SUPREME COURT OF ALASKA

Barr v. Goldome Realty Credit Corp.

46 P.3d 1004 (Alaska 2002) · Decided May 10, 2002

SUMMARY

The Alaska Supreme Court reverses a partial summary judgment granted to NationsBanc Mortgage Corporation in a foreclosure-related possession and damages action. The court holds that genuine issues of material fact remained regarding whether the borrower's loan was current and whether an escrow surplus could have been applied to cure the alleged default. The court also reverses dismissal of the borrower's counterclaim, vacates the superior court's findings and conclusions, and remands for further proceedings.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Eastaugh, Justice; Bryner; Carpeneti; Eastaugh; Fabe; Matthews
JURISDICTION	Alaska
DECIDED	May 10, 2002
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Barr appealed the superior court's grant of partial summary judgment in favor of Nationsbane Mortgage Corporation on Nationsbane's claim for possession of the property and on Barr's counterclaim for damages arising from an allegedly improper foreclosure.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The court affirms only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law, drawing all reasonable inferences in favor of the nonmoving party.
PRECEDENTIAL VALUE	Published Alaska Supreme Court opinion; precedential.
PARTIES	Donna Barr v. Goldome Realty Credit Corp.

TOPICS

summary judgment · wrongful foreclosure · mortgages · evidence · civil procedure

PRACTICE AREAS

civil procedure | real estate | foreclosure | mortgages | evidence

QUESTIONS PRESENTED

1. Whether summary judgment was proper when affidavits created a genuine dispute regarding whether Barr's loan was current and whether an escrow surplus existed that could have been applied to her payment obligations.
2. Whether the evidence relied on by Barr's accounting expert was sufficiently reliable for purposes of opposing summary judgment, even though the underlying documents were not themselves shown to be admissible.
3. Whether dismissal of Barr's counterclaim for foreclosure-related damages was proper when the validity of the foreclosure depended on disputed facts concerning the escrow surplus and the loan's payment status.
4. Whether the superior court's findings of fact and conclusions of law should be vacated because they addressed issues remaining in genuine factual dispute.

HOLDINGS

1. Summary judgment was improper because genuine issues of material fact remained regarding whether Barr's loan was current and whether an escrow surplus existed that could have been applied to her monthly payment obligations.
2. For purposes of summary judgment, the accountant's affidavit was admissible evidence because the record did not establish that the documents she relied on were so unreliable that an expert could not reasonably rely on them.
3. Dismissal of Barr's counterclaim was improper because Nationsbane did not conclusively disprove the existence of an escrow surplus or establish that the foreclosure was proper.
4. The superior court's findings of fact and conclusions of law were vacated because they addressed issues affected by genuine factual disputes.

KEY QUOTATIONS

> *"Because we agree with Barr that genuine issues of material fact remain, we reverse the superior court's partial grant of summary judgment to Nationsbane, vacate its findings, and remand for further proceedings."* (46 P.3d at 1004)

> *"Without a more convincing showing by Nationsbane that the documents Whah reviewed were so unreliable as to preclude an expert from forming an opinion in reliance on them, we conclude that for purposes of summary judgment, Whah's affidavit was admissible evidence."* (46 P.3d at 1008)

> *"Because Nationsbane did not conclusively show that a surplus did not exist, it has failed to meet its burden in disproving Barr's damage claim."* (46 P.3d at 1009)

FACTUAL BACKGROUND

Donna Barr owned property in Anchorage subject to a deed of trust securing a mortgage loan serviced by Nationsbanc. Nationsbanc began foreclosure proceedings in January 1998 after concluding that Barr's loan was in default, although Barr contended that surplus escrow funds and prior overpayments should have been credited to her monthly obligations. Barr submitted affidavits, including an accountant's affidavit stating that she had overpaid the mortgage by more than $7,465 and that the loan was not in default when foreclosure began. Nationsbanc purchased the property at the foreclosure sale and sued Barr for possession; Barr counterclaimed for damages caused by the allegedly improper foreclosure.

PROCEDURAL HISTORY

Nationsbanc initiated foreclosure proceedings after determining that the loan was in default, purchased the property at the foreclosure sale, and sued Barr for possession, rental value, and damages. Barr asserted that the foreclosure was improper because Nationsbanc failed to credit surplus escrow funds and counterclaimed for damages. After discovery, the superior court granted Nationsbanc partial summary judgment, dismissed the counterclaim with prejudice, adopted findings and conclusions proposed by Nationsbanc, and denied reconsideration. The Alaska Supreme Court reversed the summary judgment, vacated the findings and conclusions, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The case was remanded for further proceedings consistent with the opinion. The partial summary judgment in favor of Nationsbanc was reversed, and the superior court's findings of fact and conclusions of law were vacated.

CASES CITED

- Moore v. Allstate Ins. Co., 995 P.2d 231, 233 (Alaska 2000)
- Bliss v. Bobich, 971 P.2d 141, 145 n.4 (Alaska 1998)
- Schneider v. Pay'N Save Corp., 723 P.2d 619, 623 (Alaska 1986)
- Norris v. Gatts, 738 P.2d 344, 349-50 (Alaska 1987)
- Wassink v. Hawkins, 859 P.2d 712, 713-14 (Alaska 1993)

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