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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1342**

United Prairie Bank - Mountain Lake,
Respondent,

vs.

Haugen Nutrition & Equipment, LLC, et al.,
Appellants,

Haugen Feeds, Inc., et al.,
Defendants.

**Filed March 15, 2011
Affirmed
Bjorkman, Judge**

Cottonwood County District Court
File No. 17-CV-10-285

Samuel L. Hanson, Charles B. Rogers, Jason R. Asmus, Briggs and Morgan, P.A.,
Minneapolis, Minnesota (for respondent)

John E. Mack, Ralph Daby, Mack & Daby, P.A., New London, Minnesota (for
appellants)

Considered and decided by Wright, Presiding Judge; Bjorkman, Judge; and
Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellants challenge the district court's summary judgment in favor of respondent in an eviction action, arguing that the district court erred in granting the eviction because the underlying foreclosure and sheriff's sale were improper. We affirm.

FACTS

This appeal is the third in a multi-year litigation involving two parcels of land located in Cottonwood County (the real property). A full description of the underlying facts is set forth in our two prior decisions, *United Prairie Bank v. Haugen Nutrition & Equip., LLC*, Nos. A06-722, A06-868 (Minn. App. May 22, 2007), and *United Prairie Bank v. Haugen Nutrition & Equip., LLC*, 782 N.W.2d 263 (Minn. App. 2010) (*United Prairie Bank II*), review granted (Minn. June 29, 2010). The following facts pertain to the eviction decision at issue in this appeal.

Appellants Leland and Ilene Haugen owned the real property and used it to farm and run a feed mill business. In 2003, the Haugens entered into a series of transactions to refinance their outstanding debt on the real property. The Haugens sold the real property to an intermediary who borrowed money from respondent United Prairie Bank (UPB) to make the purchase. The Haugens formed appellant Haugen Nutrition & Equipment, LLC (HNE), and HNE agreed to repurchase the real property from the intermediary on a contract for deed. HNE also gave UPB a mortgage on the real property as part of the transactions. When HNE failed to make the balloon payment due at the end of the first

year under the contract for deed, the intermediary was unable to repay his debt to UPB and transferred title to the real property and the contract for deed to UPB.

UPB subsequently initiated an action against the Haugens and HNE to recover funds due under the contract for deed and to foreclose on the real property. The district court determined that the contract for deed was an equitable mortgage and that UPB could foreclose the equitable mortgage by action in the pending suit. The district court also ruled that UPB was entitled to recover attorney fees that UPB incurred in protecting the real property from other creditors. Judgment was entered on January 26, 2009, and UPB recorded the judgment and a notice of lis pendens on February 12. UPB subsequently moved for entry of a judgment of foreclosure as to the equitable mortgage, which the district court granted on March 30, without objection from the Haugens or HNE. UPB purchased the real property at the sheriff's sale on May 14, and the district court confirmed the sale the same day, again without objection.

The Haugens and HNE appealed the January 26, 2009 judgment, and we affirmed. *See United Prairie Bank II*, 782 N.W.2d at 266. The supreme court granted further review of the attorney-fee issue, and a decision is pending. The Haugens and HNE did not appeal the foreclosure judgment or the confirmation order.

After expiration of the 12-month redemption period on May 14, 2010, UPB initiated this eviction action to recover possession of the real property and evict the Haugens, HNE, and Darren Haugen, the Haugens' son who was renting the real property. The Haugens and HNE argued that UPB did not have title to the real property because the foreclosure was ineffective. Darren Haugen argued that he was entitled to possession of

the real property by virtue of an April 15, 2010 lease from the Haugens and submitted a February 19, 2009 deed transferring the real property from HNE to the Haugens. UPB moved for summary judgment, and the Haugens and HNE moved for an “order invalidating the sheriff’s sale and certificate herein and reopening the validity of such sale pursuant to Minn. R. Civ. P. 60b, clauses c, d, e and f.” The district court granted UPB’s motion, entered an eviction judgment ruling that UPB was entitled to immediate possession of the real property, and issued a writ of recovery of premises and order to vacate. This appeal by the Haugens and HNE follows.

