FILED
AUG 26 1980
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

FREDERICK NICKLAS and N. CHARLENE NICKLAS, Plaintiffs-Appellees, vs. LLOYD J. WOODS and BARBARA D. WOODS, JOHN C. STODDARD and FEROL E. STODDARD, Defendants, and RAMCO, INC., Defendant-Appellant.	Filed August 26, 1980 0-188 2-62434

Appeal from Linn District Court - Robert Osmundson, Judge.

Defendant Ramco, Inc., appeals from the trial court judgment determining that Woods, a judgment-debtor of plaintiffs, had an equitable interest in real estate in the amount of $4,405.24. - Reversed and remanded.

F. James Bradley & Gregory M. Lederer, of Simmons, Perrine, Albright & Ellwood, Cedar Rapids, for defendant-appellant.

Lloyd Humphreys, of Humphreys & Associates, and N. E. Lillios, Cedar Rapids, for plaintiffs-appellees.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

Defendant, Ramco, Inc., appeals in an action which judgment-creditor, plaintiffs sought to have the court ascertain interests of parties in real estate and where trial court determined judgment-debtor, Lloyd Woods, had an equitable interest valued at $4,405.24. We reverse and remand.

In June, 1970, Woods purchased property on contract. At that same time, Woods borrowed $5000 from Ramco, Inc. and executed a document which evidenced a security interest in the property. Woods and Ramco entered into an agreement concerning coin-operated vending, music and amusement machines placed on property with proceeds to apply to loan repayment. In February, 1971, Woods was unable to perform obligations of the real estate contract, and Ramco took possession and assumed ownership. Ramco notified original vendors of this transfer.

Plaintiffs became judgment-creditors of Woods in 1972 and levied execution on property held by Woods on August 2, 1973. Plaintiffs initiated equitable proceedings to determine interests in aforementioned property and named Ramco as a defendant. The trial court found Woods had an equitable interest in the property but had abandoned that interest. Upon appeal, this court reversed that decision and remanded to lower court for determination of the extent of Wood's interest.

The trial court determined the interest to be in the amount of $4,405.24 which represented Wood's down payment and installment payments on the real estate contract minus the outstanding balance on the Ramco loan. Ramco appeals this order. Being in equity, our review is de novo. Iowa R. App. P. 4.

The equitable proceedings are in the nature of those provided in section 630, The Code 1979. This statute allows a court of equity to examine, ascertain and enforce liens on interests in real property.[1] The court may fashion appropriate modes to satisfy judgments such as payment by third party in possession in lieu of execution sale. See § 630.6, The Code 1979.

Of the issues and arguments raised on appeal, we find merit in Ramco's challenges to sufficiency of evidence and method of valuation.

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[1] Usually, this action is employed to reach property conveyed to defraud creditors.

The trial court found plaintiff had shown by preponderance of the evidence that Woods had acquired an interest in the property between June, 1970, through January, 1971. We agree.

Ramco alleges the court had insufficient evidence to determine amount of repayment on Ramco's loan. The record shows evidence of the agreement concerning the vending machines proceeds shared on a 50-50 basis. No records were kept by either party to verify specific amounts received or allocated to repayment. Ramco, Woods and the present tenant estimated average monthly proceeds. Detailed monthly figures were offered by another tenant for the year 1973. It was on this last evidence the court determined an average monthly figure to compute repayment amount. The trial judge applied 6% interest to the loan in absence of evidence of this provision. We find, while not exact, the evidence is sufficient to sustain the trial court's determination concerning the loan repayment. See Merchants' National Bank v. Crist, 98 Iowa 258, 118 N.W. 394 (1904).

There is no dispute before us concerning payments on the real estate contract, therefore, we agree with the trial court's finding of Wood's interest in that it represents $4,405.24 of the $45,000 contract price.

Ramco argues the value of Woods' interest fluctuates in relation with the valuation of the real property. Ramco asserts the value has fallen below the original contract price of $45,000. The trial court did not consider a change in the value of property, but, in effect, held that it remained constant at the contract price. We disagree. However, Ramco, as title holder, would be entitled to retain his investment should this lien be satisfied by execution sale. In this case, no sale is contemplated, rather payment in lieu of sale by Ramco to the judgment-creditors.

Ordinarily the value of the property at execution sale determines what is available to satisfy the lien. See Allen v. Kemp, 29 Iowa 452 (1870). Following Allen, the value of the property at time of payment in lieu of sale should determine what is available as Woods' interest. This requires a determination of the present fair market value.

We are asked to make our own findings as to the present fair market value, but are unable to do so on the basis of the record submitted.

Although extremely reluctant to prolong this matter, we must remand to the

lower court for a determination of the present fair market value of the property to determine if reduction in value has occurred. If a reduction in value is thus determined, Woods' interest shall be reduced by the amount needed to retain Ramco's investment in the amount of $40, 594.76. If no reduction in value is ascertained, the Woods' interest in the amount of $4,405.24 is determined.

REVERSED AND REMANDED.