IN THE COURT OF APPEALS OF IOWA

No. 9-319 / 98-0666
Filed November 10, 1999

FIRST BANK AND TRUST COMPANY,
Plaintiff-Appellee,

vs.

LESTER W. STECKELBERG, and NORMA STECKELBERG,
Defendants-Appellants,

R.A. BARTOLOMEI, SPORER LAW FIRM, P.C., JOHNSON AUCTION, SALES AND REAL ESTATE, INC., DESOTO ELEVATOR, INC.,
Defendants.

SPORER LAW FIRM, INC.,
Plaintiff,

vs.

LESTER W. STECKELBERG, NORMA STECKELBERG, FIRST BANK AND TRUST COMPANY, KEITH EGGER, R.A. BARTOLOMEI, ROY THOMPSON, DOUGLAS EGGER, DELENE EGGER, JOSEPH STECKELBERG, JOHNSON AUCTION SALES AND REAL ESTATE, INC., DESOTO ELEVATOR, INC., and FARMERS COOPERATIVE COMPANY,
Defendant.

Appeal from the Iowa District Court for Guthrie County, Gregory H. Hulse, Judge.

The defendants Steckelbergs appeal from the district court's mortgage foreclosure decree. The defendants claim that the district court erred in determining that they were in default on the underlying loan and in calculating the amount the defendants owed the plaintiff. **AFFIRMED AS MODIFIED.**

Robert Kohorst of Kohorst Law Firm, Harlan, for appellants.

Dee Ann Wunschel and Russell S. Wunschel, Wunschel Law Firm, P.C., Carroll, for appellee.

Heard by Sackett, C.J., and Huitink and Mahan, JJ.

PER CURIAM

Defendants-Appellants Lester W. Steckelberg and Norma G. Steckelberg (Steckelbergs) appeal from the district court's decree foreclosing a mortgage the Steckelbergs gave to Plaintiff-Appellee First Bank and Trust Company (Bank) on real estate Steckelbergs owned in Guthrie County, Iowa. Steckelbergs contends (1) the district court should not have granted summary judgment foreclosing the mortgage because the note it secured was not in default, (2) the district court did not properly calculate the amount the Steckelbergs owed the Bank, and (3) Steckelbergs should have been awarded punitive damages because a bank officer engaged in self dealing and the Bank did not follow the banking regulations. We affirm as modified.

Before reaching appellants' arguments we need decide whether this appeal has been dismissed. The Steckelbergs, through their attorney, filed a timely notice of appeal and have filed appellant's briefs. This case was scheduled for oral argument on Wednesday, September 8, 1988. On September 3, 1999 Richard. A. Bartolomei[1], as attorney for Dean Williams, filed a dismissal of the appeal. This filing was not made until five days before scheduled oral argument despite the fact that the document Williams relied upon as his authority to dismiss was shown to have been recorded in Guthrie County on May 20, 1999.

---

[1]. We are unsure whether this is the same person as R.A. Bartolomei, a defendant in this suit. However, even if it is, the dismissal does not contend to be the dismissal of R.A. Bartolomei personally.

The Steckelbergs, through their attorney, filed a motion to strike the dismissal and it was resisted. We afforded all parties the opportunity to brief the issue.

Williams contends that he has a right to dismiss the appeal and has filed a copy of a document recorded in Guthrie County titled 'Quit Claim Deed and Assignment of Right of Redemption and Contact Right, et al. The document appears to describe the real estate foreclosed upon by the district court.

Steckelbergs do not deny signing the document but they contend (1) there was no consideration given; (2) it was obtained by fraud; (3) it was obtained by undue influence; and (4) it does not give Williams the right to dismiss this appeal. They also as a part of their resistance attached a document purported to be a copy of an alleged agreement between the Bank and Donald Dean Williams whereby the Bank agreed to sell the real estate foreclosed upon to Williams for $225,000.00. The agreement represented Williams, by proper documentation, had received all right, title and interest to said real estate, together with the right to dismiss any appeals filed by the Steckelbergs challenging the foreclosure and judgment entered in favor of the Bank.

