

Mortgages--Deficiency Judgment (Feiber Realty Corp., et al. v. Abel, 265 N.Y. 94 (1934))

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and liberty.⁸ Therefore the court ordinarily will permit a plea of guilty to be withdrawn if it fairly appears that the prisoner was in ignorance of his rights or was influenced unduly or improperly either by hope or by fear in the making of it.⁹ Where the plea of guilty is entered under belief, induced by the judge, that sentence less severe than the maximum should be given, defendant should be allowed to withdraw the plea.¹⁰ The same is true where such belief is induced by the prosecuting attorney.¹¹ Where, however, no sufficient grounds for such a belief exists the court properly may deny its permission for withdrawal.¹² To make an act of the court in refusing leave to withdraw a plea of guilty an abuse of discretion it must appear that the plea was entered under some mistake, compulsion, or inducement working injustice.¹³ Such not appearing, defendant's motion was properly denied.

J. I. G.

MORTGAGES—DEFICIENCY JUDGMENT.—Plaintiff obtained judgment of foreclosure and sale just prior to the effective date of §1083-a¹ of the Civil Practice Act. Sale of premises under this judgment was effected subsequent to the date this section became operative. Defendant alleges that plaintiff should have reasonable value of property ascertained before a deficiency judgment is granted. Plaintiff contends that that section does not apply herein. *Held*, judgment of foreclosure and sale is final and the statute, having no retroactive effect, does not apply to the case at bar. *Feiber Realty Corp., et al. v. Abel*, 265 N. Y. 94, 191 N. E. 847 (1934).

A judgment of foreclosure and sale has been held to be final and an adjudication of all questions at issue.² Therefore, judgment

⁸ *Krolage v. People*, 224 Ill. 456, 79 N. E. 570 (1906); *State v. Cimini*, 53 Wash. 268, 101 Pac. 891 (1909).

⁹ *People v. Miller*, 114 Cal. 10, 45 Pac. 986 (1896); *Jenkins v. State*, 6 Okla. Cr. 516, 120 Pac. 298 (1912); *McDaryl v. State*, 7 Okla. Cr. 740, 120 Pac. 299 (1912).

¹⁰ *State v. Stephens*, 71 Mo. 535 (1880); *State v. Kring*, 71 Mo. 551 (1880).

¹¹ *Griffin v. State*, 12 Ga. App. 615, 77 S. E. 1080 (1913); *People v. Walker*, 250 Ill. 427, 95 N. E. 475 (1911); *Myers v. State*, 115 Ind. 554, 18 N. E. 42 (1888).

¹² *State v. Yates*, 52 Kan. 566, 35 Pac. 209 (1894); *State v. Pyle*, 52 Kan. 569, 35 Pac. 210 (1894); *State v. Pottenger*, 52 Kan. 569, 35 Pac. 210 (1894).

¹³ *Mastronada v. State*, 60 Miss. 86 (1882); *State v. Cimini*, *supra* note 8; *State v. Stephenson*, *supra* note 6.

¹ August 28th, 1933.

² *Morris v. Morange*, 38 N. Y. 172 (1868); *Bolles v. Duff*, 43 N. Y. 473 (1871); *Cambridge Valley Nat'l Bank v. Lynch*, 76 N. Y. 516 (1879); *Wadsworth v. Lyon*, *et al.*, 93 N. Y. 218 (1883); *Wager v. Link*, 134 N. Y. 122, 31 N. E. 213 (1892); *Read v. Patterson*, *et al.*, 134 N. Y. 128, 31 N. E. 445 (1892).

being final, the recipient has a vested right³ which the legislature cannot arbitrarily confiscate, recall, or put again in jeopardy.⁴ While this statute is remedial,⁵ requiring that no judgment be granted for any residue of the debt remaining unsatisfied where the mortgaged property shall be sold during the emergency, except after an appraisal and the reasonable market value of same has been ascertained,⁶ and should therefore be liberally construed,⁷ a construction which would give it retroactive operation is not favored by the courts.⁸ Unless the language clearly and plainly indicated a contrary purpose, a prospective construction will always be given.⁹ In the instant case, the statute became effective in the interim between the rendering of judgment and sale of the property and therefore has no effect.

A. S. G.

DIVORCE—RIGHT TO DISCONTINUE ACTION.—*W* instituted an action for separation in which she obtained judgment and alimony. The parties then entered into a separation agreement wherein a different financial arrangement was made. While the separation suit was pending, but before judgment *H* went to Nevada and obtained a divorce, *W* not appearing therein. Thereafter *H* remarried in a foreign state. Thereupon, *W* commenced two actions: (1) against *H* and his alleged second wife for a declaratory judgment and (2) against *H* for specific performance of the separation agreement. Personal service was had in each action. As a result of conferences, *W* discontinued the two suits and brought an action for divorce against *H*, who in consideration thereof agreed to make certain payments to her. The divorce action was started in good faith, *H* being personally served. However, *H* defaulted on his payments and refused to comply with the terms of the separation agreement, whereupon *W* moved for leave to discontinue her divorce action. From a denial of the motion *W* appealed. *Held*, reversed, the special circumstances present herein permit the granting of *W*'s motion to

³ *Livingston v. Livingston*, 173 N. Y. 377, 66 N. E. 123 (1903).

⁴ *Matter of Greene*, 166 N. Y. 485, 60 N. E. 183 (1901).

⁵ Instant case.

⁶ N. Y. CIVIL PRACTICE ACT §1083 a.

⁷ *Hudler v. Gloden*, 36 N. Y. 446 (1867); *Ayers, et al. v. Lawrence, et al.*, 59 N. Y. 196 (1874); *Berger, et al. v. Varrelmann*, 127 N. Y. 287, 27 N. E. 1065 (1891); *Allen v. Stevens*, 161 N. Y. 143, 55 N. E. 568 (1899).

⁸ *Walker v. Walker*, 155 N. Y. 77, 49 N. E. 663 (1898); *Livingston v. Livingston*, *supra* note 3; *Wilson v. Hinman*, 182 N. Y. 411, 75 N. E. 236 (1905).

⁹ *Walker v. Walker*, *supra* note 8; *Benton v. Wickwore*, 54 N. Y. 226 (1873); *Goillotel v. Mayor, etc., of the City of New York*, 87 N. Y. 441 (1882); *Jacobus v. Colgate*, 217 N. Y. 235, 111 N. E. 837 (1916).