

IN THE COURT OF APPEALS OF IOWA

No. 8-688 / 08-0432
Filed February 4, 2009

COUNTRYWIDE HOME LOANS, INC.,
Plaintiff-Appellee,

vs.

ALL OF THE UNKNOWN CLAIMANTS, et al.,
Defendants,

TIME VALUE HOLDINGS, L.L.C.,
Intervenor-Appellant.

Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Intervenor appeals from a district court ruling granting summary judgment in favor of plaintiff. **AFFIRMED.**

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., Des Moines,
for appellee.

Heard by Mahan, P.J., and Miller and Doyle, JJ.

MILLER, J.

Time Value Holdings, L.L.C. (TVH) appeals from a district court ruling granting summary judgment in favor of Countrywide Home Loans, Inc. (Countrywide). We affirm the judgment of the district court.

I. BACKGROUND FACTS AND PROCEEDINGS.

The record reveals the following undisputed facts. Douglas Lyman acquired title to residential real estate in Des Moines, Iowa, in May 2000. In October 2001, he borrowed \$144,000 from Bankers Trust Company, N.A. and secured the loan with a mortgage on the property. That mortgage was assigned to Iowa Bankers Mortgage Company (IBMC). In January 2004, Lyman borrowed \$55,500 from Home Loan Center, Inc. and secured that loan with a second mortgage on the property. The second mortgage was subsequently assigned to Countrywide. In June 2004, Lyman conveyed title to the real estate to “Douglas M. Lyman, as Trustee of the Douglas M. Lyman Trust.” Lyman died several months later.

On March 10, 2005, Countrywide filed a petition seeking to foreclose its junior mortgage on the property. The defendants named in the suit were: all unknown claimants of Lyman, including but not limited to all of his unknown heirs, spouses, assignees, grantees, legatees, devisees, and beneficiaries,¹ the Douglas M. Lyman Trust, the Iowa Department of Revenue and Finance, and the Internal Revenue Service. A decree was entered on September 21, 2005,

¹ A decedent’s estate had not been opened on behalf of Lyman when Countrywide filed its petition to foreclose on the second mortgage, and nothing in the record before us on appeal indicates that such an estate was ever opened during the course of these proceedings.

foreclosing Countrywide's mortgage and ordering the property to be sold at a sheriff's sale on November 22, 2005. Generativity, L.L.C., the predecessor in interest to TVH, purchased the real estate at that sale for \$109,000.

Prior to the decree foreclosing Countrywide's mortgage and the subsequent sheriff's sale, IBMC filed a petition seeking to foreclose its senior mortgage on the property. It named the same defendants in its suit as those named in Countrywide's suit, with the exception that it also named the junior lienholders as defendants. A decree foreclosing IBMC's senior mortgage and ordering the property to be sold at a sheriff's sale was entered on November 9, 2005. Generativity did not discover IBMC's senior mortgage on the property and foreclosure judgment until after it purchased the property at the Countrywide sheriff's sale on November 22, 2005. IBMC later assigned its interest in its foreclosure judgment to Generativity.

On January 12, 2006, Generativity filed a motion to intervene in the Countrywide foreclosure action and to set aside the sheriff's sale. The district court denied those motions but ordered an overplus of \$43,350.56 to be applied to the debt secured by IBMC's senior mortgage. Generativity appealed. We reversed the district court's denial of Generativity's motion to intervene and remanded the case for further proceedings on the motion to set aside the sheriff's sale. *Countrywide Home Loans, Inc. v. All of the Unknown Claimants*, No. 06-0357 (Iowa Ct. App. Feb. 28, 2007).

While its appeal was pending, Generativity sold the property pursuant to a real estate contract executed in March 2006 for \$182,000. It then assigned its

interest in that contract to TVH in May 2006. IBMC's foreclosure judgment proceeded to a sheriff's sale in May 2006, and TVH purchased the property at that sale for \$143,455.77 less the \$43,350.56 overplus.

