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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1890**

Federal National Mortgage Association,
Respondent,

vs.

Bennie Lee,
Appellant,

John Doe, et al.,
Defendants.

**Filed July 23, 2012
Affirmed
Chutich, Judge**

Hennepin County District Court
File No. 27-CV-HC-11-6031

Christopher T. Kalla, Usset, Weingarden & Liebo, PLLP, St. Louis Park, Minnesota (for respondent)

William B. Butler, Butler Liberty Law, LLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Schellhas, Presiding Judge; Kalitowski, Judge; and Chutich, Judge.

UNPUBLISHED OPINION

CHUTICH, Judge

On appeal from summary judgment in this eviction dispute, appellant Bennie Lee argues that (1) the existence of fact issues should have precluded the grant of summary

judgment and entitled him to a jury trial; and (2) the district court should have stayed the eviction action pending resolution of a first-filed federal quiet-title action. Because the record shows respondent is entitled to the premises and because the district court did not abuse its discretion in refusing to grant the stay, we affirm.

FACTS

In 2007, Lee signed a promissory note in favor of American Mortgage Network, Inc. (AMNI) and granted a mortgage covering real property located in Minneapolis to Mortgage Electronic Registration Systems, Inc. (MERS) as nominee for AMNI. MERS assigned the mortgage to Chase Home Finance LLC (Chase). Lee later defaulted under the terms of the note and mortgage, and Chase initiated foreclosure proceedings. The property was sold at a sheriff's mortgage foreclosure sale on February 18, 2011, to Chase, which then immediately assigned the sheriff's certificate of sale to respondent Federal National Mortgage Association (Fannie Mae). Both the sale certificate and assignment were promptly recorded.

On August 15, 2011, Lee filed a quiet-title action in Chisago County, challenging the validity of the foreclosure by arguing that Chase's interest—through which Fannie Mae claimed a right of possession to the property—was invalid. Although Fannie Mae was the record owner of the property at the time, it was not named as a defendant when Lee commenced the quiet-title action. The action was later removed to federal court. Two days after filing the quiet-title action, Lee filed a notice of lis pendens on the property.

On August 18, 2011, the six-month foreclosure redemption period expired. Lee failed to redeem, but remained in possession of the property. Soon thereafter, Fannie Mae commenced this eviction proceeding against him. Lee demanded a jury trial and requested a stay of the eviction proceeding pending the outcome of the federal quiet-title action. Based on the parties' briefing, the district court issued a written order denying Lee's request for a stay. Following oral arguments, the district court granted Fannie Mae's motion for summary judgment in the eviction proceeding.

Lee filed a petition for a writ of prohibition to this court on October 18, 2011, which was denied. A writ of recovery and order to vacate were issued by the district court on October 19, 2011. Lee filed this appeal on October 24, 2011; he challenges both the district court's denial of the stay of eviction and grant of summary judgment in favor of Fannie Mae.

In an order filed November 7, 2011, the district court stayed Lee's eviction on a temporary basis to give him a chance to post bonds and retain possession.¹ He failed to post the bonds, and the district court terminated the stay of eviction and reinstated the writ of recovery and order to vacate.

In a judgment filed January 24, 2012, the federal district court dismissed Lee's quiet-title action with prejudice. *Jerde v. JPMorgan Chase Bank, N.A.*, No. 11-2666, 2012 WL 206271, at *3 (D. Minn. Jan. 24, 2012) (denying plaintiff's motion to remand

¹ Parties affected by an adverse eviction judgment can remain in possession of the property during an eviction appeal if they provide a bond under Minn. Stat. § 504B.371, subd. 3 (2010).

and granting defendant's motions to dismiss).² Lee filed an appeal of the dismissal to the Eighth Circuit on February 24, 2012.

D E C I S I O N

I. Summary Judgment

Summary judgment is governed by Minn. R. Civ. P. 56. This court reviews a district court's summary judgment decision de novo. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). "In doing so, we determine whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment." *Id.* "A motion for summary judgment shall be granted when the . . . [record] show[s] that there is no genuine issue of material fact and that either party is entitled to a judgment as a matter of law." *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

An eviction action is "a summary court proceeding to remove [an] . . . occupant from or otherwise recover possession of real property." Minn. Stat. § 504B.001, subd. 4 (2010). Eviction by the person "entitled to the premises" is proper if another person holds-over or continues possession of real property after "expiration of the time for redemption on foreclosure of a mortgage." Minn. Stat. § 504B.285, subd. 1 (2010).

