ARTU Challenge

Description

You are claims counsel for a title insurance underwriter and receive the following claim:

1. In 2008, John and Mary Adams purchased Lot 10 of Happy Acres as tenants by the entirety, and financed the purchase with a $250,000 loan from Big Bank.
2. In 2009, Mary inherited a sum of money from her father, and paid the Big Bank loan in full.
3. In 2010, Johnâ??s business suffered a serious business reversal, and John borrowed $100,000 from Little Bank, securing the loan with a deed of trust. John did not tell Mary about the loan, and forged her name to both the note and deed of trust. Little Bank obtained a Fidelity loan policy.
4. In 2011, Mary discovered Johnâ??s transgressions, but remained silent for fear of damaging the marriage.
5. In May of 2014, the Little Bank loan went into default, and Little Bank commenced foreclosure proceedings. Mary hired Perry Mason, Esq., who petitioned the Court to enjoin the foreclosure sale on the grounds that the deed of trust was void. Little Bank has now filed a claim.

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How should this be resolved?

A) There is no claim until Little Bank sues John on the note, obtains a judgment, and cannot collect.

B) There is no claim until Little Bank forecloses on Johnâ??s half interest and suffers a loss.

C) The claim is covered because there is a challenge to the validity of the deed of trust and the deed of trust is void.

D) The claim is covered but Little Bank will prevail because Mary took to long to assert her rights.

Answer:

D â?? The claim is certainly covered as a challenge is being made to the enforceability of the Little Bank deed of trust. While conventional wisdom is that the deed of trust is void ab initio, there is also a statute of limitations issue. In Virginia, forgery constitutes fraud, and the statute of limitations for fraud is two years from date the cause of action arises â?? Â§8.01-243. Since Mary discovered the fraud in 2010 and did not file suit until 2014, the statute of limitations has run on her fraud claim. Holly v. Wells Fargo Bank, N.A., Case No. 3:14-cv-00017, U.S. District Court for Western District of Virginia.

Category

1. Uncategorized

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