On remand, TVH, as a substituted party for Generativity, filed a motion for summary judgment, arguing the decree foreclosing Countrywide's junior mortgage and subsequent sheriff's sale were void for want of jurisdiction over indispensable parties, namely a successor trustee for the Douglas M. Lyman Trust and a personal representative of Douglas M. Lyman's estate, and should be set aside. TVH requested the district court to enter judgment against Countrywide for "the amount paid at the Countrywide sheriff's sale [\$109,000], less the amount received as a result of application of the overplus from this sale toward the debt secured by the [IBMC] mortgage." Countrywide resisted TVH's summary judgment motion and filed its own motion for summary judgment. The district court granted Countrywide's summary judgment motion and denied TVH's motion, finding TVH could not "seek to avoid its mistake in failing to discover a senior mortgage on the subject property prior to its purchase by asserting that the original sheriff's sale was void due to the district court's lack of jurisdiction."

TVH appeals. It claims the district court erred in failing to set aside the Countrywide sheriff's sale because indispensable parties were not joined in the foreclosure action and it consequently acquired no title to the property. Countrywide responds that the court correctly concluded the absence of the omitted parties did not deprive the court of jurisdiction in entering the foreclosure

decree and that TVH is barred by the doctrine of *caveat emptor* from complaining of the defects in the title it purchased at the Countrywide sheriff's sale.²

II. SCOPE AND STANDARDS OF REVIEW.

We review the district court's summary judgment rulings for the correction of errors at law. Iowa R. App. P. 6.4; *Faeth v. State Farm Mut. Auto. Ins. Co.*, 707 N.W.2d 328, 331 (Iowa 2005). Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Walderbach v. Archdiocese of Dubuque, Inc.*, 730 N.W.2d 198, 199 (Iowa 2007). We review the record in the light most favorable to the party opposing the motion. *Tenney v. Atlantic Assocs.*, 594 N.W.2d 11, 14 (Iowa 1999). A fact question arises if reasonable minds can differ on how the issue should be resolved. *Walderbach*, 730 N.W.2d at 199. No fact question arises if the only conflict concerns legal consequences flowing from undisputed facts. *McNertney v. Kahler*, 710 N.W.2d 209, 210 (Iowa 2006).

² Countrywide additionally asserts that the issues raised by TVH in its summary judgment motion and on appeal are moot because

any interest [TVH] held . . . by virtue of the sheriff's deed it took in the Countrywide foreclosure was extinguished when [it] acquired title by virtue of the deed issued in the subsequent sheriff's sale in the senior mortgage foreclosure action. . . . Further, TVH's predecessor in interest then passed the title (which it claims is defective) to a third party.

Although Countrywide raised this claim in the district court proceedings, the court did not rule on it. See *State Farm Mut. 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.").

III. MERITS.

In denying TVH's motion to set aside the sheriff's sale, the district court, citing *Tod v. Crisman*, 123 Iowa 693, 99 N.W. 686 (1904), determined Countrywide's failure to name a successor trustee for the trust and a personal representative for Lyman's estate did not deprive the court of the jurisdiction necessary to enter a valid decree and judgment authorizing foreclosure. In *Tod*, 123 Iowa at 700-01, 99 N.W. at 689, our supreme court stated:

[I]n no case does the court's jurisdiction over the subject-matter and the parties properly before it depend upon the absence of other parties, however necessary these may be to a complete adjudication. Undoubtedly those who have not been made parties may collaterally dispute the decree and deny its validity, and probably it should not be regarded as an obstacle to them in obtaining any relief to which they may be entitled. But its efficacy between the parties before the court does not depend upon the fact that others may or ought to have been made parties. Their absence is not a defect involving the jurisdiction of the court over the parties who are present, or over the subject-matter of the suit, in so far as those parties are concerned. The court may nevertheless proceed to a decree, and such decree, though rendered in violation of the rules and practice of equity in such cases, is not void as between the parties to it. It is irregular, but not void.

