

1991

## Iowa Supreme Court Denied Right of First Refusal to Agricultural Property Mortgagors

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### Recommended Citation

Jonathan Barrish *Iowa Supreme Court Denied Right of First Refusal to Agricultural Property Mortgagors*, 3 Loy. Consumer L. Rev. 107 (1991).

Available at: <http://lawcommons.luc.edu/lclr/vol3/iss3/12>

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“termination.” The court explained that in insurance law, cancellation referred to a termination of a policy prior to its expiration. In contrast, termination referred to the expiration of the policy due to lapse of the policy period. Since Watts’s policy terminated due to the lapse of the policy period, the court determined that notice under the loss payable clause was not required.

Although Farm and City offered to renew Watts’s policy, the court explained that the offer did not affect its decision. By its terms, the policy automatically terminated upon Watts’s failure to pay the renewal premium. Indeed, the termination signaled a rejection of the offer.

Finally, the supreme court rejected First National’s public policy argument that an insurer had an inherent duty to give notice of the expiration to a loss payee. The court recognized that no known authority required an insurance company to continue to contract with an insured after the policy expired. Also, the court emphasized that because First National had a copy of the declaration page, it was fully aware of the expiration date. The court concluded that in the absence of an insurance policy or statutory provision stating otherwise, an insurer had no duty to notify a lienholder of a policyholder’s failure to renew or of the expiration of the policy period.

The court reversed and remanded the case, directing that judgment be entered in favor of Farm and City.

Elizabeth A. Barnes

## Iowa Supreme Court Denied Right of First Refusal To Agricultural Property Mortgagees

In *Cole v. First Bank of Greene*, 463 N.W.2d 59 (Iowa 1990), the Iowa Supreme Court held that a bank was not required to offer the prior owners of foreclosed agricultural property the opportunity to repurchase the property. In addition, the court held that the prior

owners failed to establish the existence of an oral contract with the bank which would have permitted the prior owners to purchase a portion of the foreclosed property at a reduced price.

### Background

Dean and Marilyn Cole (the “Coles”) borrowed money from the First Bank of Greene (“First Bank”) and used their eighty-three acre farm as collateral. When the Coles failed to repay the loans, First Bank obtained a decree of foreclosure on the Coles’ farm in November 1986. Pursuant to an order by the district court, the county sheriff placed a levy on the property. In December 1986, the Coles filed a designation of homestead, which exempted their residence and up to forty acres of their property from creditors’ liens.

In January 1987, First Bank bid \$80,000 for the property at a sheriff’s sale. First Bank received a certificate of sheriff’s sale which entitled it to receive within one year either the balance of the debt owed by the Coles or the title to their farm. First Bank immediately assigned the certificate to Leon D. Steere and C. Jolene Steere (the “Steeres”) for \$70,000; First Bank did not first offer the Coles the opportunity to repurchase the property on the same terms.

Seven months later, the Coles filed an application in the foreclosure action, asking the court to determine the fair market value of the homestead property. The court did not act on this application.

The Coles filed suit in 1988 against First Bank and the Steeres. First, the Coles claimed that the district court’s failure to determine the fair market value of the homestead in the foreclosure action denied them their right to redeem their property. Iowa Code § 654.16 (1987). Second, the Coles alleged that First Bank denied them their right of first refusal by failing to offer them the sheriff’s certificate at the same price that the Steeres paid. Iowa Code § 524.910(2) (1987). Finally, the Coles contended that First Bank breached an oral agreement it had made in which it agreed to resell the Coles six acres of their property if First Bank was

the highest bidder at the foreclosure sale.

On all three issues, the Iowa district court decided in favor of First Bank. The Coles appealed.

### Supreme Court’s Decision

#### Right to Fair Market Valuation of Homestead

On appeal, the Coles argued that the district court erred in refusing to determine the fair market value of their homestead according to § 654.16. Iowa Code § 654.16 (1987). In 1986, the Iowa Legislature adopted § 654.16 which provided that a mortgagor could designate a portion of the foreclosed land as a homestead. The statute also stated that a court would determine the fair market value of the homestead, in the event it was sold with nonhomestead property; the mortgagor was permitted to redeem the homestead separately within two years of the foreclosure sale. In 1987, the Iowa Legislature amended § 654.16, revising the valuation procedures for agricultural homesteads subject to redemption.

The court rejected the Coles’ argument. The court noted that the Coles had conceded in their post-trial brief that § 654.16 did not apply to them due to its enactment date. In this case, the sheriff’s sale took place prior to the effective date of the 1987 revisions to § 654.16. The court held that through their earlier concession regarding § 654.16, the Coles waived their right to raise the issue on appeal.

