FILED
JUN 26 1990
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-157 / 89-946

FARM CREDIT BANK OF OMAHA, formerly THE FEDERAL LAND BANK OF OMAHA, A CORPORATION,

93

Appellant,

vs.

C. MARVIN PETERSON and DELORIS PETERSON, Husband and Wife,

Defendants,

and

HOUGHTON STATE BANK,

Appellee.

Appeal from the Iowa District Court for Montgomery County, Keith E. Burgett, Judge.

The Farm Credit Bank appeals a district court judgment denying foreclosure of a supplemental mortgage executed by the Petersons and determining that the mortgage should be released. **AFFIRMED.**

Steven H. Krohn of Smith, Peterson, Beckman & Willson, Council Bluffs, for appellant.

Jack E. Ruesch of Telpner, Smith, Sawatzke & Ruesch, Council Bluffs, for appellee.

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

SCHLEGEL, J.

The Farm Credit Bank (FCB) appeals a district court judgment denying foreclosure of a supplemental mortgage executed by the Petersons and determining that the mortgage should be released. We affirm the trial court.

In May 1981, the Petersons executed and delivered to the FCB a twenty-five year variable interest rate note with annual installments due on April 1 of each year. To secure this note, the Petersons executed and delivered to the FCB a mortgage in May 1981 on certain real estate.

By July 1985, the Petersons had yet to make the April 1, 1985, installment payment on the 1981 note. On July 31, 1985, the Petersons executed a supplemental mortgage on additional land they owned in favor of the FCB. The Petersons and the FCB also signed a "Letter of Assurance and Agreement" whereby the Petersons agreed to the supplemental mortgage in order to permit them to pay the April 1, 1985, payment plus default interest on November 1, 1985. The FCB further agreed to release the supplemental mortgage if the extended payment is made on November 1 "and the accrued interest from April 1 to November 1 is paid also on November 1." The FCB also sent a letter to the Petersons on August 13, 1985, explaining the July 31 agreement.

Prior to November 1, 1985, the Petersons contacted the FCB and advised that payment would be somewhat delayed. On December 23, 1985, the Petersons, after receiving the funds

from the Houghton Bank, paid the FCB $7,763.59, representing the balance on the April payment plus interest on the April balance that had accrued from April to November. The supplemental mortgage was never released.

On November 18, 1987, the FCB filed a petition to foreclose both the 1981 mortgage and the 1985 supplemental mortgage executed by the Petersons. The Houghton Bank was listed as a defendant. The FCB claimed that any interest the Bank had on the two mortgaged properties was secondary to their interest.

The parties did not dispute the foreclosure of the 1981 mortgage. However, the issue as to whether the 1985 mortgage could be foreclosed on by the FCB proceeded to trial. Following trial, the district court determined that the Petersons' December 1985 payment was sufficient to satisfy their July agreement with the FCB such that the supplemental mortgage should be released. The district court then denied the foreclosure of this 1985 mortgage. The FCB has filed this appeal.

This appeal arises out of an action for foreclosure of a mortgage which is an equitable proceeding. Freese Leasing v. Union Trust & Savings Bank, 253 N.W.2d 921, 925 (Iowa 1977) (citing Iowa Code section 654.1). Our review of the facts in equity cases is de novo. Id. We give weight to the trial court's findings of fact but are not bound by them. Id.

The question presented for our review is whether the district court properly held that the FCB was not entitled to foreclosure of its supplemental mortgage. A mortgage is subject to the principles of interpretation and construction which govern contracts generally. Id. at 924. These principles are designed to assist in identifying the intention of the parties. Id. In the construction of written contracts, the cardinal principle is that the intent of the parties must control; and except in cases of ambiguity, this is determined by what the contract itself says. Iowa R. App. P. 14(f)(14).

The Petersons signed a supplemental mortgage and a letter of assurance and agreement on July 31, 1985. The trial court found these documents, in particular the letter of assurance and agreement, to be ambiguous. Upon our review of the two documents we agree with this determination. The documents do not make it at all clear whether the agreement was intended to provide for a payment of accrued interest on the entire unpaid principle balance as the bank suggests. It is entirely possible to construe the letter of assurance and agreement as requiring the supplemental mortgage as additional collateral only for the 1985 payment, thereby requiring the FCB to release the supplemental mortgage upon payment of the balance of the April 1, 1985, payment. Given these ambiguities, the trial court was correct in going beyond the documents to determine the actual intent of the parties.

Upon our examination of the record we hold the intent of the parties was, as the trial court found, to hold the supplemental mortgage as collateral only for the 1985 payment, and upon payment of the balance of the April 1, 1985, payment the FCB was required to release the supplemental mortgage.

AFFIRMED.