

## Tennessee: Foreclosure of Superior Deed of Trust Extinguishes Subsequent Easement

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The general rule in Tennessee regarding the foreclosure of a superior deed of trust is the purchaser at a foreclosure sale takes title divested of all encumbrances made subsequent to the foreclosed deed of trust. The Court of Appeals of Tennessee recently confirmed this rule applies when the subsequent encumbrance is an easement. *Helmboldt. v. Jugan* (Tenn. App. LEXIS 523 2016).

Towering Oaks owned 13.4 acres of undeveloped land in Tennessee. Towering Oaks executed a Deed of Trust with TNBank to secure a mortgage taken on the 13.4 acres. The property was adjacent to property owned by the Jugans. Several years after executing the Deed of Trust, Towering Oaks began negotiating with TNBank to release 2.1 acres of the encumbered property. Simultaneously, Towering Oaks was also negotiating with the Jugans to create a buffer easement across a portion of Towering Oaks' property, adjacent to the Jugan's property. TNBank ultimately agreed to a partial release of the 2.1 acres. Immediately thereafter, Towering Oaks sold the released 2.1 acres to the Jugans; and restrictions were executed and recorded between Towering Oaks and the Jugans. The restrictions created a buffer easement over a portion of the property still owned by Towering Oaks. The buffer easement forbid the construction of improvements, forbid brush and vegetation from being cleared, and required a landscaping fence be erected and maintained so as to substantially block the view between the properties. The easement's terms and conditions were to be binding upon Towering Oaks and "its successor and assigns," and it was to "run with the land for a period of fifty (50) years."

A couple years after the execution of the restrictions, Towering Oaks defaulted on its deed of trust with TNBank. TNBank foreclosed upon the 11.3 acres of property still encumbered, and acquired the property at foreclosure sale. TNBank did not learn about the restrictions until after the foreclosure sale. TNBank ultimately sold the property to the Helmboldts, who promptly filed suit seeking a declaratory judgment to determine the validity of the restrictions.

In its review, the court recited the general rule that the purchaser at a regular foreclosure sale takes the mortgagor's title divested of all encumbrances made since the creation of the power. The court clarified that the same rule applies when the post-mortgage encumbrance is an easement. The court's discussion focused on the fact that TNBank never released the impacted area of property, never subordinated its interest, nor even knew about the existence of a buffer easement prior to the foreclosure. The court recited testimony from the record evidencing that TNBank was never informed that the Jugans were requesting a buffer area in exchange for their purchase of the 2.1 acres. The buffer easement did not exist at the time the deed of trust was executed. Subsequent to the execution and recording of the Deed of Trust, Towering Oaks lacked authority to encumber the interest of TNBank. The court determined that while the bank released 2.1 acres of property so that Towering Oaks could sell those acres to the Jugans, the record did not show that the bank was ever aware there would also be a buffer easement granted that would impact the bank's remaining security interest.

In affirming the trial court's grant of summary judgment in favor of the Helmboldts, the court stated that, "Easements like other encumbrances generally diminish the fair market value of a property rather than increase its value. To grant the buffer easement against the deed of trust would be to effectively

foist an unanticipated, unwanted easement onto a property where the holder of the security instrument executed it prior to any clouds on title.” The Court thus found the restrictions at issue were extinguished as an operation of law when TNBank foreclosed on its superior deed of trust.