IN THE COURT OF APPEALS OF IOWA

No. 0-174 / 09-1000
Filed May 26, 2010

WILLIAM MEYER,
Plaintiff-Appellant,

vs.

DALE MOHS, DEBBIE MOHS, and
ANCHOR BANK, FSB of Madison, Wisconsin,
Defendants-Appellees.

Appeal from the Iowa District Court for Clayton County, John Bauercamper, Judge.

The plaintiff appeals from the district court's order denying his petition to foreclose the defendants' mortgage. **AFFIRMED**.

James Burns of Miller, Pearson, Gloe, Burns, Beatty & Cowie, P.L.C., Decorah, for appellant.

James S. Updegraff, West Union, and Charles Kelly, Postville, for appellees Dale and Debbie Mohs.

John Compton of John C. Compton, P.S., Strawberry Point, for appellee Anchor Bank.

Heard by Vogel, P.J., and Potterfield and Danilson, JJ.

VOGEL, P.J.

I. Background Facts and Proceedings.

Draun's, Inc., incorporated in 1974, was an Iowa Corporation that sold and serviced farm equipment. As of 2000, Draun's had two shareholders—William Meyer owned sixty-five percent of the stock and held the title of President, and Dale Mohs owned thirty-five percent of the stock and held the title of Vice President and Secretary. On March 9, 2000, Draun's borrowed $175,000 from Peoples State Bank (Bank) for operating costs.[1] The terms of the promissory note provided that the corporation would be able to borrow up to $175,000 at an interest rate of 9.75% with the balance due on April 9, 2006. On behalf of the corporation, Meyer as President and Mohs as Vice President signed the note. That same day, Meyer and Mohs and his wife, Debbie Mohs, executed mortgages on real estate they personally owned. The Mohses' mortgage stated it stood as security for "Note for $175,000 dated 3/9/00." Finally, a "Corporate Authorization Resolution" was signed by Meyer and Mohs, which required both Meyer's and Mohs's signatures for, among other things, incurring debt. In August 2001, Meyer and Mohs signed a guaranty agreement, whereby they bound themselves to jointly and severally secure up to $175,000 to the Bank whether the indebtedness was then due or would become due anytime thereafter.

In April 2004, Draun's ceased operations and dissolved. After the corporation's assets were sold, the proceeds were paid to the Bank but were

[1] Peoples State Bank later merged with several other local banks and formed Freedom Bank.

insufficient to pay the note in full. On May 10, 2004, purportedly on behalf of Drahn's, Meyer alone signed a modification of the original note, which advanced the maturity date to December 1, 2004, and reduced the interest rate to 7.75%. The balance due as of that date was $138,828.04.

In 2006, Meyer and the Bank reached an agreement. The balance then due on the loan was $70,000, but the Bank agreed to accept $60,000 plus legal fees as payment in full and forgive the remaining balance. Additionally, the Bank would assign to Meyer the original note and the Mohses' mortgage. On July 13, 2006, Meyer borrowed $61,285.87 from the Bank, and in turn paid off the note as modified by Meyer on May 10, 2004—$60,000 was applied to the note and $1285.87 designated as attorneys fees incurred by the Bank. The Bank forgave the balance on the note, and although the original was lost, the uncontroverted testimony was that the note was fully satisfied and the debt discharged. The Bank then executed a document entitled "Assignment of Promissory Note," which stated that it assigned to Meyer all right, title, and interest in the promissory note dated March 9, 2000.

On December 1, 2006, Meyer filed a petition alleging that Mohs had defaulted on the promissory note and sought judgment against Mohs in the amount of $61,285.87 plus interest, costs, and attorney fees, and requested the Mohses' mortgage be foreclosed. Trial was held on March 26, 2009. At trial, Meyer did not introduce any evidence regarding the corporate bylaws or the

rights and duties the parties owed as shareholders.[2] Rather, he was only seeking to foreclose the Mohses' mortgage, as he claimed it secured the payment of the corporate note.

