

IN THE COURT OF APPEALS OF IOWA

No. 2-767 / 11-1917
Filed January 9, 2013

HOME FEDERAL SAVINGS BANK,
Plaintiff-Appellant,

vs.

**MICHAEL TRETTIN, MAREN TRETTIN,
BRYCE J. CHRISTENSEN,
KRISTA A. POLKING-CHRISTENSEN,
WELLS FARGO BANK, N.A.
and VERIDIAN CREDIT UNION,**
Defendants-Appellees.

Appeal from the Iowa District Court for Dallas County, Gregory A. Hulse,
Judge.

Plaintiff appeals the district court's grant of summary judgment to appellees, finding plaintiff's efforts to enforce a judgment were barred by a special statute of limitations. **REVERSED AND REMANDED.**

Marcus F. Abels of Simpson, Abels, Fischer & Bouslog, P.C., Des Moines, for appellant.

Joseph M. Borg and William B. Serangeli of Dickinson, Mackaman, Tyler & Hagen, P.C., Des Moines, for appellees Trettins and Christensens.

Elizabeth R. Meyer of Davis, Brown, Koehn, Shors & Roberts, P.C., Des Moines, for appellee Wells Fargo Bank, N.A.

Kenneth P. Nelson of Randall & Nelson, P.L.C., Waterloo, for appellee Veridian Credit Union.

Heard by Eisenhauer, C.J., and Vogel and Vaitheswaran, JJ.

EISENHAUER, C.J.

Federal Home Savings Bank appeals from a grant of summary judgment in favor of Michael Trettin, Maren Trettin, Bryce H. Christensen, and Krista A. Polking-Christensen. We reverse and remand.

I. Background Facts & Proceedings.

On January 19, 2004, Silverleaf Land Company, LLC, obtained a loan for \$975,000 from Home Federal Savings Bank (Bank). This loan was secured by a mortgage on agricultural property in Dallas County, Iowa, and a commercial security agreement. In addition, the loan was secured by commercial guaranties signed by John C. Kline, Inc.; John C. Kline, individually (Kline); Randal L. Walters, Inc.; and Randal L. Walters, individually. The loan was later modified to extend the maturity date and increase the loan amount.

Silverleaf defaulted on the loan. On November 26, 2007, the Bank filed a petition for foreclosure of the real estate mortgage in Dallas County. In the same petition it sought to enforce the commercial security agreement and written guaranties. On June 3, 2008, the district court granted summary judgment and entered a decree, finding the allegations in the petition were true and incorporating them into its decree. The principal balance plus interest and penalties due at that time was \$1,411,285.63. The court entered judgment against Silverleaf; John C. Kline, Inc.; Kline; Randal L. Walters, Inc.; and

Randal L. Walters.¹ The present case involves only the judgment against John C. Kline, Inc.

At the time of the judgment on June 3, 2008, John C. Kline, Inc. owned two undeveloped lots in Dallas County. On September 3, 2008, John C. Kline, Inc. sold one of the lots to Meridian Homes, LC. A home was built on the property, which was subsequently purchased in September 2009 by Bryce Christensen and Krista Polking-Christensen. John C. Kline, Inc. sold the other lot to Drake Companies, LLC, on September 9, 2008. A home was built on that lot, which was purchased in January 2009 by Michael and Maren Trettin.²

Kline, individually, filed for bankruptcy protection on February 17, 2009. A stay order as to Kline was entered in the district court proceedings. The bankruptcy proceedings were dismissed on September 24, 2009.

On August 18, 2010, the Bank filed a petition for foreclosure of the judgment lien against the homeowners. The petition also named Mortgage Electronic Registrations Systems, Inc., Veridian Credit Union, and Wells Fargo Bank, as defendants. The Bank asserted \$560,101.45 remained unpaid on the loan and it was entitled to enforce its judgment against property owned by John C. Kline, Inc. in Dallas County on the date of the judgment, including the two lots purchased by the homeowners. The Bank claimed its lien was superior to the rights and interests of the defendants in the property.

¹ The court ordered the real estate and collateral be sold. In the event of a deficiency after the sale, the court determined a deficiency judgment would be entered against Silverleaf; John C. Kline, Inc.; Kline; Randal L. Walters, Inc.; and Randal L. Walters.

² We will refer to Bryce Christensen, Krista Polking-Christensen, Michael Trettin, and Maren Trettin collectively as the homeowners.

On May 18, 2011, the homeowners filed a motion for partial summary judgment, asserting the Bank's claims were barred by the special statute of limitations found in Iowa Code section 615.1 (Supp. 2009).³ The Bank filed a resistance to the motion and filed its own motion for summary judgment. It argued it was proceeding against John C. Kline, Inc. based on the guaranty signed by the company, not on the basis of a real estate mortgage, which would be covered by section 615.1. In the alternative, the Bank claimed the two-year statute of limitations found in section 615.1 had been extended due to the bankruptcy proceedings involving Kline. The homeowners resisted the Bank's motion for summary judgment.