D E C I S I O N

On an appeal from summary judgment, we ask whether there are any genuine issues of material fact and whether the district court erred in its application of the law. *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990). We review de novo whether the district court erred in its application of the law and whether there were any genuine issues of material fact when the evidence is viewed in the light most favorable to the nonmoving party. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

An eviction action is a summary proceeding to determine the present possessory rights to property. *See* Minn. Stat. § 504B.001, subd. 4 (2010). The only issue for determination in an eviction proceeding is “whether the facts alleged in the complaint are true.” *Minneapolis Cmty. Dev. Agency v. Smallwood*, 379 N.W.2d 554, 555 (Minn. App. 1985), *review denied* (Minn. Feb. 19, 1986); *see also* Minn. Stat. § 504B.355 (2010). An eviction complaint must identify the person against whom the complaint is made,

describe the premises of which possession is claimed, and state “the facts which authorize the recovery of possession.” Minn. Stat. § 504B.321, subd. 1 (2010). Eviction is proper if a mortgagor withholds possession of land after the “time for redemption on foreclosure of a mortgage” has expired. Minn. Stat. § 504B.285, subd. 1 (2010) (stating that person “entitled to the premises may recover possession by eviction”).

Appellants argue that the district court erred in relying on the foreclosure because the foreclosure was defective and should be reopened. We disagree. The uncontested foreclosure of the equitable mortgage and uncontested sheriff’s sale transferred title to the real property to UPB, contingent only on HNE’s right of redemption. *See* Minn. Stat. §§ 580.23, subd. 2 (providing mortgagor a 12-month redemption period), 581.10 (2010); *Geo. Benz & Sons v. Willar*, 198 Minn. 311, 314, 269 N.W. 840, 841 (1936) (stating that fee title vests in foreclosure purchaser upon expiration of redemption period). The foreclosure and sale also extinguished any interests in the real property given after the equitable mortgage—the February 19, 2009 deed transferring the real property from HNE to the Haugens and the April 15, 2010 lease from the Haugens to Darren Haugen. *See In re Crablex, Inc.*, 762 N.W.2d 247, 253 (Minn. App. 2009) (stating that “a mortgage foreclosure terminates interests over which the mortgage has priority”), *review denied* (Minn. Apr. 29, 2009). And it is undisputed that the period of redemption expired without HNE redeeming the real property. UPB, therefore, was entitled to a court order compelling delivery of possession. *See* Minn. Stat. § 504B.285, subd. 1.

Moreover, appellants’ argument is essentially a collateral challenge to UPB’s title. An eviction action is a summary proceeding solely for determination of the present

possessory rights to property. *See* Minn. Stat. § 504B.001, subd. 4. Title claims cannot be determined in an eviction proceeding unless the party has no alternative forum available to litigate the claims. *AMRESO Residential Mortg. Corp. v. Stange*, 631 N.W.2d 444, 444 (Minn. App. 2001) (holding that eviction proceedings “are summary in nature and the limited scope of these proceedings does not permit the adjudication of title claims”). The district court properly concluded that appellants have other avenues for directly litigating their title-based claims. For example, appellants’ rule 60.02 motion, while improper in the eviction action, could have been asserted in the foreclosure action. *See Bode v. Minn. Dep’t of Natural Res.*, 612 N.W.2d 862, 866 (Minn. 2000) (stating that rule 60.02 is “a procedural mechanism to directly, rather than collaterally, attack a void judgment”). Accordingly, we conclude that the district court did not err in declining to address appellants’ title challenges in the eviction action.

Finally, we reject appellants’ assertion that the pending appeal in *United Prairie Bank II* somehow disposes of the issues in this case. That appeal concerns only attorney fees and related issues flowing from the January 26, 2009 judgment; it does not concern the subsequent foreclosure or sale. *See United Prairie Bank II*, 782 N.W.2d at 265-66. And the district court expressly stated in its unchallenged foreclosure decision that it was not awarding attorney fees to UPB. The outcome of the appeal pending before the supreme court, therefore, has no bearing on the validity of the district court’s eviction decision.

Affirmed.