**IN THE COURT OF APPEALS OF IOWA**

No. 0-272 / 09-0700
Filed June 30, 2010

**DEUTSCHE BANK NATIONAL TRUST COMPANY,
As Trustee of Ameriquest Mortgage
Securities, Inc., Asset-Backed Pass
Through Certificates, Series 2004-X3,
Under the Pooling and Servicing Agreement
Dated as of September 1, 2004,
Without Recourse,**
Plaintiff-Appellant,

**vs.**

**DAVID J. GAUPP, ALEXANDRA C. GAUPP,
NATHAN PARTON and SPOUSE OF
NATHAN PARTON, REBEKAH J. BARTON
and SPOUSE OF REBEKAH J. BARTON,
WELLS FARGO BANK, N.A., and
PARTIES IN POSSESSION,,**
Defendants-Appellees.

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Appeal from the Iowa District Court for Pottawattamie County, Greg W. Steensland, Judge.

The plaintiff appeals from the district court's order granting the defendants' motion for summary judgment. **AFFIRMED.**

Matthew E. Laughlin and Sarah K. Franklin of Davis Brown Law Firm, Des Moines, for appellant.

Charles R. Hannan, IV, Council Bluffs, for appellees David J. Gaupp and Alexandra C. Gaupp.

Aaron W. Rodenburg, Council Bluffs, for appellees G&G Properties and Troy Granger.

Brian D. Nolan of Nolan, Olson & Stryker, P.C., L.L.O., Omaha, Nebraska, for appellees Wells Fargo Bank, N.A., Nathan Parton, Spouse of Nathan Parton, Rebekah J. Barton, and Spouse of Rebekah J. Barton.

Alexandra Gaupp, Council Bluffs, appellee pro se.

David Gaupp, Council Avenue, appellee pro se.

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

**VOGEL, P.J.**

**I. Background Facts and Proceedings.**

In 2002, David Gaupp and Troy Granger formed a partnership, G & G Properties. On March 23, 2002, Gaupp and Granger purchased a duplex to use as a rental home for their partnership. Charles and Betty Bowes conveyed the property to "David J. Gaupp and Troy Granger" by warranty deed, which was recorded on April 9, 2002. On July 3, 2002, Gaupp, his wife, Alexandra Gaupp, and Granger conveyed the property to "G & G Properties" by warranty deed, which was recorded on September 24, 2002.

On December 8, 2003, Gaupp borrowed $162,000 from Ameriquest Mortgage Company (Ameriquest), which was evidenced by a promissory note and signed by Gaupp individually. In spite of the fact that Gaupp was not the titleholder of the property, the note purported to be secured by a mortgage on the property showing the borrower/mortgagor as "David J. Gaupp, married," and bearing the signatures of "David J. Gaupp" and "Alexandra C. Gaupp,"[1] but the acknowledgment is only as to "David J. Gaupp" and was notarized by a Nebraska notary public. The mortgage instrument was recorded on January 8, 2004. Ameriquest subsequently sold and assigned the mortgage to Deutsche Bank National Trust Company (Deutsche Bank).

Although G & G Properties was the record titleholder of the property, the Gaupps and Granger subsequently executed two deeds regarding the property. On December 31, 2003, a "Corrected Warranty Deed" attempted to convey the property from "David J. Gaupp and Alexandra C. Gaupp" and "Troy S. Granger"

[1] Alexandra denies she signed the mortgage.

to "David J. Gaupp and Alexandra C. Gaupp," which was then recorded on January 8, 2004. On February 2, 2005, the Gaupps attempted to convey the real estate from "David J. Gaupp and Alexandra C. Gaupp" to "G & G Properties" by a quitclaim deed, which was recorded on July 28, 2005. In David Gaupp's deposition testimony, he explained that these conveyances were done so that Granger's name would not appear in the title, in an effort to keep Granger's child support obligations from being a lien against the real estate.

In April 2006, G & G Properties agreed to sell the real estate. On May 5, 2006, "G & G Properties" conveyed the property to "Nathan D. Parton, a single person and Rebekah J. Barton, a single person" by warranty deed, which was recorded on May 19, 2006.[2] In order to purchase the property, the Partons obtained a loan from Wells Fargo Bank, N.A. (Wells Fargo) that was secured by a mortgage on the real estate, which was recorded on May 19, 2006. G & G Properties received proceeds in the amount of $188,273.02 from the sale of the real estate.

At some point, Gaupp defaulted on the note held by Deutsche Bank. On January 30, 2007, Deutsche Bank filed a petition to foreclose its mortgage, seeking judgment in rem against the real estate in the amount of $154,147.19, plus attorney's fees, costs, and interest, naming the Gaupps as defendants, parties in possession. On March 16, 2007, Deutsche Bank amended its petition to add the Partons and Wells Fargo as additional defendants. On November 1,

[2] Nathan and Rebekah subsequently married and are referred to herein as "the Partons."

2007, the Partons filed a third-party complaint against G & G properties and Granger.