(Citation omitted); accord *In re Guardianship of Damon*, 238 Iowa 570, 576, 28 N.W.2d 48, 51 (1947); *Gunnar v. Town of Montezuma*, 228 Iowa 581, 585, 293 N.W. 1, 3 (1940).

Although the factual situations presented in *Tod*, *In re Damon's Guardianship*, and *Gunnar* differ from that presented in this case, TVH advances no compelling reason why the rule set forth above should not apply here. See also 47 Am. Jur. 2d *Judicial Sales* § 27, at 452 (2006) ("[E]ven though a sale is void as to persons who are not parties, the sale usually passes the title or

interest of those who are parties; the latter are estopped from arguing that the sale is void on the ground that certain necessary parties are not before the court.”). Thus, as the district court determined,

assuming arguendo that there may have been individuals interested in the subject property who were not named in [Countrywide’s] initial foreclosure action and who could not be bound by the foreclosure decree and sheriff’s sale at issue, such would not affect the validity of the foreclosure decree and sheriff’s sale as between those who were proper parties to such proceedings.

TVH nevertheless argues the sheriff’s sale should be set aside because it “acquire[d] ‘no title’ when the district court did not have jurisdiction over, at the very least, the owner of the property.” As the district court recognized, the general rule is that “[i]n the absence of fraud, the law will not, ordinarily, relieve a purchaser at [a sheriff’s] sale, who acquires a *defective* title.” *Hamsmith v. Espy*, 19 Iowa 444, 446 (1865) (“The law proclaims in the ears of all who propose to buy—*caveat emptor*, and look out, take notice, beware of the title for which you bid.”); *see also Equitable Life Ins. Co. v. Carpenter*, 202 Iowa 1334, 1337, 212 N.W. 145, 146 (1927) (stating the rule of *caveat emptor* applies to foreclosure sales and such sales will not be disturbed for nothing more than a mistake of law or forgetfulness). There are exceptions to this rule, such as where a purchaser at a sheriff’s sale acquires no title by way of the sale. *Hamsmith*, 19 Iowa at 446 (recognizing a purchaser is entitled to relief under that exception where “the judgment, on which the execut[ion] issued, was not a lien at the time of the levy, and this fact was unknown to the purchaser”).

The district court correctly concluded that while TVH may have acquired a defective title by reason of its purchase of the property at the Countrywide sheriff's sale, it did not acquire no title. See *Francksen v. Miller*, 297 N.W.2d 375, 378 (Iowa 1980) (holding where wife was not joined in foreclosure action involving a homestead, "the foreclosure decree and sheriff's deed are valid against the husband but do not entitle [sheriff's sale purchaser] to possession" in his subsequent forcible entry and detainer action "because they do not conclude [the] wife's rights"); see also 47 Am. Jur. 2d *Judicial Sales* § 171, at 548 ("Since a failure to bring a person who is a necessary party into a proceeding involving the sale of real property makes the sale void as to the omitted person, an omission prevents the purchaser from obtaining a good and merchantable title."). Thus, TVH is not entitled to have the Countrywide sheriff's sale set aside in this case and the proceeds it expended at that sale returned to it.

TVH could instead, as the district court acknowledged in its ruling, petition the court to "reopen the original foreclosure proceedings for the purpose of bringing in omitted parties with possible rights of redemption . . . and to have the foreclosure judgment made conclusive as to such parties." See *Lincoln Joint Stock Land Bank v. Rydberg*, 234 Iowa 1143, 1145, 15 N.W.2d 246, 247 (1944). It did not, however, ask for such relief in these proceedings.

IV. CONCLUSION.

In light of the foregoing, we conclude the district court correctly denied TVH's motion for summary judgment and granted summary judgment in favor of

Countrywide on its motion. The judgment of the district court is accordingly affirmed.

AFFIRMED.