The document which Williams contends gives him the right to dismiss this appeal is an assignment to Williams of Steckelbergs' redemption rights by way of a quit claim deed that specifies it conveys redemption rights to the land. The deed also contains the following language claimed by Williams to have assigned to him the right to dismiss this appeal. That language is, "we [grantors] ... convey to Dean Williams, Grantee, all of our right, tittle, interest, estate, contract seller's rights, claim, *appeal right,* homestead right, right of redemption from foreclosure, and demands of every kind, in, to, and arising out of each of our interests in the [real estate]".

The question we first address is whether this document is sufficient to assign to Williams the Steckelbergs' right to dismiss this appeal. We find it does not. In addition to the foreclosure, this case involves claims against the Bank and a challenge to the amount the district court determined Steckelbergs owed the Bank on a promissory note given by the Steckelbergs to the bank. There is no language in the deed assigning any rights to Steckelbergs' action seeking damages against the Bank or challenging the amount due on the promissory note. The clear language of the conveyance fails to assign all claims raised in this appeal. Additionally it does not refer to this case by name or number. There is no language in the document assigning the challenges the Steckelbergs advance in this appeal to the district court's findings as to the extent of their obligation on the promissory note and their claims against the Bank for breach of a fiduciary relationship and overreaching.

In determining intent, we look to more than the language of the agreement. *Estate of Simpson*, 403 N.W.2d 791 (Iowa 1987). We try to determine what the parties meant by what they said. *Freese Leasing,* 253 N.W.2d 921, 926 (Iowa 1977). The bare reference to appeals concerning the land is insufficient to support the position for dismissal Williams advanced. Having so decided, we proceed to consider the appeal finding it unnecessary to address the

Steckelbergs' other challenges to both the validity of the deed and Williams' right to dismiss this appeal.

The facts that give rise to this dispute started on November 9, 1993. On that date, the Steckelbergs gave the Bank a written promissory note for the principal amount of $152,000 due and payable on October 1, 2013. The money was not delivered to Steckelbergs, but rather was deposited in an account captioned Steckelberg Trust Escrow and subsequently dispensed through money orders issued by Robert Van Horn, the loan officer who wrote the loan.

The note carried a three-year interest rate of eight point five percent with a variable rate thereafter of one point five percent under the plaintiff's base agricultural rate. The note further provided principal should be paid on demand, but if there was no demand then Steckelbergs should pay $5,000 annually beginning October 1, 2013. The note stated it was secured by a mortgage of the same dat› recorded with the Guthrie county recorder. The note contained the agreement of the Steckelbergs to pay additional charges for "abstracting, attorney, title ins., recording, doc. and appraisal fees." The mortgage secured by the note covered Guthrie County agricultural land and plaintiffs' homestead. The mortgage provided that further advances up to a maximum principal amount of $200,000 would be secured by the mortgagee.

The Bank learned soon after it took what it considered a first mortgage on the real estate, that on November 7, 1993 a judgment was entered in favor of Heartland Cooperative and against the Steckelbergs in the amount of $70,626.00 on a note or an account the Steckelbergs had signed as grantors. The judgment was a lien on the land mortgaged and, due to the time of its recording, had priority over the Bank's mortgage. Ultimately, the Bank purchased the judgment and increased Steckelbergs' obligation on the note on its books to include the purchase price of the judgment, although ownership of the judgment and the lien the judgment carried with it continued to be owned by the Bank. After entering the amount it paid for the judgment and attorney fees on its book as an obligation of the Steckelbergs on their note, the Bank commenced charging Steckelbergs interest on the amount at the rate of interest provided in the note.

On August 27, 1996, defendant R.A. Bartolomei recorded real estate contracts showing his purchase of three parcels of real estate covered under the Bank's mortgage. On October 1, 1996, Steckelbergs gave a note in the amount of $20,000 to defendant Sporer Law Firm, P.C. This note was secured by a mortgagee on property mortgaged to plaintiff.

On October 10, 1995 a seventy-acre tract of land that had been covered by the mortgage was sold through the Bank to Keith Egger and $54,736 was credited against the Steckelbergs' note. On January 16, 1996, $24,397.40 was credited for the sale, again through the Bank, of forty acres of the land that had been covered by the mortgage to McIntire. Van Horn, the loan officer handling this loan, took a real estate commission of $5,700 on the sale and deducted it from the amount credited from the sale on Steckelbergs' obligation.

