

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2010).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-2121**

U. S. Bank National Association,
Respondent,

vs.

John M. Steele, P. A., et al.,
Appellants.

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

Hennepin County District Court
File No. 27-CV-10-20950

William Paul Wassweiler, Daniel J. Schwartz, Bryan R. Freeman, Lindquist & Vennum, PLLP, Minneapolis, Minnesota (for respondent)

David E. Krause, Minneapolis, Minnesota (for appellants)

Considered and decided by Peterson, Presiding Judge; Stoneburner, Judge; and Hudson, Judge.

UNPUBLISHED OPINION

PETERSON, Judge

In this loan-guaranty dispute about the guarantors' responsibility for amounts associated with real property sold at a sheriff's foreclosure sale, appellant-guarantors

argue that the district court misread the guaranty documents when it held appellants responsible for certain taxes and a recording fee. We affirm.

FACTS

Appellant John M. Steele purchased real property in Minneapolis (the property) for \$1,025,000 and assigned his rights under the purchase agreement and conveyed the property by warranty deed to SND Development, LLC. Steele was the sole member of SND.

SND and respondent U.S. Bank National Association entered into a loan agreement in the amount of \$840,000. The loan was secured by a mortgage on the property, and Steele and appellant John M. Steele, P.A., executed loan guaranties. SND defaulted on the loan in 2008, when the balance due was \$861,233.50. Respondent foreclosed by advertisement and purchased the property for \$861,233.50 at a sheriff's sale on November 7, 2008. The sale was subject to a six-month redemption period. In addition to defaulting on the loan, SND failed to pay \$85,394.95 for property taxes due in 2007 and 2008. During the redemption period, respondent paid the delinquent property taxes and a \$48 recording fee for an affidavit of additional amounts due that showed expenses incurred by respondent during the redemption period.

Respondent requested payment for the property taxes and recording fee from appellants under the guaranties. Appellants declined to pay, and respondent brought this lawsuit against appellants. The parties filed cross-motions for summary judgment. The district court granted summary judgment for respondent, concluding that, as a matter of law, under the guaranties, respondent was entitled to recover the total amount of property

taxes, the recording fee, and reasonable attorney fees incurred to enforce the guaranties.¹ Respondent then moved for an award of attorney fees. The district court awarded respondent \$34,353.78 in attorney fees and costs and \$9,550.88 in prejudgment interest. This appeal followed.

DECISION

I.

“[A] guaranty is construed the same as any other contract, the intent of the parties being derived from the commonly accepted meaning of the words and clauses used, taken as a whole.” *Am. Tobacco Co. v. Chalfen*, 260 Minn. 79, 81, 108 N.W.2d 702, 704 (1961). Construction of an unambiguous contract is a question of law, which we review de novo. *Horodenski v. Lyndale Green Townhome Ass’n, Inc.*, 804 N.W.2d 366, 371 (Minn. App. 2011); *see also Denelsback v. Wells Fargo & Co.*, 666 N.W.2d 339, 346 (Minn. 2003) (stating that whether a contract is ambiguous is a question of law). “[U]nambiguous language must be accorded its plain and ordinary meaning. Language that is not reasonably susceptible to more than one meaning is unambiguous.” *Id.*

The guaranties that appellants signed state:

As used herein, the term “*Obligations*” shall mean *all loans, drafts, overdrafts, checks, notes and all other debts, liabilities and obligations of any kind owing by [SND] to the Bank, whether direct or indirect, absolute or contingent, liquidated or unliquidated whether the same or of a different nature and whether existing now or in the future, including interest thereon and all costs, expenses and reasonable attorneys’ fees (including fees of inside counsel) paid or*

¹ The district court denied additional damages sought by respondent, but respondent does not challenge the denial on appeal.

incurred by the Bank at any time before or after judgment in attempting to collect any of the foregoing, to realize on any collateral securing any of the foregoing or this Guaranty, and to enforce this Guaranty. (Emphasis added.)

Appellants argue that the district court erred in construing the phrase “to realize on any collateral securing any of the foregoing” in the guaranties. Appellants contend that “securing any of the foregoing” refers to SND’s liabilities to respondent and that SND’s debt to respondent was satisfied when the property was sold at the sheriff’s sale. Therefore, after the sheriff’s sale, the property no longer secured any debt owed by SND to respondent, and expenses incurred after the sale were not incurred to realize on collateral securing SND’s debt to respondent.

The plain and ordinary meaning of “realization” is “[c]onversion of noncash assets into cash assets,” *Black’s Law Dictionary* 1379 (9th ed. 2009), and, therefore, the phrase, “to realize on any collateral,” as used in the guaranties, means to convert noncash collateral into cash. Under the guaranties, the loan on which SND defaulted was an obligation owed by SND to respondent, and the property was collateral that secured the loan. Following the sheriff’s sale, although respondent’s loan to SND was paid, respondent held a lien on the property. The supreme court explained long ago:

If the mortgagee is the purchaser at the foreclosure sale, his debt, as between him and the mortgagor, is paid; but it is not true that either his mortgage, as a muniment of title,² or his interest in the mortgaged premises, is discharged or extinguished. Where the mortgagee is the purchaser at the foreclosure sale, he simply receives a conditional conveyance of the premises for the payment of his debt, and continues to

² “Muniment of title” means “[d]ocumentary evidence of title.” *Black’s Law Dictionary* 1114 (9th ed. 2009).

have a lien on the premises for the amount of the purchase price, which was applied in payment of his debt. His interest in the premises is practically the same after the sale as before, except the purchase price must be repaid to him by the mortgagor, with interest, within the [redemption period], or his title under his mortgage becomes absolute. Until the time to redeem expires, he has a lien on the premises, and holds them for the security of his bid.

