SUPREME COURT OF IOWA

Nash Finch Co. v. Corey Development, Ltd.

669 N.W.2d 546 (Iowa 2003) · No. No. 02-1387 · Decided September 4, 2003

SUMMARY

The Iowa Supreme Court answered a certified question concerning whether a creditor may file a deed in lieu of foreclosure under a forbearance agreement and then pursue further recovery for the remaining debt. The court held that the parties' agreement permitted further remedies because the deed was accepted in partial satisfaction of the note and the creditor reserved its rights. The extent of the satisfaction attributable to the deed was left for determination by the trial court.

CASE DETAILS

COURT	Supreme Court of Iowa
WRITING FOR THE COURT	Streit, Justice
JURISDICTION	Iowa
DECIDED	September 4, 2003
DOCKET	No. 02-1387
DISPOSITION	other
PROCEDURAL POSTURE	The United States District Court for the Southern District of Iowa certified a question of Iowa law concerning whether a creditor that accepted and filed a deed in lieu of foreclosure under a forbearance agreement could pursue a deficiency judgment. The certification arose in a federal action in which Nash Finch sought partial summary judgment for nonpayment under the forbearance agreement.
STANDARD OF REVIEW	Questions of law certified by the federal court were reviewed de novo. The court held that the parties' intent concerning discharge of the underlying obligation may present a factual issue, although it may be decided as a matter of law when the evidence of intent is undisputed.
PRECEDENTIAL VALUE	Published Iowa Supreme Court opinion answering a certified question of state law; binding Iowa authority.

TOPICS

foreclosure · mortgages · breach of contract · contract interpretation · remedies

PRACTICE AREAS

contracts · real estate · foreclosure · remedies · commercial litigation

QUESTIONS PRESENTED

1. Whether a creditor may accept and file a deed in lieu of foreclosure pursuant to a forbearance agreement and then pursue further remedies, including a deficiency judgment, when the agreement states that the deed is in partial satisfaction of the debt and reserves the creditor's other rights.
2. Whether the Iowa foreclosure statutes, particularly Iowa Code sections 654.1 and 654.18, preclude the parties from contracting for further remedies after filing a deed in lieu of foreclosure.
3. Whether the Iowa Supreme Court could determine as a matter of law the extent to which the filed deed satisfied the underlying debt.

HOLDINGS

1. As a matter of law, a mortgagee or creditor may pursue further remedies against a defaulting debtor after filing a deed in lieu of foreclosure when the parties' agreement provides that the deed is only in partial satisfaction of the debt and reserves the creditor's rights under the note or mortgage.
2. The deed only partially extinguished the underlying debt under the parties' agreement, but the extent of the satisfaction could not be determined as a matter of law on the record and must be determined by a trial court.

KEY QUOTATIONS

> *"We conclude as a matter of law, a party may pursue further remedies after filing a deed in lieu of foreclosure in partial satisfaction of a debt."* (549)

> *"No law in Iowa precludes a creditor from contracting for a deed in lieu of foreclosure in partial satisfaction of a debt, filing the deed upon default, and then seeking further recovery."* (550)

FACTUAL BACKGROUND

Corey Development executed an $875,000 promissory note to Nash Finch secured by a mortgage, later transferred the mortgaged property without Nash Finch's consent, and defaulted on the note. The parties entered a forbearance agreement under which Nash Finch agreed to delay exercising its remedies in exchange for a deed in lieu of foreclosure in partial satisfaction of the note, while expressly reserving rights under the note and mortgage. Corey failed to pay the debt by the end of the forbearance period, Nash Finch filed the deed, and the property was appraised at $529,000 while more than $800,000 remained due. Nash Finch then pursued further recovery in federal court.

PROCEDURAL HISTORY

Corey Development defaulted on a promissory note secured by a mortgage and entered into a forbearance agreement giving Nash Finch a deed in lieu of foreclosure in partial satisfaction of the debt. After Corey failed to pay the note in full, Nash Finch filed the deed and sued in federal court for nonpayment and related damages.

The federal district court rejected the defendants' argument that filing the deed constituted an election of alternative nonjudicial voluntary foreclosure under Iowa Code section 654.18, treated the deed as additional security, and certified the deficiency-judgment question to the Iowa Supreme Court. The Iowa Supreme Court answered that further remedies were legally permissible but left the extent of the deed's satisfaction for trial.

DISPOSITION

other

REMAND INSTRUCTIONS

The extent of the satisfaction to be credited for the filing of the deed in lieu of foreclosure must be determined by a trial court. The Iowa Supreme Court directed that a copy of the opinion be transmitted to the certifying federal court.

CASES CITED

- Rosenberg v. Lincoln Fed. Sav. & Loan Ass'n, 219 Neb. 689, 365 N.W.2d 809 (1985)
- In re Wilkinson, 175 B.R. 627 (Bankr. E.D. Va. 1994)
- Conrad Bros. v. John Deere Ins. Co., 640 N.W.2d 231 (Iowa 2001)