A hearing on the motions for summary judgment was held July 19, 2011. After the hearing, but prior to the court's ruling, Wells Fargo filed a motion seeking to supplement its resistance to the Bank's motion for summary judgment. Wells Fargo claimed the judgment lien against John C. Kline, Inc. did not appear in the Iowa Court Information Services (ICIS) judgment lien index. The homeowners and PPH Mortgage Corporation joined in the motion to supplement. The Bank resisted the motions to supplement.

The district court entered a decision on August 4, 2011. The court found "[t]he fact that John C. Kline, Inc.'s liability arose from a guaranty is irrelevant because the statute of limitations applies not to a specific claim, but to judgments

³ Wells Fargo subsequently joined in the homeowners' motion for summary judgment and their resistance to the Bank's motion for summary judgment. Wells Fargo had an interest in the case because it held the Christensens' mortgage on their home. PPH Mortgage Corporation, as servicer to Fannie Mae, the successor in interest to Veridian Credit Union, also joined in the homeowners' motion for partial summary judgment. Fannie Mae held the mortgage on the Trettins' home.

entered in an action for the foreclosure of the real estate mortgage.” The court concluded section 615.1 applied to the Bank’s judgment against John C. Kline, Inc. The court also found the statute of limitations was not tolled against John C. Kline, Inc., based on the bankruptcy proceedings involving Kline, individually. The court determined because the foreclosure of the judgment lien was barred by section 615.1, it was not necessary for the court to consider the motions to supplement raised by defendants. The court granted the motions for summary judgment filed by the homeowners, Wells Fargo, and PPH Mortgage. The court denied the motion for summary judgment filed by the Bank.

The Bank filed a motion pursuant to Iowa Rule of Civil Procedure 1.904(2), claiming the court had failed to address its argument that John C. Kline, Inc. waived any right to assert a statute of limitations defense based on the language of the commercial guaranty. The court found the Bank had not raised this argument until the hearing on the motion for summary judgment and it was therefore untimely. The court went on to find even if the argument had not been untimely, the waiver had no application to the present case. The Bank appeals the decision of the district court.⁴

II. Standard of Review.

We review the district court’s ruling on a motion for summary judgment for the correction of errors at law. See Iowa R. App. P. 6.907. Summary judgment

⁴ The Bank submitted a proposed statement of proceedings pursuant to Iowa Rule of Appellate Procedure 6.806, stating the district court had not announced a ruling on the timeliness of the Bank’s waiver argument. The homeowners resisted, claiming the court specifically stated it would not consider any arguments that were not raised in a timely fashion. After a hearing, the court did not approve the Bank’s proposed statement of proceedings.

is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Kistler v. City of Perry*, 719 N.W.2d 804, 805 (Iowa 2006). A court should view the record in the light most favorable to the non-moving party. *Frontier Leasing Corp. v. Links Eng'g, LLC*, 781 N.W.2d 772, 775 (Iowa 2010). In determining whether there is a genuine issue of material fact, the court affords the non-moving party every legitimate inference the record will bear. *Kern v. Palmer Coll. of Chiropractic*, 757 N.W.2d 651, 657 (Iowa 2008).

III. Statute of Limitations.

Generally, under section 614.1(6) (2009), the statute of limitations on a judgment entered by a court is twenty years. Iowa Code section 615.1(1) (Supp. 2009),⁵ however, provides a special statute of limitations in the following circumstances:

After the expiration of a period of two years from the date of entry of judgment, exclusive of any time during which execution of the judgment was stayed pending a bankruptcy action or order of court, a judgment entered in any of the following actions shall be null and void, all liens shall be extinguished, and no execution shall be issued for any purpose other than as a setoff or counterclaim:

a.(1) For a real estate mortgage, deed of trust, or real estate contract executed prior to July 1, 2009, an action for the foreclosure of the real estate mortgage, deed of trust, or real estate contract upon property which at the time the foreclosure is commenced is either used for an agricultural purpose as defined in

⁵ In general, the statute of limitations in effect at the time an action is brought governs an action. See *Frideres v. Schiltz*, 540 N.W.2d 261, 266 (Iowa 1995); *In re Estate of Weidman*, 476 N.W.2d 357, 363 (Iowa 1991). Section 615.1 was amended in 2009. See 2009 Iowa Acts ch. 51, § 2. This amended version became effective July 1, 2009. See Iowa Code § 3.7(1) (2009). Therefore, the amended version was in effect at the time the Bank filed a petition for foreclosure of the judgment lien against the homeowners on August 18, 2010. Our analysis would remain the same, however, under either version of the statute.

section 535.13 or as a one-family or two-family dwelling which is the residence of the mortgagor.

“In its general effect it is an amendment to or an exemption of certain forms of judgment which otherwise would be entitled to the twenty-year period provided by the general statute of limitations.” *Dobler v. Bawden*, 25 N.W.2d 866, 870 (Iowa 1947). The purpose of section 615.1 “was to relieve judgment debtors in financial distress, and to enable them to get another start freed from the burden of years of judgment liens.” *Hell v. Schult*, 28 N.W.2d 1, 3 (Iowa 1947).

