

SUPREME COURT OF ARIZONA

SOURCECORP, INCORPORATED,) Arizona Supreme Court
) No. CV-11-0269-PR
Plaintiff/Appellee,)
) Court of Appeals
v.) Division One
) No. 1 CA-CV 10-0212
DEAN D. NORCUTT and STACEY L.)
NORCUTT, husband and wife,) Maricopa County
) Superior Court
Intervenors/Appellants.) No. CV2002-020676
)
)
_____) **FILED 04/25/2012**

O R D E R

The Court has received Appellants' Motion for Reconsideration. After consideration by the entire Court,

IT IS ORDERED denying the Motion for Reconsideration.

IT IS FURTHER ORDERED that the opinion, filed on April 6, 2012, is amended as follows:

On page 5, paragraph 6, fourth sentence, insert a period in place of the comma after "liens" and delete the phrase "even though the property owner ultimately redeemed all the liens." A copy of the corrected page is attached.

DATED this _____ day of April, 2012.

A. JOHN PELANDER
Duty Justice

TO:

Francis J. Burke Jr

Bennett Evan Cooper

Douglas Janicik

Michael R. Scheurich

Anne L. Tiffen

Robert C. Brown

Richard A. Segal

Scott A. Malm

Charles W. Wirken

Michael J. Holden

Barry A. Willits

II.

¶15 Equitable subrogation is "the substitution of another person in the place of a creditor, so that the person in whose favor it is exercised succeeds to the rights of the creditor in relation to the debt." *Mosher v. Conway*, 45 Ariz. 463, 468, 46 P.2d 110, 112 (1935). This equitable remedy is "designed to avoid a person's receiving an unearned windfall at the expense of another." Restatement (Third) of Property: Mortgages § 7.6 cmt. a (1997) ("Restatement"); see *Mosher*, 45 Ariz. at 468, 46 P.3d at 112 (noting that purpose of doctrine is to prevent injustice). "The general rule is that a person having an interest in property who pays off an encumbrance in order to protect his interest is subrogated to the rights and limitations of the person paid." *Id.* at 472, 46 P.2d at 114; see also Restatement § 7.6(a) (providing that "[o]ne who fully performs an obligation of another, secured by a mortgage, becomes by subrogation the owner of the obligation and the mortgage to the extent necessary to prevent unjust enrichment").

¶16 *Mosher* concerned "paving liens" on residential lots assessed for street improvements. Under the statutory scheme, the city could auction liens for delinquent assessments to private parties. If the property owner or a "party in interest" did not redeem the lien within a year, the purchaser would

obtain the property free of encumbrances. 45 Ariz. at 465-67, 46 P.2d at 111-12. In *Mosher*, one lot was subject to three liens, which were sold separately. Applying equitable subrogation, this Court held that the second purchaser was subrogated to the positions of the first and third purchasers when he redeemed their liens. The owner could not complain about this result because it merely required her to pay one person rather than another to release the liens. *Id.* at 471, 46 P.2d at 113.

¶17 *Mosher* said that "no general rule can be stated which will afford a test [for equitable subrogation] in all cases." *Id.* at 468, 46 P.2d at 112. Instead, "[w]hether it is applicable or not depends upon the particular facts and circumstances of each case as it arises." *Id.*, 46 P.2d at 112. Noting "the modern tendency" to extend the doctrine's use, *id.*, 46 P.2d at 112, the Court also observed that

[A] mere volunteer, who has no rights to protect, may not claim the right of subrogation, for one who, having no interest to protect, without any legal or moral obligation to pay, and without an agreement for subrogation or an assignment of the debt, pays the debt of another, is not entitled to subrogation, the payment in his case absolutely extinguishing the debt.

Id. at 470, 46 P.2d at 113. The Court immediately added that "when one, to protect his own interest, pays a debt which he honestly believes must be paid to accomplish that purpose, . . . he cannot be held to be a mere volunteer." *Id.*, 46 P.2d at 113.