On March 14, 1997, the Bank commenced this action by filing a petition for foreclosure. On May 1, 1997, the Bank amended the petition and asked for judgment against Steckelbergs for the sum of $167,888.11, together with interest from October 17, 1994 and costs, including statutory attorney fees. The amendment also asked the judgment be established as a first lien on the real estate.

Steckelbergs answered raising several affirmative defenses. They (1) alleged the note was only for $152,000 and no additional advances were contemplated; consequently, all payments should have been applied to principal and interest due; (2) no other advances were secured by the mortgage; (3) they were assured by Robert Van Horn, the bank's chief executive officer and loan officer, they would not be in default so long as interest was paid on the principal sum; (4) that all payments made should have been applied to principal and interest and they were not in default; (5) the Bank was not entitled to attorney fees; (6) that the Bank did not comply with the notice to cure requirements of the Code of Iowa; (7) that a June 26, 1996, settlement agreement modified the land secured by the mortgage; and (7) that Robert Van Horn engaged in self-dealing and had a conflict of interest; and (8) they should have punitive damages because (a) the Bank violated laws and regulations governing administration of loans, and (b) the Bank encouraged them to arrange for sale of real estate but withheld consent and tortiously interfered with the consummation of real estate transactions.

The Bank filed a motion for summary judgment. The district court ruled on the motion finding (1) that there was no dispute but that Steckelbergs were in default on the note; (2) that the terms of the mortgage contain a future advance clause to secure credit of up to $200.000; (3) there were no written promises that as long as payment of principal and interest were made as contemplated in the note Steckelbergs would not be in default; (4) the written provision of the note and mortgage controlled and that the Bank was entitled to attorney fees; (5) the Bank properly notified Steckelbergs as required by Iowa Code 654; (6) the settlement agreement was null and void; and (7) there was no proof to support Steckelbergs' counter claim.

The district court subsequently entered judgment for the Bank on the note for $165,055.81 plus accrued net interest of $27,158.49 and attorney fees of $15,000. Interest was to incur on the principal debt at the rate of nine percent per annum from the date of the decree. The district court established the judgment as a first lien on the Guthrie county property.

This action was tried in equity; our review is de novo. Iowa R. App. P. 4. Although we give weight to the fact findings of the district court, especially when considering the credibility of witnesses, we are not bound by them. Iowa R. App. P. 14(f)(7); *Production Credit Ass'n v. Shirley*, 485 N.W.2d 469, 471 (Iowa 1992).

A summary judgment ruling is reviewed for error. The district court correctly enters summary judgment when the record shows "no genuine issue as to any material fact and ...

the moving part is entitled to judgment as a matter of law." Iowa R. Civ. P. 237(c).; *C-Thru Container Corp. v. Midland Mfg. Co.*, 533 N.W.2d 542, 544 (Iowa 1995). To decide if the moving party has met this burden, we review the record in the light most favorable to the party opposing summary judgment. *Id., Hoffnagle v. McDonald's Corp.*, 522 N.W.2d 808, 811 (Iowa 1994).

Steckelburgs contend (1) the amount the district court found they owed on the notes was erroneous for several reasons; (2) they were not in default on the note; and (3) the Bank failed in putting the money from the loan in an escrow account without a written document or a signed escrow agreement and in not paying them interest on money that remained in the escrow account, while charging them interest on funds in the escrow account prior to the amounts being disbursed, in violation of the requirement of Iowa Code 524.905(2).

We first address the various errors the Steckelbergs claim the district court made in computing the amount due on the November 9, 1993 note.

Steckelbergs claim the Bank incorrectly considered their obligation on the note to include the amount the Bank paid to purchase the judgment owned by Heartland Cooperative. The Bank paid Heartland $80,000 and took an assignment of Heartland's for $70,600.26 plus interest against Steckelbergs and the other defendants. The Bank retained ownership of the judgment, yet included on their books as owed to the Bank by the Steckelbergs' on their note the $80,000 the Bank paid for the judgment together with attorney fees the Bank claims to have expended in obtaining the assignment. Steckelbergs contend the Bank should not have been able to both retain ownership of the judgment and increase the amount of the Steckelbergs' note by the $80,000 and charge them interest on the judgment as well as the attorney fees spent in having the judgment assigned to the Bank.

