FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-391 / 89-1615

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THE FEDERAL LAND BANK OF OMAHA, n/k/a FARM CREDIT BANK OF OMAHA,

Plaintiff-Appellant

vs.

HAROLD M. DUNKELBERGER and NANETTE M. DUNKELBERGER, Husband and Wife,

Defendants-Appellants,

and

PERRY PRODUCTION CREDIT ASSOCIATION, n/k/a PRODUCTION CREDIT ASSOCIATION OF THE MIDLANDS; REUBEN LUNDBERG; and the ESTATE OF CLARENCE LUNDBERG, d/b/a LUNDBERG FARMS; GREG SCHWECKER,

Defendants.

Appeal from the Iowa District Court for Boone County, Gary L. McMinimee, Judge.

The Dunkelbergers appeal a district court order denying their motion to discharge a judgment for rent and their motion to quash execution and levy. **REVERSED.**

John C. Werden, Jr. of Van Dyke & Werden, P.C., Carroll, for appellants.

Thomas H. Burke of Whitfield, Musgrave & Eddy, Des Moines, for appellee.

James P. Craig and Steven P. Greiner of Moyer & Bergman, Cedar Rapids, for amicus curiae Agra-Partners Farm Management, Ltd.

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

SCHLEGEL, P.J.

Defendants Dunkelbergers appeal a district court order overruling their motions to discharge judgment and to quash execution and levy obtained by plaintiff Federal Land Bank's receiver, Agra-Partners Farm Management, against Dunkelbergers' counterclaim against a party in another action. Agra-Partners joins Federal Land Bank as amicus curiae in urging that the judgment and order be upheld. We reverse.

I.

This case commenced as a mortgage foreclosure action brought upon three promissory notes, variously secured by real estate mortgages. On August 20, 1985, plaintiff, Federal Land Bank (FLB), now known as the Federal Credit Bank of Omaha, filed its mortgage foreclosure petition against the Dunkelbergers and others seeking to foreclose three real estate mortgages that secured three promissory notes executed by Dunkelbergers. On May 20, 1987, FLB sought appointment of a receiver for the real estate to manage the property, collect the rents and profits, and to apply proceeds received during the receivership to the indebtedness of the defendants.

On April 28, 1988, Agra-Partners Farm Management, the successor receiver, filed a motion requesting that the Dunkelbergers be ordered to pay the receiver the fair rental value of the real estate for the 1987 and 1988 crop

years. As a result of that motion and a hearing at which Dunkelberger and Schwecker were both represented, on July 19, 1988, the trial court entered an order directing the Dunkelbergers to pay the receiver $39,805.50 for the 1987 rent and $39,805.50 for the 1988 rent, subject to payment by their tenant, Greg Schwecker. The court also entered judgment in those amounts "in favor of the mortgagee." The July 19 order was amended on September 14, 1988, and judgment was entered against the Dunkelbergers for $28,065 for 1987 rent and $28,065 for 1988 rent, subject to payment by Schwecker. The judgments in favor of the mortgagee were confirmed. Schwecker paid the sum of $24,825 for 1988, leaving a balance of $31,305 plus interest.

The receiver filed praecipes for general execution on September 14, 1988; January 18, 1989; and April 14, 1989. All of those praecipes were returned unsatisfied. The receiver requested the issuance of a special execution on May 9, 1989. The Polk County Sheriff levied on the Dunkelbergers' counterclaims in a separate foreclosure lawsuit brought by Production Credit Association of the Midlands (PCA). PCA claims a second mortgage on the land involved in this lawsuit. PCA was represented by the same counsel as FLB, but never sought nor received an adjudication of the PCA mortgages in this action.

FLB obtained a judgment of foreclosure on March 28, 1989. The foreclosure decree, which was not appealed, is a final judgment and provided in pertinent part:

> The Defendants . . . have received a discharge of their indebtedness due to [FLB] pursuant to a Discharge in their Bankruptcy filed in the United States Bankruptcy Court for the Southern District of Iowa, Central Division, Bankruptcy No. 85-458-C. As such, all judgments herein shall be in rem only and not personal judgments against said Defendants . . . .