On June 5, 2009, the district court denied Meyer's petition. The court discussed that although the Bank attempted to get a personal guarantee from Meyer and Mohs, the Bank's paperwork was "sloppy" at best—the personal mortgage instrument signed by the Mohses did not clearly tie them to the corporate note, the guarantee document was signed much later than the loan and without consideration, the modification of the note by Meyer was not signed in compliance with the corporate borrowing resolution, and the original note was lost and "apparently marked 'paid.'" The court found,

> Both shareholders were jointly and severally liable for the full balance due on the Bank loan, if the personal guarantee is valid. The Bank's action in accepting full payment from one party and canceling the debt, leaves the Bank paid in full. Therefore, there is no remaining debt left to support the Bank's transfer of the Mohses' mortgage to Meyer. Meyer cannot rely on the Bank loan as consideration to support the mortgage, but is instead relying on his interpretation of the respective rights and obligations of the corporate shareholders for corporate debts. The court lacks the jurisdiction and the evidence needed to adjudicate the rights and responsibilities of the shareholders.
>
> Therefore, the court concludes that the Bank had nothing of value to assign to Meyer.

Meyer appeals.

II. Standard of Review.

An action to foreclose a mortgage is an equitable proceeding and therefore, review is de novo. Iowa Code § 654.1 (2005); *Iowa State Bank &*

[2] When asked whether any corporate agreement or bylaws existed regarding how debt would be paid in event of liquidation, Meyer answered, "The corporate book disappeared."

Trust Co. v. Michel, 683 N.W.2d 95, 98 (Iowa 2004). "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 State Bank & Trust Co.*, 683 N.W.2d at 98.

III. Analysis.

Meyer asserts that he had a right to foreclose the mortgage the Mohses gave on their real estate, as it secured the corporate note. In 2000, Draun's, Inc. borrowed $175,000 from the Bank, which was evidenced by the note. *See* 59 CJS *Mortgages* § 204 (distinguishing between a note, evidence of the debt, and mortgage, security for the debt). That day, both Meyer and the Mohses executed mortgages on their individual real property in order to secure the note to the Bank by Draun's. *See* Am. Jur. 2d *Mortgages* § 59, at 643, § 342, at 94 (2009) (discussing that where a person mortgages his or her property to secure the debt of a third person a suretyship relationship results).

On July 13, 2006, Meyer made a payment that the Bank applied toward the note and the Bank forgave the remaining debt, which resulted in the note being fully satisfied and the debt discharged.[3] *See Farmers Nat. Bank of Winfield v. Winfield*, 702 N.W.2d 465, 467 (Iowa 2005). Because the debt was satisfied, the mortgages executed by Meyer and the Mohses had nothing to secure. *See* 59 C.J.S. *Mortgages* § 565, at 596 (2009) ("After a debt is discharged, an assignment of a mortgage without the debt is a mere nullity . . . ."). We agree with the district court that the underlying debt had been paid

[3] Meyer acknowledges in his brief that "[the note] was paid in full as to the Bank."

and therefore the Mohses' mortgage no longer secured any debt. Meyer's petition to foreclose the mortgage was properly denied.[4]

Meyer additionally asserts on appeal that he has the right of contribution against Mohs. While Meyer may have a remedy apart from this action, Meyer did not preserve it for appeal. *See Hills Banks & Trust Co. v. Converse*, 772 N.W.2d 764, 772 (Iowa 2009) (discussing contribution between co-sureties). At trial, Meyer argued that a balance was due on the note and sought foreclosure as his remedy based upon this balance due. The district court did not rule on the contribution issue and Meyer did not file a post-trial motion requesting the court do so. Therefore, we find that any recovery based upon a right of contribution is not preserved for our review. *See, e.g.*, *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2006) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal."); *State Farm Mutual Auto Ins. Co. v. Pflibsen*, 350 N.W.2d 202, 206 (Iowa 1984) ("It is well settled that a rule [1.904(2)] motion is essential to preservation of error when a trial court fails to resolve an issue, claim, defense, or legal theory properly submitted to it for adjudication."). We affirm.

AFFIRMED.

[4] Any agreement between the Bank and Meyer as to the effect of the assignment of the note and mortgage does not create the ability of Meyer to pursue a foreclosure action. *See generally* Iowa Code ch. 654.