The district court found the argument had some merit on its face, but then reasoned the transaction benefited the Steckelbergs, as the judgment drew interest at ten percent and the Bank charged a lesser rate. The district court also found Steckelbergs knew of the transaction as a release of the judgment as a lien against the land was necessary in order to sell the parcels of real estate that were sold. The district court subsequently determined this $80,000.00 was an advance under the dragnet clause of the mortgage and directed the district court to release the Heartland judgment prior to the sale of the real estate.

Steckelbergs contend the district court was wrong in its reasoning and the principle amount of their note must be reduced by an additional $80,082 and the interest should be reduced by $16,123.36. Steckelbergs further contend they were prejudiced because the interest on the note was compounded while the interest on the judgment against them did not compound.

Steckelbergs also contend the Bank did not follow the code in handling the judgment. The parties appear to agree that the acquisition of the judgment was subject to the provision of Iowa Code 524.910.[2] Steckelbergs contend the judgment is personal property and

---

[2]. 524.910. Property acquired to satisfy debts previously contracted.
A state bank may acquire property of any kind to secure, protect or satisfy a loan or investment previously made in good faith. Property acquired pursuant to this section shall be held and disposed of subject to the following conditions and limitations:

consequently Iowa Code 524.910 requires the personal property acquired to secure a loan must be sold in six months unless extended. The Bank contends it is governed by 524.910(2). We find it unnecessary to determine which provision of 524.910 governed this transaction and do not do so. We do address Steckelbergs' other challenges to the treatment of the Heartland judgment.

Paragraph number 10 of the mortgage provides in applicable part:

> If [Steckelberg] fail to perform any of my duties under this mortgage ... *or other security interest that has priority over this mortgage, you [the Bank] may perform the duties or cause them to be performed. You may sign my [Steckelbergs] name or pay any amount if necessary for performance. ...* .
> (Emphasis supplied)

This language gives the Bank the authority to do what is necessary to pay the Heartland judgement because it is a prior security interest. We agree with the district court that the Bank in paying the judgment should not have both retained ownership of it and charged Steckelbergs with the amount it paid to purchase the judgment. Furthermore, we note that the judgment was also against persons other than the Steckelbergs, and the Bank as the owner of the judgment would be able to enforce it against those persons also.

---

1. Shares in a corporation and other personal property, the acquisition of which is not otherwise authorized by this chapter, shall be sold or otherwise disposed of within six months unless the time is extended by the superintendent.

2. Real property purchased by a state bank at sales upon foreclosure of mortgages or deeds of trust owned by it, or acquired upon judgments or decrees obtained or rendered for debts due it, or real property conveyed to it in satisfaction of debts previously contracted in the course of its business, or real property obtained by it through redemption as a junior mortgagee or within five years after title is vested in the state bank, unless the time is extended by the superintendent.

The district court addressed the problem it had with the treatment of the judgment by finding the Bank treated it as an advance. The district court treated it as an advance. Consequently, the district court ordered the judgment released. While the Steckelbergs suggest they would have paid less interest on the judgment because interest on the judgment was not compounded, they offer no computations of the difference in interest, if any. Instead, they ask that the case be remanded to the district court to make the computation. Steckelbergs had their opportunity to make a record on this issue and chose not to do so. We do not consider Steckelbergs claim they were charged too much interest on the Heartland judgment.

At the time of foreclosure the district court's treatment of the Heartland judgment appears to be an equitable solution. However, at the time the Bank declared the note in default and sought to foreclose the mortgage, the Bank considered the $80,000 in the amount the Bank contended Steckelbergs owed it on the mortgage. Yet the Bank had a separate and prior lien on the land for the judgment. The Bank was holding double security for the same debt.

In the absence of clear, supportive evidence of a contrary intention, a mortgage containing a dragnet-type clause will not be extended to cover future advances unless the advances are of the same kind and quality or relate to the same transaction or series of transactions as the principal obligations secured or unless the document evidencing the subsequent advance refers to the mortgage as providing security therefore. *Freese Leasing*, 253 N.W.2d at 927.

