IN THE COURT OF APPEALS OF IOWA

No. 4-108 / 93-0576

FILED
SEP 16 1994
CLERK SUPREME COURT

**FARM CREDIT BANK OF OMAHA,
Formerly The Federal Land
Bank of Omaha, A Corporation,**

Plaintiff-Appellee,

**vs.**

**CORNERSTONE DEVELOPMENT;
SAM KENNEDY III, Partner;
ERNEST MILLER, Partner;
SAM KENNEDY III, Individually;
and ERNEST MILLER, Individually,**

Defendants-Appellants.

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Appeal from the Iowa District Court for Cerro Gordo County, Jon Stuart Scoles, Judge.

Defendants appeal from an order of the district court approving the sale of certain property in receivership to Terry Kieweiet. **AFFIRMED.**

Stanley J. Thompson of Davis, Hockenberg, Wine, Brown, Koehn & Shors, P.C., Des Moines, for appellants.

Thomas W. Lipps and Martin W. Peterson of Peterson and Lipps, Algona, for Terry Kiewiet.

Dale L. Putnam of Putnam and Strand Law Office, Decorah, for appellee Farm Credit Bank of Omaha.

Heard by Donielson, C.J., and Sackett and Habhab, JJ.

**HABHAB, J.**

The defendants, Sam Kennedy III and Ernest W. Miller, individually and as general partners of Cornerstone Development ("Cornerstone") appeal from an order of the district court approving the sale of certain property in receivership to Terry Kiewiet. We affirm.

In 1985 Cornerstone entered into an option to purchase real estate for the amount of $35,000 from Ris-Van Farms, Ltd. Cornerstone paid $1000 for this option, the remaining $34,000 to be paid in three annual installments. The property in question consisted of thirteen acres of land located at the intersection of old Highway 106 and Interstate 35 in Clear Lake. In 1988, Ris-Van assigned the option to Farm Credit Bank of Omaha (FCBO).

On May 8, 1990, FCBO filed a petition for strict performance, requesting that Cornerstone perform on its option to purchase the real estate, or in the alternative, have judgment entered in the amount of $34,000 plus interest and punitive damages. In April 1991 the parties entered into a stipulation providing Cornerstone would purchase the real estate on contract from FCBO, and that if Cornerstone defaulted, a receiver would be appointed to sell the property and a default judgment would be established. Cornerstone would also pay any difference between the net sale price and the $34,000 balance due. The district court approved the stipulation.

Cornerstone failed to make the payment due in March 1992. FCBO subsequently filed a motion to appoint a receiver. The district court appointed a receiver, Jack Dominic. In June 1992 the receiver entered into a purchase agreement with Terry Kiewiet, who agreed to purchase the property for $25,000. FCBO filed a motion for court approval of the sale. Cornerstone resisted the motion, requesting the court set aside the order approving FCBO's application. Following a hearing, the district court set aside the previous order approving the sale because FCBO had not given Cornerstone proper notice. FCBO then filed a motion for a rehearing.

On September 18, 1992 Denise Kennedy, Sam's wife, presented an offer to buy the property for $38,000. That offer, however, expired on September 21, 1992. On November 11, Denise renewed her offer. This offer was to expire the next day. At a hearing in November 1992 the district court was faced with two offers: Kiewiet's offer of $25,000 and Denise Kennedy's offer of $38,000. The district court concluded the receiver should pursue the higher offer, and ordered the receiver to cooperate in the sale of the property to Denise Kennedy. Kiewiet's offer would be accepted only if Denise Kennedy failed to close on the property by December 11, 1992.

Denise subsequently undertook performance of the contract to purchase the property. She ordered and received a title opinion. The title opinion revealed eight

objections to the title, the most significant of which was the recorded real estate contract in favor of Cornerstone from March 18, 1991. The title examiner stated this contract created a cloud on the title which had to be removed by forfeiture proceedings pursuant to Iowa code chapter 656.

