

NO. A10-257

State of Minnesota
In Court of Appeals

Galt Funding, LLC,

Appellant,

v.

The Minneapolis Grand, LLC, Benjamin Reed,
Benjamin Miller, Paul Maeker, and Erik Anderson,

Respondents.

APPELLANT'S REPLY BRIEF

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INTRODUCTION

Each Respondent in this case purchased the real property at issue with knowledge of and subject to Appellant's mortgage interest. When the borrower defaulted, Appellant proceeded with a foreclosure of its mortgage, which now covered 4 units, and bid the total balance of its mortgage loan, allocated among the 4 units. Despite being served with notice of foreclosure, no Respondent participated in the sheriff's sale or otherwise responded to the notice. As a result, the four separate sheriff's sales on the four units proceeded, and the original blanket mortgage lien covering multiple units was extinguished and replaced by four separate liens, each one securing the bid on that unit at the foreclosure sale.

The trial court fundamentally erred when it set aside the valid foreclosure sales, as the foreclosures complied with all requirements of the foreclosure statutes, the total amounts bid by Appellant did not exceed the balance of the underlying debt, and Respondents had failed to invoke their rights under MCIOA while a blanket lien existed.

DISCUSSION

I. APPELLANT IS NOT SEEKING AND WILL NEVER BE ABLE TO RECOVER THE AMOUNT OF ITS UNPAID DEBT.

Respondents' assertion that Appellants are seeking a windfall misrepresents the nature of a foreclosure by advertisement and the remedies actually available to Appellant as a result of its mortgage foreclosures. There is not now, nor has there

ever been, a potential money judgment against any Respondent. *Minn. Stat* §580.225. That is, the only potential remedy is obtaining title to the property, which Appellant could then potentially sell on the open market. As such the “ceiling” of what Appellant can ultimately recover is what the units will bring on the market at the time of a sale. While Appellant is attempting to limit its losses by conducting proper foreclosures, it can never recover a windfall.

II. APPELLANT DID NOT OVERSTATE ITS DEBT WHEN IT FORECLOSED.

Respondents – and the trial court – erroneously contend that Appellant overstated its debt when in foreclosed. There is no evidence to support this claim; in fact, the collective amount claimed by Appellant was the balance of its debt. An examination of the cases shows the trial court’s error.

In *Hargreaves v. Federal Deposit Ins. Corp.*, the FDIC completed foreclosure on Hargreaves’ farm and began an unlawful detainer action. (1990 WL 77060 (Minn. Ct. App. June 12, 1990)) Hargreaves instituted the action to set aside the foreclosure, claiming the note underlying the mortgage had been fraudulently procured, and asked the court to enjoin the FDIC from seizing the property. The FDIC claimed indebtedness of \$30,000, but it was later established that amount may have been inflated by as much as \$25,000.

The Court of Appeals reversed and remanded *Hargreaves* in large part because of errors made by the district court: failure to provide adequate basis for

its decisions and applying the incorrect standard for assessing the merits. Furthermore, *Hargreaves* is distinguishable from the present case because *Hargreaves* involved alleged material errors committed by the bank, specifically overstating Hargreaves' debt by \$25,000. Likewise, Respondents cite *Semlek v. Nat'l. Bank of Alaska*, 458 P.2d 1003 (Alaska 1969), but again, *Semlek* involved a gross overstatement of the amount of the debt – which is not present here.

In short, Appellant accurately stated the amount of the unpaid debt in the foreclosure, and the trial court erred when it decided the debt was overstated.

III. THE EQUITIES DO NOT FAVOR RESPONDENTS.

Appellant's mortgage was properly of record, before any Respondent purchased – and Respondents do not even argue that their interests are not subject to Appellant's mortgage. Appellant thereafter completed the foreclosure in compliance with Minnesota's foreclosure statute. And, it did not overstate the amount of its debt. It even served each Respondent with notice of the foreclosure sales. Respondents therefore had every opportunity, prior to the foreclosure sales, to either invoke the partial payment provisions of MCIOA, or to otherwise seek a declaration from the courts as to their rights. Instead, they allowed the foreclosure to proceed, which granted title to Appellant.

So, while Appellants strictly followed the law, and gave notice of the foreclosure to Respondents, Respondents delayed any action until their right to tender proportional payment was lost – because there was no longer a blanket lien.

Equity does not favor parties who delay in acting over parties who strictly comply with the law.

IV. THE TRIAL COURT'S DECISION ON THE CROSS MOTIONS FOR SUMMARY JUDGMENT IS SUBJECT TO THE STANDARD OF REVIEW FOR SUMMARY JUDGMENT MOTIONS – RATHER THAN “ABUSE OF DISCRETION” STANDARD.