While the Bank was operating under paragraph ten in purchasing the judgment and standing in the place of the first lienholder, there was no provision that allowed the Bank to treat the $80,000.00 as an advance under the future advance or dragnet-type clause in the mortgage. Furthermore, the $80,000 would have been an advance in excess of the maximum advance allowed under the mortgage. The judgment was transferred to the Steckelbergs by the district court in the decree of foreclosure and the Bank has not cross appealed. Equity would dictate this is a fair solution. The judgment was purchased to give the bank the security it should have had and because the Steckelbergs have not shown they were overcharged interest.

The Steckelbergs complained that the Bank should not have added attorney fees it allegedly incurred in obtaining transfer of the judgment. The district court agreed and subtracted $10,622.98 for fees for Attorney Green from the amount claimed due and made a computation and subtracted interest the Bank charged on these fees. We agree with the district court's treatment on this attorney fee issue and are not clear why the Steckelbergs appear to advance in their brief they were charged for these fees.

While we agree the Bank improperly handled the Heartland judgment and the attorney fee issue, we cannot disagree with the district court's treatment of the issue. Remembering that we are in equity, we find the result equitable and affirm the trial court on these issues and refuse to modify the amount of the judgment on these grounds.

Steckelbergs' claim that the mortgage should not have been foreclosed because there was no deficiency need not be addressed. The note was a demand note and the Bank demanded payment.

The Steckelbergs also advance claims stemming from the loan officer placing the money from the loan in an escrow account. They contend that in doing so the Bank was acting in a fiduciary capacity in disbursing the funds. The Steckelbergs rely on Iowa Code section 524.905[3] to support their contention that in putting the money in escrow Robert Van Horn, the banker handling their loan, undertook a fiduciary relationship. We are inclined to agree with that part of the argument that the bank assumed a fiduciary relationship as to the disbursement of the loan funds put in the trust account.

---

[3]. 524.905(2) Protective payments--escrow accounts.

A bank may include in the loan documents signed by the borrower a provision requiring the borrower to pay the bank each month in addition to interest and principal under the note an amount equal to one-twelfth of the estimated annual real estate taxes, special assessments, hazard insurance premium, mortgage insurance premium, or any other payment agreed to by the borrower and the bank in order to better secure the loan. The bank shall be deemed to be acting in a fiduciary capacity with respect to these funds. A bank receiving funds in escrow pursuant to an escrow agreement executed on or after July 1, 1982 in connection with a loan as defined in section 535.8, subsection 1, shall pay interest to the borrower on those funds, calculated on a daily basis, at the rate the bank pays to depositors of funds in ordinary savings accounts. A bank which maintains an escrow account in connection with any loan authorized by this section, whether or not the mortgage has been assigned to a third person, shall each year deliver to the mortgagor a written annual accounting of all transactions made with respect to the loan and escrow account.

The district court concluded the Bank improperly left $4576.26 in the escrow account and modified the principal and interest amount the Bank claimed due. Accordingly, we find no reason to disagree with the district court on this issue.

Steckelbergs challenge a number of other expenditures made by the Bank either though disbursing their funds or charging the principal balance of their loan with additional principle amounts.

Steckelbergs contend the plaintiff should not have charged the escrow account with attorney fees paid to Attorney Jeff Minnich because the fees were neither authorized by the appellants nor necessary for plaintiff to maintain its security interest or otherwise authorized by the note and or mortgage. Unlike the district court, we fail to find the Bank has proven that the attorney fees paid to Minnich were such attorney fees as should be charged to the Steckelbergs.

Additionally, without the nee l to decide if the Bank had a conflict of interest in paying a commission on the sale of real estate the Bank pushed the Steckelbergs to sell, we find that the Bank has failed to show it was entitled to the commission taken from the funds generated from the sale of the real estate.

We have considered the other challenges to the Bank's accounting made by the Steckelbergs and find no valid reason to depart from the district court's treatment of those issues.

We modify the judgment to subtract from the balance the district court found due on the note the following; (1) $2,039.83 paid by the Bank as attorney fees to Neu, Minnich & Comito and the interest that accrued on said amount from March 21, 1996, and (2) $5,700.00 taken by the Bank as a commission on the sale of real estate and the interest that accrued on said amount from December 4, 1995, the approximate date the money paid for the commission should have been credited against the balance the Steckelbergs owed on the note. In all other respects we affirm the district court. Costs on appeal are taxed one-half to the Bank and one-half to the Steckelbergs. We award no further attorney fees.

AFFIRMED AS MODIFIED.