A credit card company obtained and properly filed a judgment against a man after he failed to pay a $10,000 debt. A statute in the jurisdiction provides as follows: "Any judgment properly filed shall, for 10 years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered."

Two years later, the man purchased land for $200,000. He made a down payment of $20,000 and borrowed the remaining $180,000 from a bank. The bank loan was secured by a mortgage on the land. Immediately after the closing, the deed to the man was recorded first, and the bank's mortgage was recorded second.

Five months later, the man defaulted on the mortgage loan and the bank initiated judicial foreclosure proceedings. After receiving notice of the proceedings, the credit card company filed a motion to have its judgment lien declared to be the first lien on the land.

Is the credit card company's motion likely to be granted?

A. No, because the bank's mortgage secured a loan used to purchase the land.

B. No, because the man's down payment exceeded the amount of his debt to the credit card company.

C. Yes, because the bank had constructive notice of the judgment lien.

D. Yes, because the bank is a third-party lender and not the seller of the land.

Explanation:

In foreclosure proceedings, lien priority is generally determined by the date a lien is recorded (ie, first in time, first in right). But **purchase-money mortgages** (PMMs) are an exception to this rule. These mortgages have **super priority** over all other liens—regardless of whether the PMM or those liens are recorded—because PMMs are granted to **secure the purchase price** of the mortgaged property.

Here, the credit card company acquired a judgment lien to secure repayment of the man's $10,000 debt. Two years later, the bank acquired a PMM because it received a mortgage to secure the $180,000 loan used to purchase the land. Since that PMM has super priority over all other liens—including a judgment lien that was first in time—the court will likely *deny* the credit card company's motion to have its lien declared first on the land.

(Choice B) Whether the man could have paid off the judgment lien with the money that he used for the down payment is irrelevant to the bank's priority over the lien.

(Choice C) The bank likely had constructive (ie, record or inquiry) notice of the credit card company's judgment lien because that lien was properly filed. But this has no effect on the super priority of the bank's PMM.

(Choice D) PMMs can be given to third-party lenders (ie, third-party PMMs) and sellers of the land (ie, vendor PMMs). But any PMM executed at the same time as the purchase of the mortgaged real property has priority over any other claim, including the credit card company's previously filed judgment lien.

Educational objective:

A purchase-money mortgage (PMM) has super priority over all other liens because it is granted to secure the purchase price of mortgaged property. As a result, PMMs trump the "first in time, first in right" rule that sets priority based on the date a lien is recorded.

References

Restatement (Third) of Property: Mortgages § 7.2 (Am. Law Inst. 1997) (purchase-money mortgages).

Lien priority on real property