
<u>01/23/17</u> <i>[Signature]</i>	)	_____	)	_____	)
	J. )		J. )		J. )
<u>01/31/17</u> <i>[Signature]</i>	)	_____	)	_____	)
	J. )		J. )		J. )
<u>2/3/17</u> <i>[Signature]</i>	)	_____	)	_____	)
	J. )		J. )		J. )