FCBO contended the contract was terminated by implication and agreement by virtue of the stipulation and order of April 14, 1991, providing for the sale of the property. FCBO also argued if there was a legitimate title objection, the simple cure would be for Cornerstone, the contract purchaser, to give Denise Kennedy, the property purchaser, a quit claim deed.

Denise refused to close on the date fixed by the court, i.e., December 11, 1992. Sam Kennedy and Miller filed a motion to compel clear title and sale completion. The receiver then sold the property to Kiewiet. On December 15, 1992, Kiewiet delivered to the receiver the $25,000 payment. After the sale, FCBO filed a resistance to Kennedy and Miller's motion to compel clear title. At the hearing on the motion, FCBO agreed that Denise would be given an opportunity to purchase the property if certain conditions were met. First, Denise was required to provide $38,000 to the receiver by January 8, 1993, by noon. Cornerstone would also provide a quit claim deed to cure the title objection. Last, Kiewiet would have to agree.

The title objection was cleared and Kennedy tendered to the receiver $38,000 on January 8, 1993. Kiewiet, however, filed an objection. At a hearing, the district court ratified the sale of the property to Kiewiet. Cornerstone and the Kennedy's appeal.

Cornerstone argues the sale to Kiewiet did not conform to the district court's order of November 18, 1992, and that FCBO engaged in inequitable conduct. Cornerstone claims because the sale to Kiewiet was invalid, the district court had the power to set aside the sale. Cornerstone further claims FCBO obstructed the transaction with Denise Kennedy by failing to remove objections from the title.

Cornerstone argues Denise Kennedy would not have missed the December 11, 1992, deadline had FCBO cooperated. Cornerstone claims FCBO therefore has "unclean hands" and should not be allowed to profit from its actions. Cornerstone also argues the district court should have set aside the receiver's sale since the sale of the property was not for the highest possible price.

In equity action such as this, our scope of review is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings but are not bound by them.

Iowa Code section 624.33 provides, "A conveyance by a commissioner shall not pass any right until it has been approved by the court, which approval shall be indorsed on the conveyance and recorded with it."

> Where a contract is made by a receiver under the authority of the appointing court, or where the court ratifies a contract of the receiver, the court is bound to enforce such contract, and the court cannot anul such a contract at its pleasure.

66 Am. Jur. 2d Receivers § 238 (1971). Also 75 C.J.S. Receivers § 243(a) provides:

> Generally, a sale by a receiver is not complete and binding and the purchaser acquires no title thereunder until the sale is confirmed by the court, unless the sale is made in conformity with authority to sell on specified terms expressly given beforehand.

The sale occurred pursuant to a court order since the order entered November 18, 1992, authorized the receiver to sell the property to Terry Kiewiet for the sum of $25,000, if Denise Kennedy did not close on December 11, 1992. From our de novo review of the record, we, like the trial court, find that FCBO's conduct was not inequitable. We tend to agree with the trial court that if anyone was guilty of inequitable conduct, it was Cornerstone.

Cornerstone also claims Kiewiet's offer should not have been approved because it was less than Denise Kennedy's offer. "Mere inadequacy of price is not a ground for objection to the confirmation of sale unless it is so great as to shock the conscience." 66 Am. Jur. 2d Receivers § 409 (1971). Kiewiet's offer exceeded the appraisal value by $1500.

We find the district court did not err in refusing to vacate or modify the confirmation of the sale to Kiewiet. Costs on appeal are assessed to the appellant.

**AFFIRMED.**

Donielson, C.J., concurs; Sackett, J., dissents.

**SACKETT, J.** (dissenting)

The question before us is whether a receiver faced with two offers to purchase real estate should be authorized to accept the lesser offer when the only problem in consummating the higher offer is a title problem that the receiver has the power to remedy.

The receiver's action in accepting the higher offer left plaintiff holding a $13,000 deficiency judgment against defendant that had the higher offer been received would not have existed.

I can not agree with the majority that the receiver acted equitably under these circumstances.