Carlson v. Presbyterian Bd. of Relief, 67 Minn. 436, 439, 70 N.W. 3, 4 (1897). *See also State v. Zacher*, 504 N.W.2d 468, 472 (Minn. 1993) (stating that mortgage continues to exist and have vitality in protecting security interest in property after foreclosure sale although mortgage debt is extinguished, citing *Carlson*).

Under their plain language, the guaranties extend to all expenses paid or incurred by respondent at any time in attempting to convert any collateral into cash. Respondent could attempt to convert the property into cash by selling it. But if there are delinquent property taxes on the property, respondent's deed or other instrument conveying the property could not be recorded. *See* Minn. Stat. § 272.12 (2010)(county recorder or registrar of titles shall refuse to receive or record instrument conveying land unless auditor notes upon instrument the words, "no delinquent taxes and transfer entered"). Consequently, paying the delinquent property taxes is a necessary part of an attempt to convert the property into cash that was not discharged by respondent's payment at the foreclosure sale.

II.

Appellants argue that, "[b]y adding the amounts claimed [for taxes and the recording fee] to the price of the property pursuant to Minn. Stat. § 582.03, [respondent]

caused any obligation for these amounts under the guaranties to be discharged by payment.” Minn. Stat. § 582.03, subd. 1 (2010), states:

The holder of any sheriff’s certificate of sale, from a foreclosure by advertisement . . . of a mortgage or lien or execution, or the holder of any certificate of redemption as a junior creditor during the period of redemption, may pay and claim the following on redemption: any taxes or assessments on which any penalty would otherwise accrue

The language of Minn. Stat. § 582.03, subd. 1, does not support appellants’ argument, and the case relied on by appellants, *Schmidt v. McKenzie*, 215 Minn. 1, 9 N.W.2d 1 (1943), which involved a guarantor’s liability when the original contract was replaced by a substitute contract, is not on point. Furthermore, nothing in the record indicates that respondent’s bid at the foreclosure sale was not for the amount due on respondent’s loan to SND.

III.

Citing *State Bank of Young Am. v. Fabel*, 530 N.W.2d 858, 863 (Minn. App. 1995), appellants argue that without any other termination provision in their guaranties, the guaranties ended when respondent’s loan to SND was satisfied and, because the amounts that respondent claims were incurred after the guaranties terminated, the amounts are not recoverable. But *Fabel* is significantly different from this case.

In *Fabel*, a bank loan was secured by both personal property and a mortgage on real property. 530 N.W.2d at 860. The guarantors executed personal guaranties for the principal amount of the loan and agreed to repay that sum. *Id.* When the borrower defaulted, the bank commenced an action for possession and sale of the personal

property, and, after deducting sale expenses and attorney fees, the bank received \$40,758.17 for the personal property. *Id.* The bank then foreclosed on the real property and purchased the property at the sheriff's sale for \$60,000, which was slightly more than the balance owing on the loan. *Id.* Later, the bank sold the real property and realized \$32,000. *Id.* The bank then sued the guarantors for \$40,132.68, which it claimed was the deficiency remaining after applying the proceeds from the sales of personal and real property to the mortgage debt. *Id.* This court determined that "[t]he note was satisfied by applying the proceeds from the sale of the personal property and from the foreclosure sale. The [guarantors] guaranteed the note; they did not guarantee that [the bank] would not experience a loss in its subsequent sale of the property." *Id.* at 862.

This court explained that,

whereas an obligation of a guarantor is not relieved by the discharge of the mortgagor in bankruptcy or the discharge of the mortgagor under the Minnesota foreclosure statute, there must be a deficiency for which the guarantors can be held liable. In cases where a principal debtor is discharged, guarantors of the debt are nonetheless liable for any deficiency; however, in a case in which the underlying debt is fully recovered, there remains nothing for which the guarantors can be held liable.

Id. at 863.

Unlike the guaranties in *Fabel*, appellants' guaranties extend to amounts other than the outstanding balance of SND's loan, which is the amount that respondent paid at the foreclosure sale. In addition to SND's loan obligation, appellants' guaranties apply to costs that respondent incurred at any time in attempting to realize on any collateral

securing the loan obligation. The costs that respondent incurred have not been fully recovered by respondent.

IV.

Appellants' argument that the district court erred in awarding attorney fees, costs, and interest is based on appellants not being liable under the guaranties; appellants do not challenge the amount awarded for attorney fees, costs, and interest. Because we have concluded that appellants are liable under the guaranties, we affirm the award for attorney fees, costs, and interest.

Affirmed.