² In dismissing the case, the federal district court noted that Lee's counsel has brought "no fewer than 15" similar quiet-title lawsuits in the District of Minnesota, all alleging that defendants had no right to foreclose on their mortgages because defendants do not hold the original notes. *Jerde*, 2012 WL 206271, at *1. The court stated that counsel's quiet-title theory was "patently meritless," and "has been rejected by every court to consider it, including the Minnesota Supreme Court." *Id.* at *1, *3.

If parties to an eviction proceeding have equitable or other disputes beyond the narrow scope of summary eviction processes set out in chapter 504B, and if it is possible to litigate those questions in a non-eviction proceeding, such as Lee’s federal quiet-title action, it is generally not appropriate to litigate those questions in the eviction proceeding. *See Bjorklund v. Bjorklund Trucking, Inc.*, 753 N.W.2d 312, 318 (Minn. App. 2008), *review denied* (Minn. Sept. 23, 2008); *see also Fraser v. Fraser*, 642 N.W.2d 34, 40–41 (Minn. App. 2002).

Lee does not deny that he defaulted on his mortgage, failed to redeem after foreclosure, or that he had continued possession of the property thereafter. Instead, he argues that it was error for the district court to grant summary judgment because Fannie Mae’s interest in the property is void.

Lee’s property was foreclosed by advertisement, a process governed by Minn. Stat. §§ 580.01–.30 (2010 & Supp. 2011). “[A]ny mortgage of real estate containing a power of sale, upon default being made in any condition thereof, may be foreclosed by advertisement.” Minn. Stat. § 580.01 (2010). A “certificate of sale,” or sheriff’s certificate, is the record of sale in a foreclosure by advertisement:

When so recorded, upon expiration of the time for redemption, the certificate shall operate as a *conveyance* to the purchaser *or the purchaser’s assignee* of all the *right, title, and interest* of the mortgagor in and to the premises named therein at the date of such mortgage, *without any other conveyance*.

Minn. Stat. § 580.12 (2010) (emphasis added). The foreclosure-by-advertisement chapter also provides that the sheriff’s certificate has evidentiary value:

Every sheriff's certificate of sale made under a power to sell contained in a mortgage shall be *prima facie* evidence that all the requirements of law in that behalf have been complied with, and *prima facie* evidence of title in fee thereunder in the purchaser at such sale, the purchaser's heirs or assigns, after the time for redemption therefrom has expired.

Minn. Stat. § 580.19 (2010) (emphasis added).

Lee argues that fact questions remain relating to transfer of the property from Chase to Fannie Mae, alleging inadequate delivery of the “deed,”³ lack of consideration, and the authenticity of certain documents. These arguments are unsupported assertions or otherwise insufficient to rebut the presumptions of compliance with the legal requirements of conveyance established by Chapter 580.

The record shows that Chase, the assignor/grantor, authorized a law firm to convey the sheriff's certificate to Fannie Mae in a recorded limited power of attorney. The assignee/grantee, Fannie Mae, assented to delivery of the sheriff's certificate by commencing this eviction action to protect its interest in the property. *See Kessler v. Von Bank*, 144 Minn. 220, 222–23, 174 N.W. 839, 840 (1919) (“[D]elivery to an agent . . . even if done without the knowledge of the grantee, is, if followed by his assent, a good delivery.” (quotation omitted)). The record contains no evidence of inadequate consideration for the assignment. The sheriff's certificate of sale and the certificate of assignment each identify the relevant parties, were notarized, and were recorded. Title vested in Fannie Mae when Lee failed to redeem. *See* Minn. Stat. § 580.12; *Geo. Benz &*

³ Although Lee refers to a deed, there was no deed involved with the conveyance at issue. The operative document was instead the sheriff's certificate.

Sons v. Willar, 198 Minn. 311, 314, 269 N.W. 840, 841 (1936) (holding that fee title vests in foreclosure purchaser upon expiration of redemption period).

The record shows that no genuine issues of material fact existed, Fannie Mae was entitled to the premises, and therefore was entitled to its recovery. *See* Minn. Stat. § 504B.345, subd. 1(a) (2010). The district court did not err in granting summary judgment.

II. Denial of Stay

“Generally, whether to stay a proceeding is discretionary with the district court, [and] its decision on the issue will not be altered on appeal absent an abuse of that discretion.” *Bjorklund*, 753 N.W.2d at 317 (quotation omitted) (alteration in original). “In deciding whether to defer to another court, a district court considers judicial economy, comity between courts, and the cost to and the convenience of the litigants.” *Id.* (quotation omitted).

