FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-351 / 88-1670

BancPLUS MORTGAGE CORP.,
a Texas Corporation,

Appellant,

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vs.

RONALD G. OAKES and **KATHLEEN E. OAKES,**

Appellees.

Appeal from the Iowa District Court for Scott County, Charles H. Pelton, Judge.

Plaintiff appeals from a district court judgment determining that plaintiff's deficiency judgment in its foreclosure action against the Oakes be limited to $6,000 based on plaintiff's failure to avoid additional losses. **AFFIRMED.**

Brian W. Peters of Healey & Peters, Dubuque, for appellant.

Marc R. Engelmann of Wells, McNally & Bowman, Davenport for appellees.

Considered by Oxberger, C.J., Sackett and Habhab, JJ.

OXBERGER, C.J.

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BancPlus Mortgage Corporation (BancPlus) appeals from a district court judgment determining that BancPlus's deficiency judgment in its foreclosure action against the Oakes be limited to $6,000 based on their failure to avoid additional losses. BancPlus contends that the district court erred in: (1) determining that BancPlus failed to mitigate its damages by not accepting the Oakes' offer of a deed and an unsecured note for the entire debt in lieu of foreclosure; and (2) determining that the Veterans Administration (VA) could bind BancPlus to accepting the Oakes' offer. Our scope of review in such equity matters is de novo. Iowa R. App. P. 4. We affirm.

In 1980, the Oakes received from Banco Mortgage Corporation (predecessor to BancPlus) a Veterans Administration guaranteed loan for $43,000 to purchase some property in Davenport.

The Oakes later experienced money problems and attempted to negotiate a settlement of their loan. In March 1986, the VA informed the Oakes to default on their payments in order to allow BancPlus and the VA to take the property back in lieu of foreclosure. The Oakes offered to pay any deficiency as it existed in April 1986. A VA appraiser estimated this deficiency to be $6,000.

In October 1986, the VA decided the Oakes were not financially capable of paying the $6,000 note and refused to accept their deed and note.

The parties stipulated that the "ultimate negotiations were between the Plaintiff [BancPlus] and the Veteran's Administration and that in March 1986 the Defendants [the Oakes] were informed by Veteran's Administration to default on their payments in order to allow the Plaintiff and Veteran's Administration to take the property back in lieu of foreclosure."

In their brief BancPlus explained the reason VA took the lead role in negotiations was because the regulations for VA guaranteed loans require any change in loan terms must be made by VA, not the mortgage lender.

In March 1987, BancPlus filed its petition for foreclosure. Judgment was entered and filed in January 1988. The foreclosure judgment reserved the issue as to the Oakes' liability for any deficiency over $6,000. Since April 1986, the property had declined further in value.

Following a hearing on stipulated facts, the district court determined that BancPlus was bound by the VA negotiations and was limited to a deficiency judgment of $6,000. BancPlus has appealed.

BancPlus contends the district court erred in holding that they failed to mitigate their damages by failing to accept a deed in lieu of foreclosure and an unsecured note.

We find the district court properly applied the doctrine of avoidable consequences to find that BancPlus failed to mitigate its damages. See 22 Am. Jur. 2d Damages § 495, at 579 (1988). BancPlus has a duty to mitigate its

damages. See Iowa Power and Light Co. v. Bd. of Waterworks, 281 N.W.2d 827, 833 (Iowa 1979); DeWaay v Muhr, 160 N.W.2d 454, 456-57 (Iowa 1968). Here the damages amount to the $6,000 deficiency plus "interest on the note, expenses of litigation, maintenance of the premises, and apparently, reduced market value." The district court found that BancPlus acted unreasonably in rejecting the Oakes' offer of deed in lieu of foreclosure and an unsecured note. Consequently, the court reduced BancPlus's recovery "by the amount that could have been reasonably avoided." We find no error in the district court on this issue.

BancPlus next contends the district court erred in finding the VA acted as agent for BancPlus.

We agree with the district court's analysis. The district court reviewed the stipulated record and concluded that the VA acted with apparent or actual authority from BancPlus in settlement negotiations with the Oakes.

The stipulated record states:

> 6. That in June of 1984 the Defendant Ronald G. Oakes had lost his job and from June of 1984 through March of 1986 the Defendants were in contact with and attempted to negotiate with the Plaintiff [BancPlus] some sort of resolution of the economic needs of the Plaintiff and the Defendant.
>
> 7. That between June of 1984 and March of 1986 the ultimate negotiations were between the Plaintiff and the Veterans Administration and in March of 1986 the Defendants were informed by the Veterans Administration to default on their payments in order to allow the Plaintiff and Veterans Administration to take the property back in lieu of foreclosure.

Further, the record indicates that the Oakes were informed by VA to default on their payments in March 1986. Five months later, in October, they were told that the $6,000 difference between the appraised value of the property and the remaining balance on the note and mortgage was too much financial obligation for them to assume and that a foreclosure was the only alternative. However, the Oakes continued to offer a deed in lieu of foreclosure and an unsecured note for the $6,000 deficiency.

The principle of "'estoppel is an equitable doctrine invoked to avoid injustice in particular cases.'" Iowa-Ill. Gas and Electric Co. v. State Com. Comm'n, 412 N.W.2d 600, 606 (Iowa 1987) (citing Heckler v. Community Health Services Inc., 467 U.S. 51, 59, 104 S. Ct. 2218, 2223, 81 L. Ed. 2d 42, 51 (1984)). The district court applied the principle of equitable estoppel and found that BancPlus represented that it would accept the Oakes deed in lieu of foreclosure and a $6,000 deficiency and that the Oakes relied upon that representation. Accordingly, the district court concluded that BancPlus was estopped from any damages in excess of thereof. In reviewing the stipulated record we find no error in the district court's analysis.

We fail to find any error in the district court's decision to limited BancPlus's deficiency judgment in its foreclosure action to $6,000 based on their failure to avoid additional losses. We affirm the decision of the district court on all accounts.

AFFIRMED.