Although this case has been complicated by numerous proceedings, the sole issue we are asked to decide is: May the receiver in the foreclosure proceedings brought by FLB levy upon a counterclaim brought by Dunkelbergers in the Federal District Court action commenced against them by PCA? To answer this question, we must answer two further questions: (1) Is the judgment valid? and (2) What is the right of the receiver to act in pursuance of that judgment?

II.

The receiver seeks authorization to levy execution on the judgment entered by the court "in favor of the mortgagee." See Iowa Code § 626.21 (1989) (authorizing the satisfaction of judgments by levy and sale of "things in action"). It contends that the judgments entered in response to its motion (to collect rents) are judgments in favor of the receiver, in fact. Dunkelbergers, on the other hand, contend that the receiver is a non-party and that the judgments were entered in favor of the mortgagee, FLB.

Iowa Code section 680.4 (1989) states that receivers have the following powers:

> Subject to the control of the court, a receiver has power to bring and defend actions, to take and keep possession of property, to collect debts, to receive the rents and profits of real property, and, generally, to do such acts in respect to the property committed to the receiver as may be authorized by law or ordered by the court.

The receiver here sought from the court the right to pursue the collection of rents and profits from the land under its control, notwithstanding section 680.4. The court, however, entered judgment, in a pending action, "in favor of the mortgagee," for the amount of rent that was reasonable for the two years involved. It did not enter judgment in favor of the receiver, and it is apparent from the order that it did not intend to do so. In fact, it is clear that the court was without jurisdiction to enter a judgment in favor of the receiver.

Although the receiver could have received the required statutory authority in that action to bring suit against Dunkelberger and Schwecker, it did not seek that authority. It was not a party named in the action in which it filed the motion. While its business was of importance to the final outcome of the foreclosure action, it did not have standing in that action to obtain a judgment in its favor. See Iowa Code § 680.4 (1989); Hawkeye Bancorporation v. Iowa College Aid Comm., 360 N.W.2d 798, 801-02 (Iowa 1985) (requiring purported party (1) have "specific, personal, and legal interest" and (2) "be injuriously affected" (citing City of Des Moines v. PERB,

275 N.W.2d 753, 759 (Iowa 1979)). The judgments entered by the court were, at the time of their entry, good and valid judgments in favor of FLB.

Counsel for FLB asks the rhetorical question in his brief:

> If [FLB] had determined that the rent judgments as against the [Dunkelbergers] for 1987 and 1988 rent were in fact [FLB's] judgments, would not they have been incorporated into the Judgment and Decree of Foreclosure?

We cannot answer what FLB or its counsel would have done had they been attentive to the clear wording of the court's order. Perhaps counsel for FLB states it more clearly at a July 1989 hearing:

> If I would have perceived that judgment that Mr. Craig has so expertly attained on behalf of the receiver to be in fact Federal Land Bank's judgment, we're talking about a not insignificant sum of money, $28,000, as against both Mr. Dunkelberger and Mr. Swecker [sic], so in excess of $56,000 of past due rent as the Court found. I certainly would have included that into a Judgment and Decree of Foreclosure that I prepared and submitted to the Court. When in fact all that is in the Decree and Foreclosure are the principal and interest balances on the three notes in question, the attorney's fees, the court costs, the abstracting costs.

During this colloquy with the court, counsel for the receiver responded to the court's question regarding whether the judgment was intended for the receiver or the mortgagee:

> Maybe that's an error on my part, but one I didn't perceive the significance of . . . until after [Dunkelbergers'] motion was filed. . . . I . . . thought about it at that time[,] and I am wondering about the net effect of a judgment that has since been rendered in this case for Federal Land Bank.

We hold that the judgments entered in response to the receiver's motion for an order directing Dunkelberger and Schwecker to pay rent were valid judgments in favor of FLB and that they never were judgments in favor of the receiver. Further, we hold that nothing has occurred to empower the receiver to enforce those judgments.

