SUPREME COURT OF ALASKA

Farmer v. Alaska USA Title Agency, Inc.

336 P.3d 160 (Alaska 2014) · No. S-15163 · Decided October 24, 2014

SUMMARY

The Alaska Supreme Court affirmed summary judgment upholding a nonjudicial foreclosure sale. The court held that Alaska law and due process did not require the debtor to receive renewed individual notice after each postponement when the sale occurred within 12 months and postponements were publicly announced. The court also held that the debtor was not misled regarding the cure amount or time to cure, and that the sale price was not so inadequate as to constitute a forfeiture.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Stowers, Justice; Fabe, Chief Justice; Winfree, Justice; Maassen, Justice; Bolger, Justice
JURISDICTION	Alaska
DECIDED	October 24, 2014
DOCKET	S-15163
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a superior court summary judgment upholding a nonjudicial foreclosure sale.
STANDARD OF REVIEW	Summary judgment is reviewed de novo, with affirmance appropriate when the record presents no genuine issue of material fact and the movant is entitled to judgment as a matter of law. Reasonable inferences are drawn in favor of the nonmovant, but unsupported assumptions and speculation are insufficient. Questions of law are reviewed under independent judgment.
PRECEDENTIAL VALUE	Published Alaska Supreme Court opinion; precedential.
PARTIES	Robert J. Farmer v. Alaska USA Title Agency, Inc., Peggy Jo Watson

TOPICS

foreclosure · summary judgment · due process · statutory interpretation · real estate

PRACTICE AREAS

real estate · foreclosure · constitutional law · bankruptcy · civil procedure

QUESTIONS PRESENTED

1. Whether equity or the Alaska Constitution required the trustee to provide the debtor with additional actual notice after each postponement of a nonjudicial foreclosure sale.
2. Whether Watson misled Farmer regarding the cure amount or the time available to cure the default.
3. Whether the foreclosure sale price was so inadequate as to constitute a forfeiture or otherwise justify invalidating the sale.

HOLDINGS

1. Neither equity nor the Alaska Constitution requires re-notice to a debtor after each postponement of a nonjudicial foreclosure sale when the debtor received proper initial notice, the sale occurred within 12 months of the original sale date, and the postponement was publicly announced.
2. A lender that promptly provides the cure amount upon request is not required to wait a fixed period after providing that amount before conducting the foreclosure sale, and Watson did not mislead Farmer.
3. A foreclosure sale price that is 80% of the property's undisputed value is not a forfeiture, and mere inadequacy of price does not invalidate a sale absent gross inadequacy causing a presumption of fraud or unfairness or additional procedural irregularities.

KEY QUOTATIONS

> *"We agree: equity does not require re-notice after postponement of a nonjudicial foreclosure sale, and Farmer received constitutionally sufficient notice."* (-4-)

> *"Therefore, we continue to hold that postponement by a public announcement "gives notice reasonably calculated to reach interested parties.""* (-8-)

> *"We AFFIRM the decision of the superior court in all respects."* (-12-)

FACTUAL BACKGROUND

Robert J. Farmer and his wife purchased Wolverine Lodge in 1992, securing the $365,000 purchase price with a deed of trust. Farmer defaulted again in 2012, while also failing to pay real estate and room taxes and maintain insurance, prompting Peggy Jo Watson to commence nonjudicial foreclosure proceedings. Farmer received initial notice of the foreclosure, but the sale was postponed six times and each postponement was publicly announced without separate personal notice to Farmer. Watson ultimately purchased the property for $120,000, which represented 80% of the property's undisputed value as stated by Farmer.

PROCEDURAL HISTORY

Watson commenced nonjudicial foreclosure proceedings after Farmer defaulted on the deed of trust. The foreclosure sale was postponed six times, with each postponement publicly announced, and the property was eventually sold to Watson. Farmer sued to challenge the foreclosure, and the superior court granted Watson summary judgment. The Alaska Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Erkins v. Alaska Trust, LLC, 265 P.3d 292, 296 (Alaska 2011)
- Beegan v. State, Department of Transportation & Public Facilities, 195 P.3d 134, 138 (Alaska 2008)
- Boyko v. Anchorage School District, 268 P.3d 1097, 1103 (Alaska 2012)
- Perkins v. Doyon Universal Services, LLC, 151 P.3d 413, 416 (Alaska 2006)
- Shaffer v. Bellows, 260 P.3d 1064, 1068 (Alaska 2011)
- Smith v. Radecki, 238 P.3d 111, 114 (Alaska 2010)
- Ostrow v. Higgins, 722 P.2d 936, 941-42 (Alaska 1986)
- Rosenberg v. Smidt, 727 P.2d 778, 779-84 (Alaska 1986)
- Young v. Embley, 143 P.3d 936, 947 (Alaska 2006)
- Blood v. Kenneth A. Murray Insurance, Inc., 151 P.3d 428, 434 (Alaska 2006)
- McCrary v. Ivanof Bay Village, 265 P.3d 337, 341 (Alaska 2011)
- Guerrero ex rel. Guerrero v. Alaska Housing Finance Corp., 123 P.3d 966, 982 n.104 (Alaska 2005)
- In re Nghiem, 264 B.R. 557, 562 (B.A.P. 9th Cir. 2001)
- In re Jauregui, 197 B.R. 673, 675 (Bankr. E.D. Cal. 1996)
- Fitzgerald v. First National Bank of Boston, 703 N.E.2d 1192, 1195 (Mass. App. 1998)
- Albrecht v. Alaska Trust, LLC, 286 P.3d 1059, 1063 (Alaska 2012)
- Baskurt v. Beal, 101 P.3d 1041, 1044, 1046 (Alaska 2004)
- McHugh v. Church, 583 P.2d 210, 213-14 (Alaska 1978)
- BFP v. Resolution Trust Corp., 511 U.S. 531, 537-38 (1994)
- Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314-15 (1950)
- Wickersham v. State, Commercial Fisheries Entry Commission, 680 P.2d 1135, 1144 (Alaska 1984)