

DISTRICT OF COLUMBIA COURT OF APPEALS

Victor M. Kibunja and Shirley O. Kibunja v. Alturas, L.L.C.

856 A.2d 1120 (D.C. 2004) · No. 02-CV-444, 02-CV-445 · Decided August 19, 2004

SUMMARY

The District of Columbia Court of Appeals affirmed summary judgment for Alturas, L.L.C. in an action concerning possession of commercial real property following a foreclosure sale. The court held that the Kibunjas had adequate time for discovery, failed to properly invoke the protection of Rule 56(f), and did not present evidence creating a genuine issue concerning the amount owed under the promissory note. The court also held that notice of the first foreclosure sale carried over to the second sale because the first sale had been conducted contingently pending bankruptcy-court approval.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Terry, Associate Judge; Ruiz, Associate Judge; Reid, Associate Judge
JURISDICTION	District of Columbia
DECIDED	August 19, 2004
DOCKET	02-CV-444, 02-CV-445
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from consolidated Superior Court actions for possession following a commercial-property foreclosure sale. The trial court certified the actions from the Landlord and Tenant Branch to the Civil Division after appellants entered a plea of title, granted Alturas summary judgment, and denied appellants' post-judgment motion for reconsideration.
STANDARD OF REVIEW	The court reviewed the summary-judgment ruling de novo, applying the same standard as the trial court and viewing the record in the light most favorable to the nonmoving party. It reviewed the substantive legal application underlying summary judgment to determine whether the law was correctly applied.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Victor M. Kibunja, Shirley O. Kibunja v. Alturas, L.L.C.

TOPICS

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QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by granting summary judgment before discovery closed and without allowing additional discovery under Super. Ct. Civ. R. 56(f).
2. Whether the record presented a genuine issue of material fact concerning the amount owed under the promissory note.
3. Whether the notice for the first foreclosure sale carried over to the second sale, satisfying the statutory requirement of at least thirty days' notice.

HOLDINGS

1. A trial court is not required to wait until the discovery deadline or the deadline for deciding dispositive motions before ruling on a summary-judgment motion when the nonmoving party had adequate time to pursue discovery.
2. A party seeking protection under Super. Ct. Civ. R. 56(f) must ordinarily file an affidavit explaining why additional discovery is needed; appellants who filed no Rule 56(f) affidavit and were not diligent in pursuing discovery were not entitled to delay of summary judgment.
3. A party opposing a properly supported motion for summary judgment cannot create a genuine issue merely by alleging possible errors in the movant's calculation; it must present specific evidence of an actual factual dispute.
4. When a foreclosure sale is conducted on a contingent basis after the debtor files for bankruptcy, with notice that a subsequent sale will follow if bankruptcy-court approval is not obtained, the original foreclosure notice carries over to the subsequent sale and satisfies the statutory notice requirement.

KEY QUOTATIONS

“Accordingly, we hold that the original notice carried over to the second sale, and that the second foreclosure sale was therefore held in compliance with the notice statute.” (856 A.2d at 1131)

“For the foregoing reasons, the judgment in favor of Alturas is Affirmed.” (856 A.2d at 1131)

FACTUAL BACKGROUND

Victor and Shirley Kibunja owned a commercial property securing a \$880,000 promissory note. After years of nonpayment and unpaid real-estate taxes, Alturas purchased the note and deed of trust, paid approximately \$1.1 million to satisfy District of Columbia tax liens, and initiated foreclosure proceedings. A first sale occurred after Victor filed a Chapter 13 petition on the scheduled sale date, but the bankruptcy court later dismissed the case and stated that the sale appeared void because it violated the automatic stay. Alturas then gave notice and

conducted a second sale twenty-two days after the first; the Kibunjas challenged the sale and refused to surrender possession.

PROCEDURAL HISTORY

Alturas filed two consolidated possession actions after purchasing the property at a second foreclosure sale. The Superior Court certified the cases to the Civil Division, granted Alturas summary judgment, and later denied the Kibunjas' motion for reconsideration. The Kibunjas timely appealed, and the District of Columbia Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986)
- Hollins v. Federal National Mortgage Ass'n, 760 A.2d 563, 572 (D.C. 2000)
- Travelers Indemnity Co. v. United Food & Commercial Workers International Union, 770 A.2d 978, 993-996 (D.C. 2001)
- Strang v. United States Arms Control & Disarmament Agency, 275 U.S.App. D.C. 37, 39, 864 F.2d 859, 861 (1989)
- Beegle v. Restaurant Management, Inc., 679 A.2d 480, 487 n. 8 (D.C. 1996)
- McAllister v. District of Columbia, 653 A.2d 849, 853 (D.C. 1995)
- Mid-South Grizzlies v. National Football League, 720 F.2d 772, 780 n. 4 (3d Cir. 1983), cert. denied, 467 U.S. 1215 (1984)
- D'Ambrosio v. Colonnade Council of Unit Owners, 717 A.2d 356, 359 n. 6 (D.C. 1998)
- First Chicago International v. United Exchange Co., 267 U.S.App. D.C. 27, 836 F.2d 1375, 1380-1381 (1988)
- Nader v. de Toledano, 408 A.2d 31, 41 (D.C. 1979), cert. denied, 444 U.S. 1078 (1980)
- Osbourne v. Capital City Mortgage Corp., 667 A.2d 1321, 1324-1326 (D.C. 1995)
- Lee v. Luigi, Inc., 696 A.2d 1371, 1373 (D.C. 1997)
- Potts v. District of Columbia, 697 A.2d 1249, 1251 (D.C. 1997)
- Ferguson v. District of Columbia, 629 A.2d 15, 19 (D.C. 1993)
- New Places, Inc. v. Communications Workers of America, 619 A.2d 73, 75 (D.C. 1993)
- Kron v. Young & Simon, Inc., 265 A.2d 293, 295 (D.C. 1970)
- Lewis v. Jordan Investments, Inc., 725 A.2d 495, 499 (D.C. 1999)
- Reichman v. Franklin Simon Corp., 392 A.2d 9, 14 (D.C. 1978)
- Burch v. Amsterdam Corp., 366 A.2d 1079, 1083 (D.C. 1976)
- Capital City Corp. v. Johnson, 646 A.2d 325, 328, 330 (D.C. 1994)
- Capital City Corp. v. Johnson, 646 A.2d 325, 330 (D.C. 1994)
- Johnson v. Fairfax Village Condominium IV Unit Owners Ass'n, 641 A.2d 495, 504 (D.C. 1994)

- Independence Federal Savings Bank v. Huntley, 573 A.2d 787, 788 (D.C. 1990)
- Bank-Fund Staff Federal Credit Union v. Cuellar, 639 A.2d 561, 569-570 (D.C. 1994)
- Peare v. Jackson, 777 A.2d 822, 824-825 (D.C. 2001)
- Jones v. Cain, 804 A.2d 322, 325 (D.C. 2002)
- Young v. First American Financial Services, 992 F. Supp. 440, 445 (D.D.C. 1998)
- Cassidy v. Owen, 533 A.2d 253, 255 (D.C. 1987)
- Fleming v. District of Columbia, 633 A.2d 846, 848 (D.C. 1993)

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