

Case Law Shorts

May 28, 2013

NY Second Dept.

Will/"interests in property"/Notes secured by mortgages/Personal Property: Decedent owned notes that were secured by mortgages and his will left his "interests in real property" to his executor. Executor sought to take ownership of the notes but the Surrogate's Court, Queens County denied. The Second Dept. sustained stating that mortgage notes are personal property and that although a will should be read in its entirety to give effect to the testator's intents... "A court, however, may not rewrite a will in order to give effect to an intention which possibly the testator may have had but which is not revealed by the language used in the will". Matter of Cincotta, Appellate Division, Second Department, 2013 NY Slip Op 03671, May 22, 2013.

[opinion](#)

NY Second Dept.

Foreclosure/Deficiency Judgment/Burden of Proof/Appraiser Affidavit: Bank foreclosed, took the property at the sale and moved for a deficiency judgment, submitting a brief affidavit from an appraiser to establish market value. Although the appraiser examined the property and summarized the comparables, the Supreme Court, Kings County, denied stating that the proof was insufficient. The Second Department sustained... "However, the appraiser did not describe the subject premises or the results of his inspection and failed to append any of the evidence of comparable sales and market data upon which he relied in arriving at his opinion. Nor did the plaintiff submit an actual appraisal report. The Supreme Court was entitled to reject the opinion of the plaintiff's appraiser as without probative value in light of the lack of evidentiary foundation set forth in his affidavit (see generally *Diaz v New York Downtown Hosp.*, 99 NY2d 542, 544; *BTC Mtge. Invs. Trust 1997-SI v Altamont Farms*, 284 AD2d at 850; *Adirondack Trust Co. v Farone*, 282 AD2d 910, 912-913)." The Court mentioned in closing that there was a noticeable disparity between the appraised value and the low sale price at the foreclosure sale. Flushing Sav. Bank, FSB v Bitar, Appellate Division, Second Department, 2013 NY Slip Op 03059, May 1, 2013

[Opinion](#)

Remarks, Questions? contact [Johnny D. Hall, Esq.](#)