

IN THE COURT OF APPEALS OF IOWA

No. 0-097 / 09-1192
Filed June 16, 2010

BURTON L. BELL,
Plaintiff-Appellant,

vs.

**RAIL CONTAINER CORPORATION,
HASTINGS FAMILY HOLDINGS, L.L.C.,
SOUTH AVENUE, L.L.C., PINNACLE BANK,
and THOMAS M. HASTINGS,**
Defendants-Appellees.

Appeal from the Iowa District Court for Pottawattamie County, Charles L. Smith, Judge.

Plaintiff appeals the district court decision denying his claim of an equitable mortgage. **AFFIRMED.**

Jeffrey Coats of Coats, Schultz & Watson, L.L.P., Council Bluffs, and Brian S. Rhoten, Council Bluffs, for appellant.

Aimee Karschner Cizek and Robert J. Becker of Stalnaker, Becker & Buresh, P.C., Omaha, Nebraska, for appellees Hastings Family Holdings and South Avenue.

Terry A. White of Domina Law Group, Omaha, Nebraska, for appellee Thomas Hastings.

Considered by Vogel, P.J., Eisenhauer, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

MAHAN, S.J.**I. Background Facts & Proceedings**

Burton Bell was a partial owner of Rail Container Corporation (RCC).¹ Bell owned 2800 and 2804 South Avenue in Council Bluffs and these properties were used by RCC.² Bell and RCC entered into a contract for sale of real estate for a purchase price of \$233,678. On September 9, 2004, Bell also signed a quit claim deed releasing and forever quit claiming to grantee all right title and interest to the property. The real estate contract was not recorded until September 5, 2006.

In July 2006 Bell sold his shares in RCC to Thomas Hastings. Bell testified that during discussions concerning the sale he informed Hastings that RCC owed him \$247,467. The purchase agreement noted Bell was owed this amount. Hastings, however, never signed the purchase agreement. In August 2006 Hastings obtained a majority interest in RCC.

On October 26, 2006, RCC conveyed the property to Hastings Family Holdings by warranty deed. Steve Rubes had a power of attorney for Bell, and Rubes signed a release for other debts. Bell did not receive any funds at the time of the sale to Hastings Family Holdings. The property was later conveyed by warranty deed to South Avenue, L.L.C., another company managed by Hastings. South Avenue obtained a mortgage on the property from Pinnacle Bank. RCC has ceased to be in business.

¹ At the time of the sale of the property in 2004, Bell, Bill Karpan, and Greg Bock each owned one-third of the stock in RCC.

² Bell also owned other property, but only these two parcels are involved in this action.

On November 27, 2007, Bell filed suit against RCC, Hastings Family Holdings, South Avenue, and Pinnacle Bank,³ alleging he had an equitable mortgage on the properties.⁴ A default judgment for \$246,934.41 entered against RCC on October 20, 2008.

The matter proceeded to a trial with the other defendants on March 12, 2009. Tabitha Wood of Missouri River Title worked on closing the sale from RCC to Hastings Family Holdings. Commitment letters noted the real estate contract between Bell and RCC. Wood testified “[t]he title commitment should have been issued to all parties involved,” but she did not personally know if the commitment letters were sent out. She stated there should have been fax cover sheets in the company’s file if the letters had been sent, and there were no fax cover sheets in the file. Wood testified that when Rubes signed the release he stated it took care of all of Bell’s claims on the property. Hastings and his business associate, William Hoppner, testified they believed the property was free and clear of all liens.

The district court ruled on July 27, 2009, there was an equitable mortgage on the property between Bell and RCC. The court also found, however, that Hastings Family Holdings, South Avenue, and Hastings did not have actual notice of the real estate contract between Bell and RCC. The court found there was no information in the record that indicated the defendants “possessed any information that would have caused a prudent man to make inquiry.” The court

³ Pinnacle Bank is not part of this appeal.

⁴ The petition was later amended to name Thomas Hastings individually.

furthermore determined the defendants lacked constructive notice. Because defendants did not have notice they were good faith purchasers for value. The court entered judgment in favor of all defendants. Bell appealed.

We granted a limited remand in the case on the issue of whether the default judgment entered against RCC on August 20, 2008, remained in force and effect after the court's ruling on July 27, 2009. The district court ruled the default judgment against RCC should remain in force and effect. Additionally, the court amended the order of July 27, 2009, so that it no longer granted judgment in favor of RCC.

II. Standard of Review

This case was tried in equity, and our review is de novo. See Iowa R. App. P. 6.907 (2009). "In equity cases, especially when considering the credibility of witnesses, the court gives weight to the fact findings of the district court, but is not bound by them." Iowa R. App. P. 6.904(3)(g).

III. Default Judgment

On appeal, Bell raised an issue pointing out that the court had previously entered a default judgment against RCC, and no motion was made to set aside the default judgment. He claims the court improperly entered judgment in favor of RCC in its later ruling of July 27, 2009. We determine this issue has been resolved by the district court's ruling in the limited remand. Therefore, we do not further address this issue.

IV. Actual Notice

An equitable mortgage may be created when there is a deficiency or uncertainty in a written instrument purporting to create a security interest. *Iowa State Bank & Trust Co. v. Michel*, 683 N.W.2d 95, 106 (Iowa 2004). An equitable mortgage may also arise by implication under equitable principles. *Tubbs v. United Cent. Bank*, 451 N.W.2d 177, 185 (Iowa 1990). The court looks to the intent of the parties to determine whether they intended to create a security interest. *Steckelberg v. Randolph*, 404 N.W.2d 144, 149 (Iowa 1987); *Klotz v. Klotz*, 440 N.W.2d 406, 408 (Iowa Ct. App. 1989).

When property that is subject to an equitable mortgage is sold, the property remains subject to the equitable mortgage unless there is a good-faith purchaser in the ordinary course of business. *Smith v. Village Enters, Inc.*, 208 N.W.2d 35, 40 (Iowa 1973). A purchaser has not shown good faith if the purchaser knew, or as a reasonably prudent person should have known, others had an interest in the property. *Raub v. Gen. Income Sponsors of Iowa, Inc.*, 176 N.W.2d 216, 220 (Iowa 1970). A purchaser may have actual or constructive notice of the claims of others. *Sun Valley Iowa Lake Ass'n v. Anderson*, 551 N.W.2d 621, 637 (Iowa 1996).

Bell claims Hastings Family Holdings, South Avenue, and Hastings had actual notice of the real estate contract for the properties between Bell and RCC. “Actual notice depends upon the purchaser having either (1) actual knowledge of the existing rights, or (2) knowledge of sufficient facts to charge the purchaser with a duty to make inquiry that would reveal the existence of such rights.” *Id.* A

person who purchases land “with knowledge of such facts as would put a prudent man upon inquiry, which, if prosecuted with ordinary diligence, would lead to actual notice of rights claimed adversely by another, is chargeable with the actual notice he would have received.” *Raub*, 176 N.W.2d at 220.

The evidence supports the district court’s finding that Hastings Family Holdings, South Avenue, and Hastings did not have actual notice of Bell’s equitable mortgage on the property. Hastings testified he believed the property was being purchased free and clear of all liens. He stated he would not have considered purchasing the property if he had not been assured it was free and clear of liens. We agree with the district court’s conclusion that these defendants did not have actual notice of the equitable mortgage. Because they did not have actual notice, they were good-faith purchasers, and the equitable lien did not follow the property.⁵

We affirm the decision of the district court.

AFFIRMED.

⁵ The district court also found there was no constructive notice. However, that issue was not raised on appeal, and therefore, we do not address it.