SUPREME COURT OF KANSAS

Fidelity Bank v. King

281 Kan. 1278 (2006) · No. No. 92,410 · Decided June 16, 2006

SUMMARY

The Supreme Court of Kansas held that a junior mortgage holder waives its claim to surplus foreclosure-sale proceeds by failing to appear and assert or adjudicate its lien in the senior mortgage holder's foreclosure action. Because U.S. Bank did not participate in the foreclosure, its mortgage lien became ineffective against the property, leaving it with an unsecured claim on the underlying note; River City Enterprises, as successor to the debtors' remaining property rights, was entitled to the surplus proceeds.

CASE DETAILS

COURT	Supreme Court of Kansas
WRITING FOR THE COURT	Beier, J.
JURISDICTION	Kansas
DECIDED	June 16, 2006
DOCKET	No. 92,410
DISPOSITION	affirmed
PROCEDURAL POSTURE	U.S. Bank appealed the district court's denial of its motion seeking distribution of surplus foreclosure-sale proceeds. The Kansas Court of Appeals affirmed, and the Supreme Court of Kansas granted review.
STANDARD OF REVIEW	Unlimited review because the appeal presented questions of law.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Kansas
PARTIES	U.S. Bank, N.A. v. River City Enterprises, L.L.C.

TOPICS

foreclosure · mortgages · real estate · appellate procedure · remedies

PRACTICE AREAS

foreclosure · mortgages · real estate · remedies · appellate procedure

QUESTIONS PRESENTED

1. Whether a junior mortgage holder that fails to appear and adjudicate its lien in a senior mortgage foreclosure preserves its lienholder status and priority claim to surplus sheriff's-sale proceeds.
2. Whether bidding at the foreclosure sale, without participating in the foreclosure action, is sufficient to preserve a junior lienholder's priority claim to surplus proceeds.
3. Whether equitable considerations permit a nonparticipating junior mortgage holder to recover surplus proceeds ahead of the holder of the debtor's equity of redemption.

HOLDINGS

1. A junior mortgage holder that fails to appear, assert its position, and have its junior lien adjudicated in the senior mortgage foreclosure loses its lienholder status and cannot claim priority to surplus foreclosure-sale proceeds.
2. A junior lienholder's bidding at the foreclosure sale, without appearing and adjudicating its lien in the foreclosure action, does not preserve its lienholder status or priority entitlement to surplus proceeds.
3. Because U.S. Bank's junior lien was not preserved, River City Enterprises, as successor to the Kings' remaining property rights and equity of redemption, was entitled to the surplus proceeds.
4. Equitable considerations do not override the legal requirement that a junior lienholder preserve and adjudicate its lien in the foreclosure action.

KEY QUOTATIONS

> *"a junior lienholder who has responded in a foreclosure action, and whose lien is adjudicated by the trial court, has three rights: (1) the right to offset bid its judgment at the sheriff's sale to protect the value of its lien; (2) the right to redeem the property from sale should the owner fail to redeem [during the owner's exclusive period]; and (3) the right to share in surplus proceeds after payment of the senior mortgage judgment."* (1281)

> *"Since inferior judgment liens are cut off by the sale, surplus takes the place of the land, and the lienholders may apply for distribution of proceeds of sale .... [W]henever surplus, standing for the land to which the lien attached, ought in equity to be distributed to lienholders, it may be distributed to them, on application to the court having control of the surplus. This is the very purpose and object of reserving, in judgment and order of sale, power to dispose of surplus."* (1283)

> *"The consequence we foresee will be an enforcement of the understanding that in order to protect a junior lien, a financial institution must appear in the foreclosure action brought by the senior mortgage holder, assert the junior lienholder's position, have the court adjudicate the junior lien, and then make sure the junior lien is recognized in the journal entry of foreclosure."* (1285-86)

FACTUAL BACKGROUND

The Kings owned Wichita real property subject to Fidelity Bank's first mortgage and U.S. Bank's 2000 second mortgage. After the Kings defaulted, Fidelity foreclosed, naming U.S. Bank as a defendant and properly serving it, but U.S. Bank did not participate or assert its junior lien. U.S. Bank later purchased the property at the sheriff's sale for $93,500, leaving $20,407.29 in surplus after Fidelity's judgment was paid. River City

Enterprises had acquired the Kings' remaining rights in the property shortly before the sale and sought distribution of the surplus.

PROCEDURAL HISTORY

Fidelity Bank foreclosed its senior mortgage and obtained a decree barring the defendants and persons claiming through them from asserting interests in the property. U.S. Bank, a junior mortgage holder, was properly served but did not appear, answer, or adjudicate its lien. After the sheriff's sale generated surplus proceeds, River City Enterprises, which had acquired the Kings' remaining property rights, obtained an order distributing the surplus to it. The district court denied U.S. Bank's motion to set aside that order and award the surplus to U.S. Bank; the Court of Appeals affirmed; the Supreme Court affirmed both lower courts.

DISPOSITION

affirmed

CASES CITED

- First Nat'l Bank & Tr. v. Miami Co. Co-op Ass'n, 257 Kan. 989, 998, 897 P.2d 144 (1995)
- Blandin's Adm'r v. Wade, 20 Kan. 251, 255 (1878)
- McFall v. Ford, 133 Kan. 593, 601, 1 P.2d 273 (1931)
- Noel v. Menninger Foundation, 175 Kan. 751, 267 P.2d 934 (1954)
- Cardarella v. City of Overland Park, 228 Kan. 698, 700-01, 620 P.2d 1122 (1980)
- Fidelity Bank v. King, 33 Kan. App. 2d 804, 806-12, 109 P.3d 180 (2005)
- Butler v. Craig, 29 Kan. 205, 207 (1883)
- Ellis v. Southwell, 29 Ill. 549, 552 (1863)
- Pool v. Gates, 119 Kan. 621, 627, 240 P. 580 (1925)