

IN THE COURT OF APPEALS OF IOWA

No. 0-368 / 10-0127
Filed July 28, 2010

FRONTIER LEASING CORPORATION,
Plaintiff-Appellee,

vs.

C. ALLEN RICE,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Eliza J. Ovrom,
Judge.

A defendant appeals a district court order denying his motion to set aside
a judgment by confession. **AFFIRMED.**

Patrick W. O'Bryan, Des Moines, and Jeffrey Flagg, West Des Moines, for
appellant.

Elizabeth R. Meyer of Davis Brown Law Firm, Des Moines, for appellee.

Considered by Vaitheswaran, P.J., and Doyle and Tabor, JJ.

VAITHESWARAN, P.J.

C. Allen Rice appeals a district court order denying his motion to set aside a judgment by confession.

I. Background Facts and Proceedings

Frontier Leasing Corporation and C. Allen Rice were involved in two lawsuits. The second lawsuit was a foreclosure action Frontier filed against an office building owned by Rice. Frontier held a second mortgage on the building. The first mortgage in the amount of \$461,000 was held by Liberty Bank.

The parties reached a settlement agreement under which the first lawsuit would be dismissed. With respect to the foreclosure action, the agreement specified that Frontier would apply any “equity” it obtained from a sale of the building to the outstanding judgment. The agreement further specified the judgment amount as \$245,000 plus interest, costs, and fees and required Rice to sign a personal judgment by confession in that amount, which would be filed with the court if he did not fulfill certain conditions. One of the conditions was that he make timely interest payments.

The foreclosure action proceeded to judgment and a sheriff’s sale. Frontier bid \$50,000 at the sale. As this was the only bid, Frontier received a sheriff’s deed to the property, which it took subject to Liberty Bank’s mortgage of \$461,000. Liberty Bank eventually acquired the property.

Frontier sent Rice an invoice for an interest payment of \$12,316.04. Rice failed to make the payment. Frontier sent Rice a default notice. Rice tendered a check for a reduced sum of \$10,615.09. In a memorandum that accompanied

the check, Rice explained that this reduced sum was based on a \$50,000 credit he applied against the \$245,000 judgment.

Frontier refused this check and asked Rice to cure his default. Rice did not do so and Frontier filed the judgment by confession with the district court.

Rice subsequently filed a motion to have the judgment set aside. Following a hearing, the district court denied the motion. The court also denied a motion to enlarge its findings and conclusions. This appeal followed.

II. Analysis

As noted, the settlement agreement between Frontier and Rice contained a provision governing foreclosure. It provided in pertinent part:

5. Foreclosure Action.

(a) In the event the equity from the sale of the real estate that is the subject of the Foreclosure Action is not sufficient to satisfy the judgment for \$245,000 plus interest, costs and fees, for C Allen Rice's personal guarantee of Frontier leases as set forth in the Foreclosure Action and which otherwise exist, then the remainder owed shall be repaid by Rice with biennial payments over a five-year period for a total of ten (10) payments. C Allen Rice will provide a Confession of Judgment in the amount of any such remainder after Sheriff's sale that is attached hereto as Exhibit A. . . . In the event that sale of the real estate does not result in any reduction of the judgment in the amount of \$245,000 then Rice can defer making any biennial payment prior to December 31, 2009, so long as Rice pays the interest that has accrued on such balance by July 1, 2008, December 31, 2008, and July 1, 2009 and for each quarter commencing July 1, 2008 and thereafter, Rice provides Frontier with a signed financial statement showing Rice's personal net worth and income. . . . In the event Rice fails to timely provide such information to Frontier, fails to demonstrate to Frontier's satisfaction that inability to pay or fails to timely make any payment, then Frontier shall be entitled to file such Confession of Judgment 20 days after written notice of default is mailed to Rice by certified mail/return receipt requested at Rice's address. . . .

(b) In the event Frontier acquires ownership of the real estate after Sheriff's sale and should Frontier then sell such real estate within 180 days after the date of such Sheriff's sale, then any

[sic] 75% of any net profit Frontier receives from the sale of such building shall be credited against any amount still owing by Rice to Frontier on the judgment for \$245,000.

Rice argues that under this provision, Frontier was obligated to apply “equity” against the outstanding judgment prior to calculating his interest payment. In his view, the “equity” was Frontier’s \$50,000 sheriff’s sale bid. The district court rejected this argument, stating:

Clearly when read in context, paragraph 5(a) refers to proceeds to Frontier from a Sheriff’s sale. There were no such proceeds. No other party bid on the property at the Sheriff’s sale. Frontier submitted a bid so that it could obtain title and try to sell the property prior to the time Liberty Bank’s pending Sheriff’s sale would take place. This is reflected in paragraph 5(b). Under the plain language of paragraph 5 of the Settlement Agreement, there is no credit toward the \$245,000 judgment amount based on Frontier bidding on the property at the Sheriff’s sale.

Our review of this ruling is at law. See *Longfellow v. Saylor*, 737 N.W.2d 148, 153 (Iowa 2007) (stating generally, the construction and interpretation of a contract is reviewed at law); *Shirley v. Pothast*, 508 N.W.2d 712, 715 (Iowa 1993) (stating settlement agreement is a document governed by contract principles). We discern no legal error. As Frontier points out, “equity” in this context means “[t]he amount by which the value of or an interest in property exceeds secured claims or liens; the difference between the value of the property and all encumbrances upon it.” Black’s Law Dictionary 580 (8th ed. 2004); see also *Des Moines Joint Stock Land Bank of Des Moines, Iowa v. Allen*, 220 Iowa 448, 456, 261 N.W. 912, 917 (1935) (“By the term ‘equity’ is meant ‘the remaining interest belonging to one who has pledged or mortgaged his property, or the surplus of value which may remain after the property has been disposed of for the satisfaction of liens.’” (quoting *Halvorson v. Mullin*, 179 Iowa 293, 299, 156 N.W.

289, 290 (1916)). Frontier's bid was plainly not "equity." Accordingly, Frontier was not obligated to deduct its bid from the judgment amount before calculating Rice's interest payment.

Our conclusion is bolstered by the agreement's reference to "net profit" in subpart (b) of paragraph 5. It is undisputed that Frontier had no net profit from the sale of the building. Therefore, there was nothing to apply against the \$245,000 judgment prior to calculation of Rice's interest payment.

Rice makes additional arguments in support of reversal. These arguments were not preserved for our review. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

We affirm the district court's denial of Rice's motion to set aside his judgment by confession.

AFFIRMED.