SUPREME COURT OF ALABAMA

B.N. Muller III v. Linda S. Seeds and Chris Seeds

975 So. 2d 914 (Ala. 2007) · No. 1050990 · Decided June 15, 2007

SUMMARY

The Supreme Court of Alabama reviewed a summary judgment concerning a mortgage lien, foreclosure, and ejectment action involving a subdivided tract of land. The court held that the evidence did not establish that the corporation's president had authority to release the mortgage lien and that the mortgage's express authorization to sell property in lots, parcels, or en masse precluded summary judgment based solely on the en masse foreclosure sale. The court reversed the summary judgment in favor of the Seedses and remanded for further proceedings.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Murdock, Justice; Cobb, Chief Justice; See, Justice; Lyons, Justice; Woodall, Justice; Stuart, Justice; Smith, Justice; Parker, Justice; Bolin, Justice
JURISDICTION	Alabama
DECIDED	June 15, 2007
DOCKET	1050990
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Muller appealed a Rule 54(b)-certified summary judgment entered by the Chilton Circuit Court in favor of the Seedses on their claim seeking to set aside a mortgage foreclosure and vest title to Lot 3 in them.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The evidence is viewed in the light most favorable to the nonmovant. The movant must make a prima facie showing that no genuine issue of material fact exists and that the movant is entitled to judgment as a matter of law; the burden then shifts to the nonmovant to produce substantial evidence creating a genuine issue of material fact.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	B.N. Muller III v. Linda S. Seeds, Chris Seeds

TOPICS

wrongful foreclosure · foreclosure · summary judgment · ejectment · appellate procedure

PRACTICE AREAS

real estate · foreclosure · civil procedure · appellate procedure · remedies

QUESTIONS PRESENTED

1. Whether the evidence created a genuine issue of material fact regarding whether Berry Shirley had authority to release Muller's mortgage lien on Lot 3.
2. Whether the trial court properly set aside the foreclosure sale because Muller sold Lots 3 and 6 en masse.
3. Whether the denial of Muller's own summary-judgment motion was properly before the Supreme Court on appeal.

HOLDINGS

1. The evidence relied upon by the Seedses did not establish that Shirley had actual or apparent authority to release Muller's individually held mortgage lien on Lot 3, and it therefore did not support summary judgment against Muller.
2. The en masse foreclosure sale could not be set aside on summary judgment merely because Lots 3 and 6 were sold together where the mortgage specifically authorized Muller to sell the property in lots, parcels, or en masse. Setting aside the sale required a showing that the parties' bargaining power or sophistication materially differed, or that Muller acted in bad faith, fraudulently, or otherwise abused the contractual discretion granted by the mortgage.
3. The denial of Muller's summary-judgment motion was not before the Supreme Court because it was an interlocutory order and lacked certification under Rule 5, Alabama Rules of Appellate Procedure.

KEY QUOTATIONS

> *"A power of sale is more than a mere clause in a legal contract and equity regards a mortgagee holding a power of sale as a quasi trustee with a duty of fairness and good faith to the mortgagor in its execution."* (921)

> *"In the absence of a showing that the bargaining power or sophistication of the parties to the mortgage materially differed, or that Muller acted in bad faith, fraudulently, or otherwise abused the discretion conferred on him by the mortgage, we cannot conclude that the summary judgment for the Seedses was appropriate on the basis that Muller disposed of the property at the foreclosure sale en masse."* (922)

FACTUAL BACKGROUND

Muller, a minority shareholder in Silver Point, held a mortgage on a 162-acre tract divided into lots, including Lot 3. The Seedses contracted to purchase Lot 3 from Silver Point, but Muller refused to release Lot 3 from his mortgage; Silver Point nevertheless completed the sale, and the Seedses took possession. After Silver Point defaulted, Muller foreclosed under the mortgage's power-of-sale provision, purchasing Lots 3 and 6 together at an en masse sale, and then filed an ejectment action when the Seedses refused to surrender Lot 3. The mortgage expressly authorized Muller to sell the property in lots, parcels, or en masse, as he deemed best.

PROCEDURAL HISTORY

Muller filed an ejectment action after foreclosing on a mortgage covering, among other property, Lot 3, which the Seedses had purchased from Silver Point. The Seedses asserted breach-of-contract and wrongful-foreclosure counterclaims and obtained an initial summary judgment on Muller's ejectment claim, which the Alabama Supreme Court reversed in Muller v. Seeds, 919 So. 2d 1174 (Ala. 2005). On remand, the Seedses moved for summary judgment on both the ejectment claim and their wrongful-foreclosure claim; the trial court granted summary judgment setting aside the foreclosure and vesting title to Lot 3 in the Seedses. The Supreme Court reversed that judgment and remanded.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

Remanded for further proceedings consistent with the opinion.

CASES CITED

- Muller v. Seeds, 919 So. 2d 1174, 1176-78 (Ala. 2005)
- Turner v. Westhampton Court, L.L.C., 903 So. 2d 82, 87 (Ala. 2004)
- Bass v. SouthTrust Bank of Baldwin County, 538 So. 2d 794, 797-98 (Ala. 1989)
- West v. Founders Life Assurance Co. of Fla., 547 So. 2d 870, 871 (Ala. 1989)
- Rosser v. AAMCO Transmissions, Inc., 923 So. 2d 294, 301 (Ala. 2005)
- Watson v. Auto-Owners Ins. Co., 599 So. 2d 1133, 1136 (Ala. 1992)
- Kelly v. Carmichael, 217 Ala. 534, 117 So. 67 (1928)
- J.H. Morris, Inc. v. Indian Hills, Inc., 282 Ala. 443, 455, 212 So. 2d 831, 843 (1968)
- Conway v. Andrews, 286 Ala. 28, 236 So. 2d 687 (1970)
- Ames v. Pardue, 389 So. 2d 927, 929-31 (Ala. 1980)
- Dozier v. Farrior, 187 Ala. 181, 65 So. 364 (1914)
- Bank of New Brockton v. Dunnavant, 204 Ala. 636, 87 So. 105 (1920)
- Rudisill v. Buckner, 244 Ala. 653, 656, 15 So. 2d 333 (1943)
- Brock v. Berry, 132 Ala. 95, 31 So. 517 (1901)
- Collins v. Thompson, 259 Ala. 82, 65 So. 2d 491 (1953)
- Wittmeier v. Tidwell, 147 Ala. 354, 40 So. 963 (1906)
- Continental Cas. Co. v. SouthTrust Bank, N.A., 933 So. 2d 337, 340 (Ala. 2006)

INSTRUCTIONS FOR AN AI ASSISTANT

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