

FILED

AUG 23 1989

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-239 / 88-1543

SUN SAVINGS BANK,

Appellee,

625

vs.

MELVIN E. DREIER,

Appellant.

Appeal from the Iowa District Court for Franklin County, Gilbert K. Bovard, Judge.

Appellant appeals a district court ruling providing for reimbursement of property tax payments paid by appellee out of receivership funds and then discharging the receiver.

AFFIRMED.

Raymond P. Drew of Hobson, Cady & Drew, Hampton, for appellant.

Michael J. Cunningham of Adams, Howe & Zoss, Des Moines, for appellee.

Heard by Donielson, P.J., and Schlegel and Habhab, JJ.

SCHLEGEL, J.

Defendant appeals a district court ruling providing for reimbursement of property taxes paid by the plaintiff out of receivership funds and then discharging the receiver. We affirm.

Defendant contends the plaintiff was not entitled to reimbursement of the real estate taxes. Defendant also contends that the prior district court ruling established Sun Bank's nonentitlement to reimbursement.

In 1986, the predecessor to the Sun Savings Bank (Bank) filed foreclosure actions against real estate owned by defendant Dreier in Butler and Franklin County. In December 1987, the Bank paid real estate taxes on the two respective properties. In April 1988, the Bank filed its verified statement of protective advancements pursuant to Iowa Code section 629.1. Eventually, in March and April 1988, judgment of foreclosure was entered against Dreier. A receiver was then appointed over the property.

Prior to the sheriff's sale of the respective properties, the Bank paid additional real estate taxes on the properties. At the sheriff's sale, the Bank bid in the full amount of its judgment on the Franklin County Property.

Dreier then filed applications seeking to terminate the receiverships. The Bank also filed an application to supplement its prior judgments because of real estate taxes

Two different results were reached by the trial courts. The first court determined that the Bank would get no receivership funds and then set the case for a hearing on who would. The second court presiding at the hearing determined that the Bank should get reimbursed. Appellant contends that the first ruling by the trial court was correct and the court's second ruling was either incorrect or should have followed the law as determined by the earlier court.

The appellant agrees that the Bank was entitled to the taxes under the protection of Iowa Code section 654.14 if it claimed them before the statutory redemption period began. Appellant contends that once the redemption period began the Bank was required to file under Iowa Code chapter 629 in order to recover the advancement. In construing a statute we presume that a reasonable result was intended. Iowa Southern Utilities Co. v. Iowa State Commerce Commission, 372 N.W.2d 274, 278 (Iowa 1985). The only part of chapter 629 regarding filing states: "[the lienholder] may file with the clerk of the district court." The first court construed section 629.4 as requiring filing in order to recover an advancement. That section states as follows:

When an advancement described in section 629.1 has been made by the holder of a junior or senior lien, the amount of that expenditure plus the interest on it shall be added to the amount of the lienholder's original lien and have the same priority as the original lien and the lienholder may recover the increased amount in any action brought for the foreclosure of the junior or senior lien referred to in the verified statement.

it had paid. On August 10, 1988, the district court entered an order terminating the receiverships and denying the Bank's application. The court also concluded that a hearing should be held to determine the proper distribution of the funds held by the receiver.

The district court, presiding at the hearing, required the receiver to reimburse the Bank for real estate taxes paid pursuant to Iowa Code section 654.14. The court further ruled that it would discharge the receiver following this disbursement.

This is an equitable action and as such our review is de novo. Iowa R. App. P. 4. However, the appellee contends that the proper scope of review is to find an abuse of discretion by the trial court. The appellee bases this argument on the discretion allowed to a trial court in establishing a receivership and in determining receivership fees. South Ottumwa Savings Bank v. Sedore, 394 N.W.2d 349, 352 (Iowa 1986); Herrick v. Davidson, 164 Iowa 462, 465, 145 N.W. 907, 907-08 (Iowa 1914). Establishing a receivership is merely a procedural action and the court should be given discretion. The statute specifically states that the court "may" establish a receivership. Iowa Code § 680.1. Iowa Code section 654.14(4) requires receivership funds to be paid and distributed as determined by the court. The statute itself provides a specific order of distribution, which takes the trial court's discretion away and requires this court to exercise de novo review.

The trial court held that in order to get the advancement the lien must be referred to in the verified statement. This would make sense as between two creditors with similar claims to the receivership funds. It does not make any sense to impose it as an absolute requirement to recovery against the debtor, who had actual knowledge of the claim against the property and of the taxes paid. In South Ottumwa Savings Bank, the debtor was not allowed to set aside an execution sale because of a mere technical mistake. The debtor in that case had actual knowledge of the circumstances and therefore could not show a substantial and justifiable prejudice resulting from the omission. South Ottumwa Savings Bank, 394 N.W.2d at 351. The appellant cannot claim that any prejudice would result from allowing the reimbursement. The district court specifically found that the debtor would receive a windfall if the appellee was not allowed to recover.

Iowa Code section 654.14 requires the receivership funds to be applied to the payment of taxes. It is reasonable to assume that this means persons who pay taxes in order to maintain the property. Both code sections only speak to means of recovering advancements. There is no specific requirement in either statute that filing occur before a creditor may be reimbursed.

The statutes in this instance are not entirely clear, but a reasonable interpretation of them will allow recovery

of the advancement. The debtor will receive an unjust enrichment if allowed to prevail. The bank paid the taxes in good faith, thereby preserving the property, and should be allowed to recover the amount it expended. The ruling of the district court, allowing the bank to recover, is affirmed.

AFFIRMED.