On October 21, 2008, the Partons and Wells Fargo filed a motion for summary judgment asserting that (1) the mortgage held by Deutsche Bank was invalid; and (2) the mortgage held by Deutsche Bank could not be foreclosed because the Partons were bona fide purchasers for value. On February 12, 2009, the district court issued its ruling finding that the Gaupps and Granger conveyed their interest in the property to G & G Properties on July 3, 2002, and when G & G Properties recorded the deed on September 24, 2002, it became the record titleholder. Gaupp did not have any interest in the property when he executed the mortgage in favor of Ameriquest/Deutsche Bank and after the mortgage was executed, Gaupp never obtained title to the property. G & G Properties did not convey the property to anyone prior to May 19, 2006, when the Partons purchased the property. As a result, the mortgage held by Deutsche Bank was "null and void." The district court granted the Partons' and Wells Fargo's motion for summary judgment and dismissed the petition for foreclosure. Deutsche Bank appeals.

**II. Standard of Review.**

We review a district court's ruling on a motion for summary judgment for correction of errors at law. Iowa R. App. P. 6.907; *City of Johnston v. Christenson*, 718 N.W.2d 290, 296 (Iowa 2006). Summary judgment should be granted when the entire record demonstrates there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3).

> Thus, on review, we examine the record before the district court to decide whether any material fact is in dispute, and if not, whether the district court correctly applied the law. In considering the record, we view the facts in the light most favorable to the party opposing the motion for summary judgment.

*Shriver v. City of Okoboji*, 567 N.W.2d 397, 400 (Iowa 1997) (internal citations and quotation omitted).

**III. Analysis.**

Deutsche Bank asserts that the district court erred in granting the defendants' motion for summary judgment. The parties do not dispute that at the time Gaupp executed the promissory note and mortgage, he did not hold title to the property and that G & G Properties was the record titleholder. Deutsche Bank cannot avoid the fundamental principal that a party that has no interest in a particular piece of real property cannot validly mortgage that property. *See, e.g.*, *Lee v. Lee*, 207 Iowa 882, 885, 223 N.W. 888, 890 (Iowa 1929) (holding a mortgage invalid because the mortgagor had no interest in the property at the time the mortgage was given); 59 C.J.S. *Mortgages* § 111, at 102-03 (2009) (discussing that "[o]ne who has no ownership interest in property has no right to mortgage it" and if one does so, the mortgage creates no interest in the property). At the time Gaupp obtained the loan from Ameriquest, he did not have any interest in the property and therefore, the mortgage instrument attempting to secure the promissory note was invalid.

Deutsche Bank argues that Gaupp acquired title to the property on December 31, 2003, when the Gaupps and Granger executed the "Corrected Warranty Deed," which Deutsche Bank further argues resulted in the mortgage

becoming valid.[3] However, this argument fails because Gaupp did not acquire an interest in the property when the "Corrected Warranty Deed" was executed on December 31, 2003. On July 3, 2002, the Gaupps and Granger conveyed the property to G & G Properties. After this conveyance, Gaupp had no interest in the property and could not convey the property to anyone. *See* Iowa Code § 557.3 (2007) ("Every conveyance of real estate passes all the interest of the grantor therein, unless a contrary intent can be reasonably inferred from the terms used."). After the July 3, 2002 conveyance, only G & G Properties was able to convey title to the property. Any such attempt by Gaupp to do so would be and was invalid as he was no longer the titleholder. Therefore, the attempts by the Gaupps and Granger to convey the property on December 31, 2003, and February 2, 2005, were not valid conveyances.[4] Additionally, because the invalid conveyances were outside the chain of title, they were stray deeds when recorded. *See* William Stoebuck and Dale Whitman, *The Law of Property* § 11.11 (3rd ed. 2000) ("The term 'chain of title' is a shorthand way of describing the collection of documents which one can find by the use of the ordinary

[3] Deutsche Bank cites to Iowa Code section 577.4 (codifying the common-law doctrine of estoppel by deed); *Sorenson v. Wright*, 268 N.W.2d 203, 205 (Iowa 1978) (discussing the doctrine of estoppel by deed); *Bisby v. Walker*, 185 Iowa 743, 169 N.W. 467 (1918) (same). However, this authority is not on point. The doctrine of estoppel by deed relies upon a factual scenario where one purports to give a mortgage on property although not in title, but subsequently obtains an interest in the property. As we discuss above, Gaupp did not have an interest in the property when he attempted to mortgage the property and subsequently never obtained an interest in the property. As the district court noted, Deutsche Bank does not cite any authority that someone without any interest in property may utilize a "Corrected Warranty Deed" to convey property that the grantor has no interest in and is titled in another person or entity.

[4] These transfers were made by the Gaupps and Granger individually and not on behalf of the partnership. *See* Iowa Code § 486A.302 (stating that "partnership property held in the name of the partnership may be transferred by an instrument of transfer executed by a partner in the partnership name").

techniques of title search."); 1 C.J.S. *Abstracts of Title* § 15, at 320 n.8 (2009) ("Instrument executed by owner [that] is recorded before acquisition or after relinquishment of title by owner is outside chain of title . . . .").[5] Title remained with G & G Properties from July 3, 2002 until May 5, 2006, when G & G Properties conveyed its solely held interest in the property to the Partons. Therefore the chain of title went from G & G Properties to the Partons. Gaupp did not have title to the property when he executed the mortgage instrument now held by Deutsche Bank nor did he subsequently obtain title. We affirm the district court's findings and ruling.

**AFFIRMED.**

[5] *See also* Iowa State Bar Ass'n, Comm. on Title Standards, *Iowa Land Title Standards* ch. 4, standard 4.5 at 18-19 (8 ed. 2010) (discussing the showing necessary regarding stray deeds between persons who have no apparent interest in record title).