

IN THE COURT OF APPEALS OF IOWA

No. 6-1030 / 06-0357
Filed February 28, 2007

COUNTRYWIDE HOME LOANS, INC.,
Plaintiff-Appellee,

vs.

ALL OF THE UNKNOWN CLAIMANTS, INCLUDING BUT NOT LIMITED TO ALL OF THE UNKNOWN HEIRS, SPOUSES, ASSIGNEES, GRANTEEES, LEGATEES, DEVISEES, AND BENEFICIARIES OF DOUGLAS M. LYMAN, DECEASED; DOUGLAS M. LYMAN TRUST; STATE OF IOWA, DEPARTMENT OF REVENUE AND FINANCE; AND UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE,
Defendants,

GENERATIVITY, L.L.C.,
Intervenor-Appellant.

Appeal from the Iowa District Court for Polk County, Don C. Nickerson, Judge.

Generativity, L.L.C., appeals the district court's denial of its motion to intervene in a foreclosure action. **REVERSED AND REMANDED.**

Randy V. Hefner and Matthew J. Hemphill of Hefner & Bergkamp, P.C., Adel, for appellant.

Benjamin W. Hopkins of Petosa, Petosa & Boecker, L.L.P., Clive, for appellee.

Considered by Sackett, C.J., and Eisenhauer, J., and Brown, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

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

Douglas Lyman purchased residential real estate in Des Moines. In October 2001, he borrowed \$144,000 from Bankers Trust Company, N.A., and this loan was secured by a mortgage on the property. In January 2004, Lyman borrowed \$55,500 from Home Loan Center, Inc. and this was secured by a second mortgage. In June 2004, Lyman transferred the property to the Douglas M. Lyman Trust. Lyman died on August 22, 2004.

On March 10, 2005, Countrywide Home Loans, Inc., filed a petition seeking to foreclose on the residential real estate based on the Home Loan Center mortgage. The suit named as defendants all unknown claimants of Lyman,¹ the Douglas M. Lyman Trust, the Iowa Department of Revenue and Finance, and the Internal Revenue Service (IRS). The petition sought foreclosure without redemption, under Iowa Code section 654.20 (2005).

On September 21, 2005, the district issued a foreclosure decree and ordered the property sold at a sheriff's sale. In the meantime, Iowa Bankers Mortgage Corporation had initiated foreclosure proceedings based on the Bankers Trust mortgage. A foreclosure decree was issued in that case on November 9, 2005. At the sheriff's sale on the Countrywide mortgage Generativity, L.L.C., purchased the property for \$109,000.

On January 12, 2006, Generativity filed a motion to intervene in the Countrywide foreclosure action and to set aside the sheriff's sale, claiming (1) the

¹ A probate estate had not been opened on behalf of Lyman. The petition named as defendants all unknown claimants of Lyman, including heirs, spouses, assignees, grantees, legatees, devisees, and beneficiaries.

court had never acquired jurisdiction over the Douglas M. Lyman Trust, (2) the court never acquired jurisdiction over the estate of Lyman, (3) no notice of the sheriff's sale was given to a trustee or personal representative, and (4) the decree stated the sale was without redemption, but by statute the IRS was entitled to a minimum redemption period. The district court denied the motion.²

Generativity now appeals.

II. Standard of Review

Our review of a ruling on a motion to intervene is for correction of errors at law, but we give deference to the district court's decision. *Kelly v. State*, 525 N.W.2d 409, 412 (Iowa 1994).

III. Motion to Intervene

Iowa Rule of Civil Procedure 1.407(1) provides for intervention of right as follows:

Upon timely application, anyone shall be permitted to intervene in an action under any of the following circumstances:

a. When a statute confers an unconditional right to intervene.

b. When the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by the existing parties.

A party may be permitted to intervene "[w]hen the applicant's claim or defense and the main action have a question of law or fact in common." Iowa R. Civ. P.

² After the district court's decision, and before the notice to appeal was filed, Generativity purchased the residential real estate in question at the sheriff's sale on the Bankers Trust mortgage. Iowa Bankers Mortgage Corporation transferred its interest in the Bankers Trust mortgage foreclosure to Generativity.

1.407(2)(b). Generativity did not specify whether it believed it was entitled to intervention as a matter of right or by permission.

In general,

[W]hile there is no absolute right to intervene in a foreclosure proceeding, and a person without interest should not be permitted to intervene, as a general rule any person having such an interest in, or lien on, the mortgaged premises, or in the debt secured, that his rights might be compromised by the rendition of a decree in his absence, should be allowed to intervene in mortgage foreclosure proceedings on his own petition.

59A C.J.S. *Mortgages* § 728, at 242 (1998) (footnotes omitted).

In *Iowa-Des Moines National Bank & Trust Co. v. Alta Casa Investment Co.*, 222 Iowa 712, 713, 269 N.W. 798, 799 (1936), the assignee of the purchaser at a sheriff's sale intervened in foreclosure proceedings after a question about the proper length of the redemption period arose. The supreme court stated, "[T]he interveners are the assignees of the purchasers at sheriff's sale and therefore are owners and holders of the certificate of purchase, and, as such, they had the right to intervene." *Iowa-Des Moines Nat'l Bank*, 222 Iowa at 716, 269 N.W. at 800.

Also, in *Dyer v. Harris*, 22 Iowa 268, 269 (1867), the purchaser at a sheriff's sale sought to intervene in mortgage foreclosure proceedings where a question was pending regarding the rights of a junior lienholder. The supreme court stated the purchaser at the sheriff's sale "acquired not only whatever interest the mortgagor had in the premises, but succeeded, and, in law, should be subrogated to the rights of the mortgagee." *Dyer*, 22 Iowa at 270. The court

concluded the purchaser had the right to intervene in the foreclosure proceedings. *Id.*

In the present case, Generativity claimed its interest (purchaser at the sheriff's foreclosure sale) in the property could be injuriously affected because there had not been sufficient notice of the mortgage proceedings or the sheriff's sale. It also claimed there was an issue regarding the redemption period for the IRS. We determine Generativity had sufficient interest in the property and the mortgage foreclosure proceedings that it should be permitted to intervene. We reverse the decision of the district court denying Generativity's motion to intervene.

IV. Other Issues

The district court denied Generativity's motion without discussion. By rejecting the motion to intervene, it may not have considered the part of the motion directed at setting aside the foreclosure proceedings. For this reason we do not address any issues raised beyond the request to intervene. We believe the district court should initially address the remainder of Generativity's requests.

We reverse the district court's ruling denying the motion to intervene and remand for further proceedings.

REVERSED AND REMANDED.