IN THE COURT OF APPEALS OF IOWA

No. 5-531 / 94-1308

FILED
APR 23 1996
CLERK SUPREME COURT

BETTY J. GOLAY,

Plaintiff-Appellant,

vs.

DENNIS L. LOUX, VIRGINIA K. LOUX, ROBERT V. GRABINSKI, and **RONALD M. WHEELER,**

Defendants-Appellees,

and

KATHERYN A. GRABINSKI,

Defendant.

Appeal from the Iowa District Court for Cerro Gordo County, Paul W. Riffel, Judge.

Appeal from denial of petition to foreclose mortgage. **AFFIRMED.**

Joseph L. Marks of Marks, Marks & Marks, Urbandale, for appellant.

Douglas R. Grabinski of Grabinski Law Firm, Clear Lake, for appellees.

Considered by Sackett, P.J., and Huitink and Streit, JJ.

HUITINK, J.

This is an appeal from the district court's dismissal of the plaintiff's petition for foreclosure against defendants Grabinski and Wheeler. Our review of this equity action is de novo. Iowa R. App. P. 4. We affirm.

On October 10, 1984, the Estate of E. L. Hanson, as seller, and Dennis L. Loux and Virginia K. Loux, as buyers, entered into an installment real estate contract for the sale and purchase of the following-described real estate:

> The East Half (E½) of Lots One (1) and Two (2) and the Westerly Three (3) feet of Lot Three (3), All in Block Five (5) in Patriarchs Militant I.O.O.F., Park, Cerro Gordo County, Iowa.

The contract was recorded in the office of the Cerro Gordo County Recorder on October 12, 1984.

On August 1, 1985, the Louxes executed a written promissory note in the principal amount of $10,000 payable to Edna E. Hayden bearing interest at the rate of eleven percent per annum. At the same time they executed the note, they also executed and delivered to Ms. Hayden a real estate mortgage granting her a lien on the above-described real estate to secure payment of the promissory note. The real estate mortgage was also recorded in the office of the Cerro Gordo County Recorder on October 30, 1985.

On December 12, 1987, the Estate of E. L. Hanson served a notice of forfeiture of the real estate contract upon the Louxes. On January 12, 1988, an affidavit in support of the forfeiture of the real estate contract was recorded in the office of the

Cerro Gordo County Recorder. Edna E. Hayden was not served with a notice of forfeiture of the real estate contract despite the fact her real estate mortgage with respect to the property had been recorded on October 30, 1985.

The trial judge found the failure to serve Hayden with a copy of the forfeiture notice was in violation of Iowa Code section 656.2(2),[1] and noncompliance with the statute renders the forfeiture ineffective. *Jamison v. Knosby*, 423 N.W.2d 2, 5 (Iowa 1988). We agree.

On January 7, 1989, the Estate of E. L. Hanson conveyed its interest in the real estate by a court officer's deed to Robert V. Grabinski. The deed was recorded in the office of the Cerro Gordo County Recorder on April 25, 1989.

On May 12, 1989, Mr. Grabinski and his now-deceased spouse, Katheryn E. Grabinski, as sellers, and Ronald M. Wheeler, as buyer, entered into an installment real estate contract for the sale and purchase of the real estate. The contract was recorded in the office of the Cerro Gordo County Recorder on May 15, 1989.

Edna E. Hayden died testate on June 1, 1989. At the time of her death, she was still the owner of the previously-described promissory note and real estate mortgage executed by the Louxes. The estate was probated in Polk County, Iowa. During the

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[1] The vendor shall also serve a copy of the notice required in subsection 1 on the person in possession of the real estate, if different than the vendee, and on all the vendee's mortgagees of record. The vendee's mortgagees of record shall include all assignees of record for collateral purposes.

Iowa Code § 656.2(2) (1987 Supp.).

probate proceedings the promissory note and real estate mortgage were assigned and transferred to Ms. Hayden's children, Gary L. Hayden and Betty L. Golay. The assignment of mortgage, which was dated May 28, 1991, was recorded in the office of the Cerro Gordo County Recorder on June 6, 1991.

