IN THE COURT OF APPEALS OF IOWA

FILED
DEC 22 1988
CLERK SUPREME COURT

FEDERAL LAND BANK OF OMAHA, a Corporation,	)	
Plaintiff-Appellee,	)	
vs.	)	
RICHARD L. HARDEN, JANICE HARDEN a/k/a JANICE E. HARDEN,	)	8-121 86-862
Defendants-Appellants,	)	
CITIZENS STATE BANK,	)	
Defendant.	)	

Appeal from the Iowa District Court for Wayne County (No. 20802), Michael J. Streit, Judge.

The Hardens appeal a district court judgment foreclosing the Bank's mortgage on the Hardens' farm property. **AFFIRMED.**

Janice E. Harden and Richard L. Harden, Lineville, pro se.

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

Rodney P. Kubat of Whitfield, Musgrave, Selvy, Kelly & Eddy, Des Moines, for defendant Citizens State Bank.

Heard by Oxberger, C.J., and Donielson and Schlegel, JJ.

OXBERGER, C.J. 87

The Hardens executed a promissory note in favor of the Bank for $110,000 in February 1977. The Hardens' farm was mortgaged to secure this note. The Hardens failed to make their 1982, 1983, 1984 and 1985 annual payments and had been advanced over $9,000 to pay delinquent real estate taxes. On June 7, 1985, the Bank petitioned to foreclose its real estate mortgage on the Hardens' farm. On July 26, 1985, the Hardens filed a Chapter 7 bankruptcy. The automatic stay was lifted on February 20, 1986, and Hardens' debts were discharged. The foreclosure action was again pursued and the district court granted the Bank's motion for summary judgment. Judgment in rem was entered and the Hardens appealed. The Hardens raise a number of issues on appeal. Our scope of review of this action in equity is de novo. We affirm.

I. Jurisdiction

The Hardens contend the district court lacked jurisdiction to foreclose on land which was acquired initially by federal land patents in the 1800s. They argue because their land was acquired pursuant to a federal treaty, under the Supremacy Clause the State court lacks jurisdiction over such land.

Iowa Code section 654.1 provides that ". . . a deed of trust or mortgage of real estate shall not be foreclosed in any other manner than by action in court by equitable

68

proceedings." Iowa Code § 654.1 (1985). See also Iowa Code § 611.5 (1985). The district court is a court of law and equity and has jurisdiction in civil and criminal matters arising in their respective districts. IA Const art. v, § 6. We find the district court does not lack jurisdiction in this mortgage foreclosure matter.

II. Mortgage

The Hardens contend the district court erred in determining the homestead was liable on the debt and could be foreclosed upon. Hardens contend the homestead is "sacred" and should never be foreclosed upon. Iowa Code section 561.21(2) provides:

> The homestead may be sold to satisfy debts of each of the following classes:
>
> 2. Those created by written contract by persons having the power to convey, expressly stipulating that it shall be liable, but then only for a deficiency remaining after exhausting all other property pledge by the same contract for the payment of the debt.

Iowa Code § 561.21(2) (1985).

Hardens executed a mortgage with the Federal Land Bank encumbering their homestead as security for a $110,000 note. This mortgage contained an express stipulation that their homestead would be liable for the debt. Summary judgment is proper when there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c) While we understand the trauma to the farmer which

accompanies such legal action, we find summary judgment was proper and that the Harden homestead was liable on the debt pursuant to the mortgage and was properly foreclosed upon. Appellants failed to raise any material issues.

III. Iowa Code Chapter 654

Hardens also contend Iowa Code chapter 654 unconstitutionally deprived them of their right to a jury trial. Iowa Code chapter 654 deals with the foreclosure of real estate mortgages. Section 654.1 provides that "a mortgage of real estates shall not be foreclosed in any other manner than by action in court by equitable proceedings." Iowa Code § 654.1 (1985). Constitutional guarantee of right of trial by jury does not apply to actions properly triable in equity. Broulik v. Henderson, 218 Iowa 640, 254 N.W. 63 (1934). All issues shall be tried to the court except those for which a jury is demanded. Iowa R. Civ. P. 178. A demand for a jury trial in a civil action must be made pursuant to the provisions of Iowa Rule of Civil Procedure 177. We fail to find the appellant was unconstitutionally deprived of a right to a jury trial under Iowa Code chapter 654.

