COURT OF APPEALS OF TEXAS, FIFTH DISTRICT, DALLAS

Stephens v. Hemyari

355 S.W.3d 10 (Tex. App.—Dallas) · Decided April 20, 2010

SUMMARY

The Texas Court of Appeals considered whether a foreclosure sale conducted after the date authorized by a bankruptcy court's order modifying the automatic stay was valid. The court held that the sale violated the automatic stay, was void, passed no title, and was not retroactively validated by dismissal of the bankruptcy case. The court reversed the trial court's summary judgment, rendered judgment canceling the substitute trustee's deed and sale, and remanded for consideration of an equitable-subrogation claim.

CASE DETAILS

COURT	Court of Appeals of Texas, Fifth District, Dallas
WRITING FOR THE COURT	Justice O'Neill; Justice Lang; Justice Myers
JURISDICTION	Texas
DECIDED	April 20, 2010
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Second appeal from a summary judgment declaring appellees owners in fee simple of three tracts of real property. Both sides moved for summary judgment concerning the validity of a foreclosure sale conducted after the date authorized by a bankruptcy-court order modifying the automatic stay.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The movant must show that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. When both parties move for summary judgment, the appellate court reviews the evidence presented by both parties and determines whether either party's motion should have been granted.
PRECEDENTIAL VALUE	Published Texas Court of Appeals memorandum opinion
PARTIES	Gary Ben Stephens, Stephens Group, L.P., Stephens Group, II, L.P. v. Kourosh Hemyari, Union Valley Ranch

TOPICS

automatic stay · foreclosure · summary judgment · appellate procedure · remedies

PRACTICE AREAS

Bankruptcy · Real estate · Civil procedure · Appellate procedure · Remedies

QUESTIONS PRESENTED

1. Whether the bankruptcy court's order modifying the automatic stay authorized a foreclosure sale after August 1, 2000.
2. Whether the September 5, 2000 foreclosure sale, conducted outside the date authorized by the bankruptcy order, was void for violating the automatic stay.
3. Whether post-sale conduct, including equitable estoppel, judicial estoppel, laches, waiver, or ratification, validated the void foreclosure sale.
4. Whether dismissal of the bankruptcy case impliedly annulled the automatic stay and validated the foreclosure sale.
5. Whether dismissal of the bankruptcy case revested title to the scheduled property in the Stephens partnerships.

HOLDINGS

1. The unambiguous bankruptcy-court order authorized a foreclosure sale only on August 1, 2000 and did not authorize a sale after that date.
2. Because the September 5, 2000 foreclosure sale violated the automatic stay, it was void, had no effect, and passed no title.
3. Post-sale conduct by the parties, including equitable estoppel, judicial estoppel, laches, waiver, and ratification, could not validate the void foreclosure sale.
4. Dismissal of the bankruptcy case did not impliedly annul the automatic stay or validate the foreclosure sale because neither the dismissal motion nor dismissal order specifically referenced or approved the sale.
5. Because the Stephens partnerships scheduled all three tracts and the property was not disposed of during bankruptcy, dismissal revested title in the partnerships.

KEY QUOTATIONS

> *"As stated in our prior opinion, an action taken in violation of the automatic stay is void, not merely voidable."* (at 13)

> *"The terms of an order modifying the automatic stay must be strictly construed."* (at 13)

> *"Because the foreclosure sale was in violation of the automatic stay, the sale was void, of no effect, and passed no title."* (at 15)

FACTUAL BACKGROUND

The Stephens partnerships owned three tracts of land and granted Murphy a deed of trust and a deed in lieu of foreclosure to secure a deferred $700,000 payment arising from a settlement of a bankruptcy-related adversary proceeding. After the partnerships filed Chapter 11 bankruptcy, the bankruptcy court modified the automatic stay to permit a foreclosure sale on August 1, 2000 if the required payment was not made. Murphy did not post the property for foreclosure in July, and Hemyari instead bought the property at a foreclosure sale on September 5, 2000. The partnerships had listed all three tracts in their bankruptcy schedules.

PROCEDURAL HISTORY

After the Stephens parties filed Chapter 11 bankruptcy, the bankruptcy court modified the automatic stay to permit foreclosure on August 1, 2000 if specified payment conditions were not met. Murphy did not post the property for foreclosure in July, and Hemyari purchased the property at a foreclosure sale on September 5, 2000. In the first appeal, the court reversed a summary judgment for Hemyari because the bankruptcy order did not authorize a foreclosure sale after August 1, 2000. On remand, the trial court again granted appellees summary judgment, rejected appellants' arguments that the sale was void, and denied appellants' competing motion. The court of appeals reversed, rendered judgment cancelling the substitute trustee's deed and sale, and remanded for consideration of Hemyari's equitable-subrogation claim.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The court rendered judgment cancelling the substitute trustee's September 5, 2000 deed and sale and remanded for the trial court to consider Hemyari's claim for equitable subrogation.

CASES CITED

- Stephens v. Hemyari, 216 S.W.3d 526 (Tex. App.—Dallas 2007, pet. denied)
- Diversicare Gen. Partner, Inc. v. Rubio, 185 S.W.3d 842, 846 (Tex. 2005)
- Valence Operating Co. v. Dorsett, 164 S.W.3d 656, 661 (Tex. 2005)
- Worldwide Asset Purchasing, LLC v. Rent-A-Center East, Inc., 290 S.W.3d 554, 560 (Tex. App.—Dallas 2009, no pet.)
- Howard v. INA County Mut. Ins. Co., 933 S.W.2d 212, 216 (Tex. App.—Dallas 1996, writ denied)
- Continental Casing Corp. v. Samedan Oil Corp., 751 S.W.2d 499, 501 (Tex. 1988)
- Loram Maint., Inc. v. Ianni, 210 S.W.3d 593, 596 (Tex. 2006)
- Briscoe v. Goodmark Corp., 102 S.W.3d 714, 716 (Tex. 2003)
- Reiss v. Reiss, 118 S.W.3d 439, 441-42 (Tex. 2003)
- Gulf Ins. Co. v. Burns Motors, Inc., 22 S.W.3d 417, 422 (Tex. 2000)
- In re Schwartz, 954 F.2d 569, 571, 573 (9th Cir. 1992)
- Davies v. Commissioner of Internal Revenue, 68 F.3d 1129, 1130 (9th Cir. 1995)
- Lawson v. Gibbs, 591 S.W.2d 292, 295 (Tex. Civ. App.—Houston [1st Dist.] 1979, writ ref'd n.r.e.)

- Huddleston v. Tex. Commerce Bank-Dallas, N.A., 756 S.W.2d 343, 345-46 (Tex. App.—Dallas 1988, writ denied)
- Kilpatrick v. Kilpatrick, 205 S.W.3d 690, 702 (Tex. App.—Fort Worth 2006, pet. denied)
- Kunica v. St. Jean Financial, Inc., 233 B.R. 46, 53-55 (S.D.N.Y. 1999)