“[W]hen the counterclaims and defenses are *necessary* to a fair determination of [an] eviction action, it is an abuse of discretion not to grant a stay of [] eviction proceedings when an alternate civil action that involves those counterclaims and defenses is pending.” *Id.* at 318–19 (emphasis added). Nevertheless, the possibility of multiple determinations from related actions alone is “not enough to establish that the district court abused its discretion by not staying the proceedings.” *Id.* at 318. “In the absence of some showing that the lack of a stay will compromise a party’s interests in the subject property, a district court does *not* abuse its discretion by denying a motion to stay an eviction proceeding.” *Fed. Home Loan Mortg. Corp. v. Nedashkovskiy*, 801 N.W.2d 190,

193 (Minn. App. 2011) (emphasis added). Importantly, “even when such a showing is made, the decision whether to grant the stay is entrusted to the district court’s discretion.”

Id.

Lee argues that the district court should have stayed the eviction proceeding because the pending first-filed quiet-title action involves issues necessary to defense of the eviction action. He contends that allowing the eviction action to proceed would compromise his interest in the property because Minn. Stat. § 559.01 requires that a “party asserting [a quiet title] claim be in possession of the property.” Additionally, Lee asserts that a determination by the eviction court that Fannie Mae is entitled to the property would “collaterally estop” him from pursuing the quiet-title claim or otherwise challenging the foreclosure.

Because Lee failed to show that a stay was necessary or appropriate to protect his interest in the property, the district court did not abuse its broad discretion by declining to stay this case. First, the notice of lis pendens adequately protects Lee’s interest in the property while he pursues his claims in federal court. *See Real Estate Equity Strategies, LLC v. Jones*, 720 N.W.2d 352, 359–60 (Minn. App. 2006) (holding that where homeowners have ways to protect their alleged interests in a property other than obtaining a stay of an eviction proceeding—such as filing a notice of lis pendens—a district court’s decision to deny a stay is not an abuse of discretion.). Lee filed the notice of lis pendens after the quiet-title action commenced, but before the redemption period

expired vesting title in Fannie Mae, and before Fannie Mae commenced this eviction action.⁴

Second, Lee's interest in the property was protected because he was not required to remain in possession of the property to maintain his quiet-title action. Minn. Stat. § 559.11 (2010) provides that “*any* person claiming title thereto against the occupant” can bring an “action to try the title to land.” (Emphasis added.) Moreover, a plaintiff “may maintain an equitable action to remove a cloud [on title] though he is not in possession.” *Union Cent. Life Ins. Co. v. Page*, 190 Minn. 360, 367, 251 N.W. 911, 914 (1933).

Although the potential for a collateral-estoppel effect of an eviction verdict on a first-filed action challenging title can be relevant when determining whether to grant a stay, it is one of several factors to be considered. *Bjorklund*, 753 N.W.2d at 319. Here, unlike in *Bjorklund*, the record contains no evidence that Fannie Mae ever intended to use the eviction action for estoppel purposes in the federal action. Further, not only does the summary nature of an eviction proceeding mean that any collateral-estoppel effect arising from an eviction judgment is limited, but, even if the prerequisites of collateral estoppel are satisfied, whether and to what extent that doctrine will be invoked is discretionary

⁴ Minn. Stat. § 557.02 (2010) explains the effect of the filing of a notice of lis pendens:

In all actions . . . [affecting real property], any party thereto, at the time of filing the complaint, or at any time thereafter during the pendency of such action, may file for record with the county recorder of each county in which any part of the premises lies a notice of pendency of the action From the time of the filing of such notice . . . the pendency of the action shall be notice to purchasers and encumbrancers of the rights and equities of the party filing the same to the premises.

Therefore, Lee's rights in the property pending the outcome of the federal quiet title action were and still are protected.

with the court asked to apply that doctrine. *See Burgmeier v. Bjur*, 533 N.W.2d 67, 70 (Minn. App. 1995) (noting the limited collateral-estoppel effect of unlawful detainer rulings), *review denied* (Minn. Sept. 20, 1995); *see also AFSCME Council 96 v. Arrowhead Reg'l Corr. Bd.*, 356 N.W.2d 295, 299 (Minn. 1984) (stating that even if available, res judicata and collateral estoppel are not rigidly applied, and “[b]oth rules are qualified or rejected when their application would contravene an overriding public policy” (quoting *Tipler v. E.I. duPont deNemours & Co.*, 443 F.2d 125, 128 (6th Cir. 1971))).

We have repeatedly declined to adopt a universal requirement that eviction proceedings be stayed whenever a related claim is asserted. *See Nedashkovskiy*, 801 N.W.2d at 193. Lee’s interests in the property were adequately protected regardless of whether the eviction proceeding was stayed. He was, at all times, able to fully pursue his first-filed quiet-title claim. On these facts, the district court did not abuse its discretion when it declined to stay the eviction proceeding.

Affirmed.