On May 28, 1991, Gary L. Hayden and his spouse assigned and transferred their interest in the real estate mortgage to Betty J. Golay. Said assignment was also filed with the Cerro Gordo County Recorder on June 6, 1991. On May 29, 1991, Gary L. Hayden assigned and transferred to Betty J. Golay his interest in the promissory note.

Betty J. Golay, the plaintiff herein, is presently the owner and holder of the promissory note and real estate mortgage the Louxes gave Edna Hayden. She filed a petition on October 7, 1991, seeking a judgment on the note and foreclosure of the real estate mortgage. The Louxes, Grabinski, and Wheeler were named as defendants. Golay claims her interest in the real estate is superior to the interest of any of the defendants.

On July 2, 1992, Robert V. Grabinski and Ronald M. Wheeler caused a notice of forfeiture of the real estate contract to be served upon the Louxes. On September 23, 1992, a notice of forfeiture of the real estate contract was served on Golay. Neither the Louxes nor Golay tendered any sums requested in the notices. On April 26, 1993, defendants Grabinski and Wheeler filed an affidavit in support of forfeiture of real estate contract with the Cerro Gordo County Recorder.

The trial court found Golay was entitled to a judgment on the note against the Louxes for the principal balance, accrued interest, and attorney fees. The court found Golay was not entitled to foreclosure of the mortgage which secured this indebtedness. The trial court wisely concluded any interest Golay had in the real estate was junior and inferior to the other defendants and had been forfeited by her failure to comply with the notice of forfeiture served upon her on September 23, 1992. Golay's petition was dismissed as to defendants Grabinski and Wheeler.

Golay appeals. She contends she was entitled to foreclose the mortgage and the district court erred in finding Grabinski and Wheeler had forfeited the Hanson Estate/Loux real estate contract. Golay claims the court officer's deed purports to convey only the real estate to Grabinski and not the estate's interest in the real estate contract. We reject this argument. While the parties stipulated the court officer's deed made no reference to the real estate contract, every conveyance of real estate passes all the interests of the grantor in the property, unless a contrary intent can be reasonably inferred from the terms used. *Davies v. Radford*, 433 N.W.2d 704, 705 (Iowa 1988). Grabinski took the real estate subject to the real estate contract and stepped into the shoes, and acquired the rights, of the vendor.

Golay also argues any interest Grabinski and Wheeler received in the real estate in 1989 was subsequent to Hayden's receipt of a mortgage interest in 1985 and their interests are therefore junior to the interest Hayden acquired. This argument overlooks the fact that Grabinski's and Wheeler's interests follow from the interest of the original

vendor, the Hanson Estate. When Hayden acquired her mortgage interest she had record notice her interest was subject to the superior interest of the Hanson Estate. Grabinski is the successor in interest to the vendor and is vested with all of the rights of the vendor, including the right of forfeiture. *Moore v. Elliott*, 213 Iowa 374, 377, 239 N.W. 32, 34 (1931).

Grabinski, as successor to the vendor, commenced forfeiture proceedings in 1992, and the notice required by section 656.2(2) was served upon Golay. To preserve her rights as a mortgagee, Golay could have taken steps to terminate the forfeiture. Iowa Code § 656.4 (1987).[2] Golay did not do so, and her junior position as mortgagee gave way to the superior rights of Grabinski. The trial court was correct in denying Golay's petition for forclosure.

AFFIRMED.

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[2] **Compliance with notice.**
If the vendee or a mortgage of the real estate performs, within thirty days of completed service of notice, the breached terms specified in the notice and pays the vendor the reasonable cost of serving the notice, then the right to forfeit for the breach is terminated. The payment of attorney fees pursuant to section 656.7 is not necessary to comply with the notice and prevent forfeiture.
Iowa Code § 656.4 (1987).