



## 09/24/70 MORRISON ET AL. v. CASTLEBERRY ET AL.

177 S.E.2d 232 (1970) | Cited 0 times | Supreme Court of Georgia | September 24, 1970

In this action the plaintiffs sought to set aside a foreclosure under the power contained in a deed to secure debt and the deed issued by the defendants to themselves pursuant thereto. In their answer and cross action, the defendants sought to enjoin the plaintiffs from interfering with the defendants' possession of the property in question and other relief. The defendants made a motion for judgment on the pleadings, and the trial Judge, upon consideration thereof, considered affidavits of the parties and documentary evidence introduced by them, and he thereafter issued a summary judgment granting to the defendants the relief for which they prayed. The undisputed facts, as disclosed by the pleadings and the affidavits considered by the Judge, show that the plaintiffs held title to certain described property subject to a deed to secure debt in favor of the defendants which provided, among other things, that the plaintiffs would keep the property insured in a specified amount; that upon the breach of any of the conditions of the deed, the grantee might, without notice, declare the entire amount of the indebtedness due, sell the property at public outcry before the courthouse door, and that any failure of the grantee to exercise any rights contained therein would not amount to a waiver of their right to do so at a subsequent time. It appears, without dispute, that the plaintiffs had failed for more than one year prior to the foreclosure of said security deed to maintain insurance on the premises in accordance with the terms of the agreement; that the defendants had notified the plaintiffs in writing of such default and of their insistence that the plaintiffs comply with the terms of the security deed and that the defendants had, just prior to instituting the foreclosure proceeding, secured insurance on the premises and paid the premiums thereon themselves. Such undisputed evidence demanded a finding in favor of the defendants and the trial court did not err in denying the relief sought by the plaintiffs in their complaint and in enjoining the plaintiffs from interfering with the defendants' possession of the premises where it appeared that the defendants had duly foreclosed under the deed, advertised the property for sale and had bought the same in at the sale. *Tybrisa Co., Inc. v. Tybeeland, Inc.*, 220 Ga. 442 (139 S.E.2d 302).

Judgment affirmed.