IV. Iowa Code Chapter 560

Hardens also claim the district court erred in allowing the sheriff's sale despite Hardens' Iowa Code chapter 560 action. This appeal involves the propriety of the trial court in sustaining the Bank's motion for summary

judgment. On this issue, Hardens seek review of events subsequent to the decree. This issue is not properly before the court on appeal as it is not part of the record. Iowa R. App. P. 10. This issue was made the subject of a separate appeal No. 86-1287.

V. Foreign Corporation

The Hardens claim that the district court erred in permitting the Bank, as an unregistered foreign corporation, to pursue an action in Iowa courts under Iowa Code section 496A.120. This identical issue was recently decided by the South Dakota Supreme Court and the North Dakota Supreme Court. See Federal Land Bank of Saint Paul v. Gefroh, 390 N.W.2d 47 (N.D. 1986); Federal Land Bank of Omaha v. Feit, 368 N.W.2d 592 (S.D. 1985). Federal land banks are "federally chartered instrumentalities of the United States." 12 U.S.C. § 2011. See also Federal Land Bank of St. Paul v. Bismarck Lumber Co., 314 U.S. 95 (1941). Each federal land bank is a "body corporate" which has the power to sue and be sued. 12 U.S.C. § 2012(4). Corporations created by the authority of the United States are not foreign corporations but have a legal existence in every state in which they may transact business pursuant to the authority conferred upon them by Congress. Federal Land Bank of Saint Paul v. Gefroh, 390 N.W.2d 46, 47 (N.D. 1986) (citing Federal Land Bank of Omaha v. Feit, 368 N.W.2d 592, 595 (S.D. 1985). See also Fischer &. VanGilder

v. First Trust Joint-Stock Land Bank, 210 Iowa 531, 231 N.W. 671 (1930). Thus, we conclude that the Bank, as a federally chartered corporation, is not a "foreign corporation" subject to Iowa Code section 496A.120 and therefore is not required to obtain certificate of authority in order to maintain this action.

VI Disqualifying Counsel

Hardens claim the district court erred in not disqualifying the Bank's counsel from representing the Bank because he is a named defendant in the Hardens' bankruptcy action. The appellants cite canons 1, 5 and 9, and Disciplinary Rules 1-102(A)(5), 5-107(A)(1) and 9-101 from the Iowa Code of Professional Responsibility for Lawyers. We fail to find this authority applicable and further fail to find merit in the appellants' contention.

VII. Decree of Foreclosure

Applicants' final contention is the district court's decree of foreclosure did not properly consider and respond to the Hardens' arguments. After hearing arguments of both parties on the merits of the Bank's motion for summary judgment, the trial court sustained the motion. The court's judgment in a mortgage foreclosure action must comply to Iowa Code section 654.5. Our review of the decree of foreclosure in this case reveals full compliance. We fail to find any deficiencies in the trial court's decree of foreclosure.

v. First Trust Joint-Stock Land Bank, 210 Iowa 531, 231 N.W. 671 (1930). Thus, we conclude that the Bank, as a federally chartered corporation, is not a "foreign corporation" subject to Iowa Code section 496A.120 and therefore is not required to obtain certificate of authority in order to maintain this action.

VI Disqualifying Counsel

Hardens claim the district court erred in not disqualifying the Bank's counsel from representing the Bank because he is a named defendant in the Hardens' bankruptcy action. The appellants cite canons 1, 5 and 9, and Disciplinary Rules 1-102(A)(5), 5-107(A)(1) and 9-101 from the Iowa Code of Professional Responsibility for Lawyers. We fail to find this authority applicable and further fail to find merit in the appellants' contention.

VII. Decree of Foreclosure

Applicants' final contention is the district court's decree of foreclosure did not properly consider and respond to the Hardens' arguments. After hearing arguments of both parties on the merits of the Bank's motion for summary judgment, the trial court sustained the motion. The court's judgment in a mortgage foreclosure action must comply to Iowa Code section 654.5. Our review of the decree of foreclosure in this case reveals full compliance. We fail to find any deficiencies in the trial court's decree of foreclosure.

Upon our de novo review, we affirm the trial court.

AFFIRMED.