

SUPREME COURT OF VERMONT

Will v. Mill Condominium Owners' Ass'n

179 Vt. 500 (2006) · Decided April 28, 2006

SUMMARY

The Vermont Supreme Court held that the plaintiff could pursue damages for the loss of use of her condominium after the defendant condominium association conducted a commercially unreasonable foreclosure sale. The court concluded that the damages claim was not barred by the prior remand, waiver, or the availability of rescission, but affirmed summary judgment for the purchasers and denied statutory attorneys' fees. The court also held that denial of costs was premature and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Johnson, J.; Burgess; Dooley; Johnson; Reiber; Skoglund
JURISDICTION	Vermont
DECIDED	April 28, 2006
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Second appeal following remand from an earlier decision reversing summary judgment on the validity and commercial reasonableness of a condominium foreclosure sale. The trial court vacated the foreclosure but denied Will's claims for damages, attorneys' fees, and costs, and Will appealed.
STANDARD OF REVIEW	De novo review applies to denial of damages and attorneys' fees as a matter of law; abuse-of-discretion review applies to denial of costs.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Vermont
PARTIES	Anne M. Will v. Mill Condominium Owners' Association, Inc., Martin Nitka, Alen Seiple, Linda Seiple

TOPICS

wrongful foreclosure

foreclosure

damages

attorney fees

appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Will could pursue money damages for breach of the duty to conduct the condominium foreclosure sale in a commercially reasonable manner after rescission of the sale.
2. Whether the scope of the prior remand barred consideration of Will's damages claims.
3. Whether Will's damages claims were waived because the specific components of damages were not previously pursued or because she did not seek clarification of the remand.
4. Whether Will was entitled to attorneys' fees under 27A V.S.A. § 3-116(g).
5. Whether denial of Will's request for costs was premature.

HOLDINGS

1. Rescission and money damages are not categorically mutually exclusive remedies when they compensate for distinct harms. Although Will could not recover both rescission and the fair market value of the condominium for the same loss of ownership, she could pursue damages for distinct harms such as loss of use.
2. Unless the Supreme Court expressly limits the remand, the remand encompasses the scope of the error identified on appeal.
3. Will's damages claim was not waived merely because the particular components of damages changed or because she did not separately raise the damages issue in the first appeal.
4. Will was not entitled to attorneys' fees under 27A V.S.A. § 3-116(g) because her declaratory judgment action challenging the foreclosure sale was not a proceeding under the statutory section authorizing the fees.
5. Denial of Will's costs was premature because the trial court appeared initially to contemplate further proceedings and then denied the claims without giving her an opportunity to provide the requested itemized accounting.
6. Summary judgment for Alen and Linda Seiple remained proper because the Supreme Court's prior holding concerning the duty to conduct a commercially reasonable foreclosure sale did not affect Will's claims against them, and Will conceded that her mutual-mistake and unjust-enrichment claims were moot.

KEY QUOTATIONS

“Unless the Court states explicitly otherwise, however, the scope of the remand must encompass the scope of the error found on appeal.” (179 Vt. at 504)

“Our decision in Will I validated Will’s theory of recovery, and therefore the claims based on that theory were revived for determination upon remand.” (179 Vt. at 505)

“But it was error for the trial court to conclude that the claim was waived, precluded by our remand, or generally unavailable in light of the award of rescission.” (179 Vt. at 505)

“The grant of summary judgment to the Seiples and the denial of attorneys’ fees are affirmed. The decision of the trial court is otherwise reversed and remanded for proceedings consistent with this decision.” (179 Vt. at 507)

FACTUAL BACKGROUND

Will failed to pay condominium assessments, and the Mill Condominium Owners' Association foreclosed on and sold her condominium. The unit sold for \$3,510.10 even though it was valued at approximately \$70,000. The Supreme Court previously held that the association and its attorney had failed to conduct the sale in a commercially reasonable manner and remanded the case. After the trial court vacated the foreclosure, it denied Will's claims for damages, attorneys' fees, and costs.

PROCEDURAL HISTORY

Will's condominium association foreclosed on and sold her unit after she failed to pay condominium assessments. In the first appeal, the Vermont Supreme Court held that the association and its attorney owed a duty to conduct the foreclosure sale in a commercially reasonable manner and had breached that duty, reversing and remanding. On remand, the trial court vacated the foreclosure but denied damages, attorneys' fees, and costs; this appeal followed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must conduct further proceedings consistent with the decision on Will's damages claims against the Association and attorney Nitka and on her request for costs. The grant of summary judgment to the Seiples and denial of attorneys' fees are affirmed. Costs on the appeal are taxed against the Association and attorney Nitka.

CASES CITED

- Will v. Mill Condo. Owners’ Ass’n, 2004 VT 22, 176 Vt. 380, 848 A.2d 336
- Concord Gen. Mut. Ins. Co. v. Madore, 2005 VT 70, 178 Vt. 281, 882 A.2d 1152
- Jordan v. Nissan N. Am., Inc., 2004 VT 27, 176 Vt. 465, 853 A.2d 40
- Gokey v. Bessette, 154 Vt. 560, 565-66, 580 A.2d 488, 492 (1990)
- Coty v. Ramsey Assocs., 149 Vt. 451, 464, 546 A.2d 196, 205 (1988)
- Bissonnette v. Wylie, 168 Vt. 561, 562, 711 A.2d 1161, 1163 (1998) (mem.)
- Coty v. Ramsey Assocs., 154 Vt. 168, 171, 573 A.2d 694, 696 (1990)
- In re UNUM Life Ins. Co. of Am., 162 Vt. 201, 205, 647 A.2d 708, 711 (1994)
- Kirchner v. Giebink, 155 Vt. 351, 355, 584 A.2d 1120, 1122-23 (1990)
- DeKoeyer v. DeKoeyer, 146 Vt. 493, 498, 507 A.2d 962, 965 (1986)
- Trombetta v. Champlain Valley Fruit Co., 117 Vt. 491, 495, 94 A.2d 797, 800 (1953)