Respondents contend that the trial court's decision should be reviewed under an “abuse of discretion” standard. However, the decision itself was on the parties cross motions for summary judgment. In deciding such motions, the court must determine whether there are genuine issues of material fact and whether a party is entitled to judgment as a matter of law. The standard for review of such a decision is whether there are any genuine issues of material fact and whether the district court correctly applied the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990).

This court has previously stated the standard of review relating to summary judgment in an action to set aside a foreclosure by advertisement (which is by nature entirely equitable) in *In Re Sina*, 2006 WL 2729544, Minn.App., September 26, 2006 (copy attached). The court of appeals stated:

Courts shall grant motions for summary judgment when the pleadings, depositions, answers to interrogatories, and admissions, together with the affidavits, show that there is no genuine issue of material fact and that a party is entitled to judgment as a matter of law. *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993). On appeal from a grant of summary judgment, this court must ask whether there are any genuine issues of material fact and whether the

district court correctly applied the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). This court must “view the evidence in the light most favorable to the party against whom judgment was granted.” *Fabio*, 504 N.W.2d at 761. And this court need not defer to a district court’s decision on a legal question. *Frost-Benco Elec. Ass’n v. Minn. Pub. Utils. Comm’n*, 358 N.W.2d 639, 642 (Minn. 1984).

So, this court should determine whether there are material facts in dispute and whether the trial judge erred in applying the law – rather than an abuse of discretion standard.

CONCLUSION

At the foreclosure auction, the mortgage lien is extinguished and replaced by a new lien securing the amount of the bid. So said the Minnesota Supreme Court in *State v. Zacher* 504 N.W. 2d 468 (Minn. 1993). *Youngdahl v. HBC Enterprises* 2008 W.L. 2106855 (Minn. Ct. App. 2008) applies the rule in *Zacher* (replacement of the mortgage lien with the bid lien) to common interest community properties governed by MCIOA.

Because Respondents ignored the foreclosure notice and deferred any attempt to exercise their proportionate payoff rights, the foreclosure sales had converted Galt’s blanket mortgage lien into four individual liens securing specific bids at the foreclosure sale. Despite having notice of Appellant’s mortgage when purchasing their units and despite receiving proper notice of the foreclosure,

Respondents opted to do nothing.^[1] During that period of inaction, the lien “attributable” changed from a proportionate amount of a blanket lien to 100 percent of the bid amount (since each unit was sold pursuant to a specific bid). Minn. Stat. § 515B.3-117.

By its plain language, the proportionate payment mechanism detailed in Minn. Stat. § 515B.3-117 is permissive rather than mandatory. It is a right that “an individual unit owner **may**” exercise. Minn. Stat. § 515B.3-117. If the legislature had intended for automatic proportioning of blanket liens encumbering common interest community property or had intended to create a new affirmative duty^[2] for lenders to foreclose only on a proportionate amount of the unpaid balance, Minn. Stat. § 515B.3-117 easily could have been written that way.

The crux of Respondents’ position is contained on page 16 of their brief: “It would be inequitable if Appellant could force a unit owner to tender a one-fourth share of the nearly \$2,000,000 balance of its loan, rather than a percentage based on eighty-one units.” Brief of Respondents at 16. Far from a “red herring”, the valid recording of Galt’s mortgage and Respondents’ notice of the mortgage is the reason why strict application of *Zacher* and *Youngdahl* to this case is not

[1] Appellant played no part in Respondents’ choice to purchase units subject to Appellant’s mortgage or in Respondents’ choice to not respond to the foreclosure notice, challenge the foreclosure, or participate in the sales.

[2] Respondents urge that the facts and circumstances of this case are so unique that affirming the trial court’s ruling will not impact the lending business, forgetting (1) lenders spend much time and energy trying to evaluate, and then price, risk, and (2) someone will have to perform the ‘are our facts/circumstances sufficiently different?’ analysis to assure the lender that a foreclosure which states the remaining amount of the debt won’t be judicially voided.

inequitable. Mortgages state the amount secured and are publicly recorded to put the world on notice that title to this piece of property is subject to a debt in the stated amount. To the extent the entire debt is not paid, any subsequent purchaser's rights are subject to foreclosure. Such notice of this possibility is why permitting Appellant to receive title to the units is neither unfair nor inequitable. Respondents purchased with knowledge and notice that each of their units secured a much larger debt. And then they ignored MCIOA proportional tender rights from the date they purchased through the date of the sheriff's sale despite being served with the foreclosure notice. They slept on their rights. And in the interim the blanket lien was converted into individual liens securing the foreclosure sale bids.

This court should reverse the trial court's decision, order that Appellant's foreclosure sale was valid, and declare that Respondents may not, following a foreclosure sale, invoke Minn Stat. § 515B.3-117.

Respectfully Submitted,

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