

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: April 7, 2016

521174

In the Matter of the Estate of
PENNY LEE SHAMBO, Deceased.

TINA POTTER, as Saratoga
County Commissioner of
Social Services,
Appellant;

MELISSA A. THOMPSON, as
Administrator of the
Estate of PENNY LEE SHAMBO,
Deceased,
Respondent.

MEMORANDUM AND ORDER

WELLS FARGO BANK, N.A.,
Respondent.

(And a Related Action.)

Calendar Date: February 11, 2016

Before: Garry, J.P., Egan Jr., Lynch, Devine and Clark, JJ.

Stephen M. Dorsey, County Attorney, Ballston Spa (Hugh G. Burke of counsel), for appellant.

Bartlett, Pontiff, Stewart & Rhodes, PC, Glens Falls
(Jessica H. Vinson of counsel), for Wells Fargo Bank, N.A.,
respondent.

Lynch, J.

Appeal from an order of the Surrogate's Court of Saratoga County (Kupferman, S.), entered January 30, 2015, which, in a proceeding pursuant to SCPA article 18, denied petitioner's motion for summary judgment declaring the Saratoga County Department of Social Services to be a preferred creditor pursuant to Social Services Law § 104.

In 1978, Penny Lee Shambo (hereinafter decedent) and her husband, William J. Shambo (hereinafter Shambo), purchased property in the Town of Rotterdam, Schenectady County. In 2004, decedent began receiving Medicaid assistance in Saratoga County. Three years later, to secure a \$50,000 loan, Shambo executed a note, endorsed over to Wells Fargo Bank, N.A., and both Shambo and decedent executed a mortgage on the Rotterdam property. Shambo passed away in 2008 and letters of administration for his estate were issued to respondent, Shambo's daughter. Surrogate's Court issued an order authorizing the sale of the property, but the property was not sold. In 2009, decedent died intestate, at which time her Medicaid benefits were terminated. Thereafter, in 2010, the mortgage was assigned to Wells Fargo, and, in 2012, letters of administration for decedent's estate were granted to respondent.

In April 2013, petitioner moved in Surrogate's Court for an order validating the claim of the Saratoga County Department of Social Services (hereinafter Department) for Medicaid assistance provided to decedent and, in May 2014, Surrogate's Court issued a decree permitting the claim in the amount of \$643,436.82. In the meantime, Wells Fargo commenced a foreclosure action in Supreme Court, which was transferred to Surrogate's Court in November 2014. By order entered January 30, 2015, Surrogate's Court denied a motion by petitioner for summary judgment as to the priority of the Department's claim, without articulating any reasoning for its decision. Petitioner appeals.

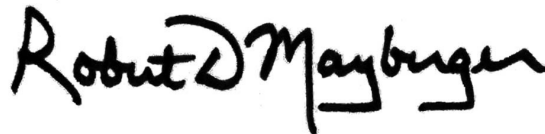
At issue on this appeal is which claim, petitioner's (on behalf of the Department) or Wells Fargo's has priority against decedent's estate. Petitioner asserts priority pursuant to Social Services Law § 104 (1), which provides, in relevant part,

that "[i]n all claims of the public welfare official made under [such] section[,], the public welfare official shall be deemed a preferred creditor" (emphasis added). "Preferred creditor" has been construed to give a social services department priority over a "general creditor, that is, a creditor that, upon giving credit, takes no rights against specific property of a debtor" (Matter of Shannon, 25 NY3d 345, 349 [2015] [internal quotation marks, brackets and citation omitted]; see Matter of Warren, 53 NY2d 118, 122 [1981]). Here, Wells Fargo holds a mortgage lien against the Rotterdam property that was recorded prior to the May 2014 decree of Surrogate's Court validating petitioner's claim. Although Medicaid assistance was provided to decedent before the mortgage was given, petitioner did not have a prior lien against the property (see Social Services Law § 369 [2] [a]). As such, we conclude that Wells Fargo's prior specific lien gives it priority over petitioner's claim with respect to the Rotterdam property (see Matter of Pierce, 106 AD2d 892, 892 [1984], lv denied 64 NY2d 609 [1985]; Matter of Lambert, 87 AD2d 818, 818 [1982]; see also UCC 9-102 [55]; Matter of Security Trust Co. v West, 120 AD2d 84, 86 [1986], lv denied 70 NY2d 601 [1987]). Since there is no factual dispute as to the sequence of events outlined above, Surrogate's Court, upon searching the record, should have granted summary judgment confirming the priority of Wells Fargo's claim over that of petitioner (see CPLR 3212 [b]). Given our authority to search the record and grant summary judgment to a nonmoving or nonappealing party (see Merritt Hill Vineyards v Windy Hgts. Vineyard, 61 NY2d 106, 110, 111 [1984]; Johnson v Zelanis, 113 AD3d 899, 901-902 [2014]), we now grant such relief to Wells Fargo.

Garry, J.P., Egan Jr., Devine and Clark, JJ., concur.

ORDERED that the order is modified, on the law, without costs, by granting summary judgment to Wells Fargo Bank, N.A. declaring it to have a preferred claim over petitioner to certain property in decedent's estate in the Town of Rotterdam, Schenectady County, and, as so modified, affirmed.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court