



IN THE COURT OF APPEALS OF IOWA

91

THE FEDERAL LAND BANK OF OMAHA,
A Corporation,

Plaintiff-Appellee,

vs.

CARL DEJOODE AND LINDA DEJOODE,

Defendants-Appellants.

)

)

)

)

)

Filed
February 26, 1986

5-806
85-464

Appeal from the Iowa District Court for Marion County (No. 21968), Michael
J. Streit, Judge.

The defendants have appealed from appointment of a receiver of land
following a judgment of foreclosure obtained by plaintiff bank. **AFFIRMED.**

Marlyn S. Jensen, Osceola, for the defendants-appellant.

James D. Meyer of the Meyer Law Firm, Chariton, for the
plaintiff-appellee.

Heard by Oxberger, C.J., Snell, and Hayden, JJ.

The defendants, Carl and Linda DeJooode, have appealed from appointment of a receiver of land which was owned by the DeJoodes prior to a judgment of foreclosure obtained by plaintiff bank. We affirm.

The Federal Land Bank of Omaha held a mortgage against farmland owned by the DeJoodes. When they failed to pay off the underlying debts, the bank obtained a judgment of foreclosure. At a subsequent auction, the Federal Land Bank purchased the land for \$155,000, leaving a deficiency of about \$8800. The bank purchased the land subject to the DeJoodes' statutory right to redeem within one year and to retain possession for one year, pursuant to section 628.3 of the Code.

Following its purchase of the land, the bank filed a petition asking that a receiver be appointed to manage the land, as provided in a clause in the mortgage. After a hearing, the district court appointed a receiver.

The DeJoodes have appealed from the district court order, contending the appointment was not warranted under section 680.1 of the Code. The defendants claim there was no evidence or pleadings showing the property, its rent or profits, were in danger of being lost or impaired. In order to appoint a receiver pursuant to this section of the Code, such a showing must be made, and it must also be shown appointment of a receiver would not substantially infringe the rights of the mortgagor. Defendants further say the appointment violates their right to possession under section 628.3 of the Code.

The bank responds by saying that cases support the proposition that when a clause is included in the mortgage allowing appointment of a receiver, such proof is not necessary. Appointment is made pursuant to the contract, and not under the statute, the bank argues. The bank further states that once it is shown the security is insufficient the court is justified in appointing a receiver.

The defendants rely primarily upon statements made in Hartford Steam Boiler Inspection & Insurance Co. v. Alexander, 215 Iowa 573, 576, 246 N.W.2d 404, 405 (1933) indicating that "receivership provisions in a mortgage are remedial only." That case, however, dealt only with the question of whether a receiver should have paid out certain moneys during the course of his appointment. Id.

The supreme court has stated that even if the mortgage allows for appointment of a receiver, the court must look at the facts and circumstances of the parties' situation and determine for itself whether such an appointment is warranted. Sheakley v. Mechler, 199 Iowa 1390, 1394, 203 N.W. 929, 930 (1925). Explaining, the court went on to say, "In brief, under our law, a court of equity, if equitable grounds are shown, may appoint a receiver, with or without a stipulation in the mortgage; and it may refuse to appoint one in a given case, if the facts so warrant, even though the mortgage contains the usual and ordinary stipulation for the appointment of a receiver. . . . The power to appoint a receiver in a foreclosure suit is a power inherent in a court of equity, and is to be exercised or withheld according to the consideration of the rights and equities of all parties, as determined by the circumstances of the case." Id. The court went on to allow appointment of the receiver, as provided in the mortgage contract, since there was sufficient showing that the security was inadequate to satisfy the debt. Id. at 1396, 203 N.W. at 931.

The court has also stated that the parties can settle by contract the conditions for protecting the security offered. Hubbel v. Avenue Investment Co., 97 Iowa 135, 137, 66 N.W. 85, 86 (1896). There the court said:

We think a controlling fact in the case is the contract of the parties. The section¹ permits this appointment, independent of the agreement of the parties, if the facts exist under which such an appointment is authorized.

¹ Section 2903 Code Iowa 1896.

There is nothing in the section to restrict the right of parties, pending an action, to stipulate for the appointment of a receiver, or of the court to appoint one on such stipulation. Nor is there anything in the section intended to deny any rights to the court or to the parties, as to a receiver, that would have existed had the section not been adopted. Now, we think it is not to be seriously questioned that, without the section, the court could, by a stipulation of the parties, place the property in the hands of a receiver, to be held under its direction. And it seems to us equally clear that the parties could, by contract, when the property was pledged as security, settle the conditions on which it should be preserved and applied. The parties, in making the contract, seem to have been in such doubt, as to the sufficiency of the property as security, as to provide that if proceedings to foreclosure should be commenced, a receiver should take the rents and profits, and apply them, and otherwise preserve the property, under the direction of the court. We see nothing in such a contract that is unconscionable, or against public policy; nor do we see why it should not be enforced as the parties intended. The investment company took the property burdened with the encumbrances and its conditions.

Id. (also cited with approval and followed at Prudential Insurance Co. v. Puckett, 216 Iowa 406, 408, 249 N.W. 142, 143 (1933)). The Prudential case has also been cited by authorities as support for the statement "ordinarily, where the mortgage or other agreement contains such a stipulation, (for appointment of a receiver) the court will, in a proper case, appoint a receiver on the mortgagee's request, if not as a matter of course, at least on a showing of equitable grounds therefore" those equitable grounds involving a proof of inadequacy of security. 59 C.J.S. Mortgages § 663(a)(1949).

We find the holdings of the various cases to indicate that when an appointment of a receiver is made and there is no mortgage clause stipulation to such an appointment, the statute must be strictly complied with and the appointment will be limited. However, where such a stipulation is provided for in the contract, the appointment must be approved by the court. The court need not find the exact grounds as specified in the statute, but must find that

the security is inadequate to satisfy the debt. It will be in the court's sound discretion to allow or decline appointment of a receiver, such decision being made upon the circumstances of the parties and the record as a whole.

It has been established that appointment of a receiver may be made during the year of redemption if the mortgage so provides. In re Lindsay, 12 F. Supp. 625, 631 (N.D. Iowa 1935). Also, see Sheakley, at 1395, 203 N.W. at 931; Bain v. Washburn, 214 Iowa 609, 610, 243 N.W. 286 (1932).

There is no serious dispute here that the security is inadequate to satisfy the debt. We find the court did not abuse its discretion in appointing a receiver.

AFFIRMED.