III.

The judgments for rent were entered against Dunkelbergers before the judgment and decree of foreclosure was entered. As indicated by counsel for FLB, had he been attentive to the fact that the rent judgments were in favor of FLB, he would have included them in the decree of foreclosure. The court record clearly showed that judgments were in favor of FLB.

FLB is charged with responsibility of knowing the state of the record and cannot look to others to direct its actions in view of the record. Counsel for both FLB and the receiver have been awarded substantial fees from the receipts of the Sheriff's sale and from rental collected to protect the interests of their clients. Surely, they cannot claim that they have no duty to be aware of the condition of the record of proceedings.

FLB cannot recover judgment for more than the amount owed by Dunkelbergers. It recovered a judgment for the full amount of the indebtedness represented by the notes secured by real estate mortgages. It had previously been

awarded judgment for rental of the real estate. To allow the judgment for rental to stand in addition to the judgment in foreclosure would give an excess judgment to FLB. This is true because the assignment of rents contained in the mortgages in this case was as additional security for the amounts loaned. The foreclosure judgment and decree was for the full amount of the unpaid debt plus interest, costs, attorney fees and other expenses.

The Iowa Supreme Court has noted that the general rule pertaining to merger is:

> When a valid and final personal judgment is rendered in favor of the plaintiff:
>
> (1) The plaintiff cannot thereafter maintain an action on the original claim or any part thereof, although he may be able to maintain an action upon the judgment . . . .

Brenton State Bank of Jefferson v. Tiffany, 440 N.W.2d 583, 585 (Iowa 1989) (quoting Restatement (Second) of Judgments § 18 (1982)) (Tiffany II). The court noted, "When the plaintiff recovers a valid and final personal judgment, his original claim is extinguished and rights upon the judgment are substituted for it." Id. (quoting Restatement (Second) of Judgments § 18 comment a (1982)). Further, "the doctrine of merger is an aspect of res judicata which prevents relitigation of existing judgments." Id. (citations omitted).

In the present case, plaintiff's foreclosure action was based on personal service to the debtor, which exhausts available remedies. See Tiffany II, 440 N.W.2d at 586;

Brenton State Bank of Jefferson v. Tiffany, 400 N.W.2d 576, 578 (Iowa 1987) (Tiffany I); Schnuettgen v. Mathewson, 207 Iowa 294, 298, 222 N.W. 893, 895 (1929). The entire debt was converted into a judgment and was merged into the judgment. The lien in favor of FLB against the land remained. See id. ("The creditor retains the right to enforce a lien or gain possession of property held as collateral for the debt." (citations omitted)). FLB's right to levy upon the land was preserved and, indeed, was carried out. FLB is not entitled to an additional judgment for rent during the time when the real estate was not in its possession. We hold that the judgments for rental, entered in favor of FLB, the mortgagee herein, merged with the judgment in foreclosure and became a part of the indebtedness that was owed as a result of that judgment. As such, those judgments have no life of their own and should be stricken from the records as independent judgments. "[A] judgment given for less than the full relief requested will be interpreted as a denial of further relief." Tiffany I, 400 N.W.2d at 578 (citing Watson v. Chapman 244 Iowa 56, 60, 55 N.W.2d 555, 557 (1952)).

IV.

Because of our ruling above, we need not consider the issues involving the attempted levy upon the counterclaim of Dunkelbergers in the action by PCA of the Midwest in Federal District Court. There is no judgment for the

receiver to enforce by levy. We believe, however, that Citizens State Bank of Des Moines v. Hansen, 449 N.W.2d 388 (1990), controls in this situation, insofar as the counterclaims constitute an offset to claims made by PCA. We do not approve the concept that by levy and the subsequent disposal of that counterclaim it is just and equitable to permit a judgment creditor to deprive a litigant of its opportunity to defend itself and to have the benefit of offsets that may be available to discharge part or all of the liability claimed by the opposing party.

REVERSED.