#### Right of First Refusal

Second, the Coles asserted that under § 524.910(2), Iowa Code § 524.910(2) (1987), First Bank was required first to offer the foreclosed property to them on the same terms as proposed to the Steeres. Section 524.910(2) required a state bank to dispose of real property purchased in a foreclosure sale within five years after the title vested in the bank. The statute also provided that if the real property was agricultural land, prior to selling the land to another person, the bank must offer the prior owner the opportunity to

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repurchase the agricultural land on the same terms that the bank seeks to dispose of the land.

The Coles contended that First Bank's receipt of the sheriff's certificate constituted a purchase of agricultural land. Therefore, the Coles argued that First Bank was required first to offer the certificate to them before it offered the certificate to the Steeres, as First Bank held the agricultural land in accordance with § 524.910(2).

The Iowa Supreme Court rejected the Coles' argument. The court distinguished between holding title to real estate and holding a lien on real estate. The court found that the sheriff's certificate only created a lien and was an interest in personal rather than real property. In addition, the court noted that the statute applied only to the sale or disposition of land. Since First Bank merely assigned the sheriff's certificate to the Steeres, the court found that a sale of land had not occurred. The court held that the assignment did not trigger the right of first refusal contained within the statute.

In addition, the court found that § 524.910(2) permitted a bank to dispose of real property only after the bank had vested title to the property. The court noted that only after a mortgagor's redemption period expired would title vest in the holder of a sheriff's certificate of sale. In this case, the redemption period had not expired prior to First Bank's assignment of the sheriff's certificate. Because the sheriff's certificate did not vest title in First Bank, the court held that the right of first refusal contained within the statute did not apply.

The court speculated that the legislature probably intended for the right to first refusal to apply in a case such as this since the statute was intended to grant relief to financially troubled farmers. However, the court refused to legislate, confirming the district court's interpretation of § 524.910(2).

### No Oral Contract Existed

Lastly, the Coles alleged that

First Bank orally agreed to sell the Coles a portion of the foreclosed property for a reduced price in the event First Bank was the highest bidder in the foreclosure sale. The court adopted the district court's factual findings. The court found that the Coles' problems with their line of credit began in December 1985. At that time, First Bank gave the Coles until April 1986 to pay their debts in full. In October 1986, a First Bank official met with the Coles and their sons in an effort to resolve the nonpayment of their loans and avoid future litigation; the official told them that if they would deed the property to First Bank, First Bank would sell them six acres for \$10,000 and would finance the sale. However, First Bank and the Coles did not discuss the particular terms of the deal, and the Coles did not act upon this offer. The court agreed with the district court's characterization of the conversation as preliminary negotiations instead of an agreement.

The court found further evidence that supported First Bank's claim. A letter written to the Coles by their attorney stated that First Bank would be more willing to consider a settlement if one could be obtained without litigation. This supported the bank's assertion that the offer was made to avoid litigation expenses. Finally, the court cited the Coles' inaction in other dealings with First Bank as evidence that the Coles took no action on the bank's offer and that no oral agreement existed. The court held that the Coles failed to meet their burden of proof to show by clear and convincing evidence that a contract existed.

Jonathan Barrish

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## New York Court Upholds Rent Control Regulations Which Broaden the Definition of Family to Include Adult Lifetime Partners

In *Rent Stabilization Association of New York v. Higgins*, 562

N.Y.S.2d 962 (A.D. 1 Dept. 1990), the Supreme Court of New York, Appellate Division, reversed a lower court decision enjoining the implementation of amendments to New York City rent control regulations. The new regulations broaden the definition of 'family' and increase the availability of rent control benefits.

### Background

The New York State Court of Appeals, in *Braschi v. Stahl Associates Co.*, 74 N.Y.2d 201, 544 N.Y.S.2d 784, 543 N.E.2d 49 (1989), recently held that the term "family," as used in the New York City rent control regulations, 9 NYCRR § 2204.6(d), Rent Control Law, included "two adult lifetime partners whose relationship is long term and characterized by an emotional and financial commitment and interdependence." 74 N.Y.2d at 211. In late 1989, the State Division of Housing and Community Renewal ("DHCR") began the process of amending its rent control and stabilization regulations by promulgating an emergency rule in accord with the *Braschi* definition of family. The emergency rule broadened the definition of family members entitled to rental succession rights.

The prior rent stabilization regulations provided for succession in two circumstances: first, where the family member had resided with the named tenant from the beginning of the tenancy and the named tenant vacated the premises, 9 NYCRR § 2523.5[b][1] (1987), and second, where the family member had resided with the named tenant for at least two years immediately prior to the death of the named tenant. 9 NYCRR § 2523.5[b][2] (1987). The emergency rule promulgated by the DHCR abolished the distinction between the named tenant's death or mere departure. Upon the named tenant's abandonment of the premises, a family member could succeed to the rights of the tenant, after residing with the tenant from the start of the lease or for at least two years. In addition, the emergency rule listed eight specific factors to be considered in determining whether the requisite emotional