We must determine whether the district court properly applied the two-year statute of limitations found in section 615.1 to the facts in this case. In considering the applicability of a statute, we look to the language of the statute and give the language its plain and rational meaning. *Marcus v. Young*, 538 N.W.2d 285, 289 (Iowa 1995). We look to what the “legislature actually said, rather than what it should or might have said.” *Lacina v. Maxwell*, 501 N.W.2d 531, 533 (Iowa 1993). “This court may not, under the guise of construction, enlarge or otherwise change the terms of a statute.” *Id.* The express mention of one thing in a statute implies the exclusion of other things. *Collins v. King*, 545 N.W.2d 310, 312 (Iowa 1996).

The Iowa Supreme Court has found, “section 615.1 is plain and unambiguous” *Lacina*, 501 N.W.2d at 533. Also, as to this section, “[w]e read no more into the statute than is expressly stated therein.” *Dobler*, 25 N.W.2d at 870. Section 615.1 applies only if the judgment in the underlying action is among those judgments expressly listed in the section. *Lacina*, 501

N.W.2d at 533. We may not expand or restrict the statute's application to circumstances beyond those plainly allowed by the statute, even when application of the statute is harsh. See *Houghton State Bank v. Peterson*, 477 N.W.2d 94, 95-96 (Iowa 1991) (discussing section 615.3, which applies to judgments on promissory obligations secured by a mortgage, but without foreclosure against the security).

"For a real estate mortgage, deed of trust, or real estate contract," section 615.1(1)(a)(1) applies to "an action for the foreclosure of the real estate mortgage, deed of trust, or real estate contract." The Bank's petition of November 26, 2007, was captioned, "Petition in Equity for Foreclosure of Real Estate Mortgage," but sought judgment against John C. Kline, Inc. based upon the commercial guaranty. "[W]e treat a motion by its contents, not its caption." *Meier v. Senecaut*, 641 N.W.2d 532, 539 (Iowa 2002). To do otherwise would elevate form over substance. See *Jones v. Iowa State Highway Comm'n*, 207 N.W.2d 1, 2 (Iowa 1973) (noting court would consider contents of petition and disregard misleading caption).

Despite the caption, the Bank was not seeking a judgment against John C. Kline, Inc. based upon the real estate mortgage. There was no allegation John C. Kline, Inc. signed the mortgage for the property securing Silverleaf's loan. Therefore, John C. Kline, Inc. was not liable under the mortgage. See *Norwest Bank Marion v. L T Enter., Inc.*, 387 N.W.2d 359, 363 (Iowa Ct. App. 1986) (noting that in mortgage foreclosure, mortgagee could only look to the property or to a personal judgment against the mortgagor to satisfy its debts). The petition prayed for judgment against John C. Kline, Inc. under the terms of

the commercial guaranty the company signed. Therefore, the judgment against John C. Kline, Inc. entered on June 3, 2008, was based upon the written commercial guaranty. See *Beal Bank v. Siems*, 670 N.W.2d 119, 123-28 (Iowa 2003) (discussing enforcement of mortgage and guaranty as separate legal issues).

Because the judgment against John C. Kline, Inc. did not arise due to a real estate mortgage, deed of trust, or real estate contract, section 615.1 does not apply to the judgment. We conclude the district court erred in its conclusion section 615.1 applied because the judgment against John C. Kline, Inc. was entered in the same ruling as the foreclosure of the real estate mortgage. As noted above, section 615.1 should be applied only according to the specific terms of the statute. See *Lacina*, 501 N.W.2d at 533 (“The court looks to what the legislature actually said.”); *Dobler*, 25 N.W.2d at 870 (“We read no more into the statute than is expressly stated therein.”).

We reverse the decision of the district court granting summary judgment to the homeowners, Wells Fargo, and PPH Mortgage based upon a finding the Bank’s claims were barred by the two-year statute of limitations in section 615.1.

IV. Other Issues.

Due to our decision on the applicability of section 615.1, we do not address the Bank’s alternative claims that the statute of limitations was tolled during the bankruptcy proceedings for Kline or John C. Kline, Inc. waived any right to assert a statute of limitations defense based upon the terms of the written commercial guaranty.

On appeal, the homeowners raise an alternative argument that the district court's decision could be affirmed because the Bank did not properly index its judgment against John C. Kline, Inc. The district court specifically did not address this issue. Furthermore, the parties' arguments on this issue make clear there is a genuine issue of material fact as to whether the judgment was properly indexed or not. Even if the district court had addressed the issue, we determine summary judgment would not be appropriate on this ground. See Iowa R. Civ. P. 1.981(3). The issue may be addressed in further proceedings before the district court.

We reverse the decision of the district court granting summary judgment to appellees based upon the two-year statute of limitations found in section 615.1. We remand for further proceedings before the district court.

REVERSED AND REMANDED.