SUPREME COURT OF VERMONT

Woodbine Condominium Ass'n v. Lowe

174 Vt. 457 (2002) · Decided June 24, 2002

SUMMARY

The Vermont Supreme Court dismissed an appeal from a condominium foreclosure for lack of jurisdiction because the homeowners failed to obtain the trial court's permission to appeal within the required ten-day period. The court held that the permission requirement applicable to mortgage foreclosures also applies to foreclosures based on condominium assessment liens and cannot be circumvented through a post-foreclosure Rule 60(b) motion. The court denied sanctions because the appeal presented a good-faith argument not directly foreclosed by existing precedent.

CASE DETAILS

COURT	Supreme Court of Vermont
JURISDICTION	Vermont
DECIDED	June 24, 2002
DISPOSITION	dismissed
PROCEDURAL POSTURE	The homeowners appealed orders denying their Vermont Rule of Civil Procedure 60(b) motion and motion to reconsider following a default judgment and foreclosure decree. The condominium association moved to dismiss for lack of appellate jurisdiction and sought sanctions under V.R.A.P. 25(d).
PRECEDENTIAL VALUE	Published precedential opinion
PARTIES	Charles R. Lowe, Debra M. Lowe v. Woodbine Condominium Association

TOPICS

appellate jurisdiction · foreclosure · appellate procedure · statutory interpretation · sanctions

PRACTICE AREAS

appellate procedure · real estate · foreclosure · condominium law · civil procedure

QUESTIONS PRESENTED

1. Whether the Vermont Supreme Court had jurisdiction to review a foreclosure-related appeal when the homeowners failed to obtain the trial court's permission to appeal within ten days of entry of the foreclosure judgment.
2. Whether the permission-to-appeal requirement applicable to mortgage foreclosures also applies to foreclosures based on condominium assessment liens.
3. Whether the alleged failure to join a junior lienholder justified reopening the foreclosure judgment or otherwise circumventing the statutory finality of foreclosure judgments.
4. Whether sanctions under V.R.A.P. 25(d) should be imposed on the homeowners' attorney.

HOLDINGS

1. A party may not circumvent the statutory permission-to-appeal requirement for a foreclosure judgment by filing a later Rule 60(b) motion and appealing its denial after the redemption period has expired. Because the Lowes did not obtain permission to appeal within ten days, the Supreme Court lacked jurisdiction.
2. Foreclosures based on condominium assessment liens are subject to the same ten-day permission-to-appeal requirement as mortgage foreclosures.
3. The alleged failure to join Chittenden Bank did not affect the rights of the parties before the court and did not justify circumventing the Legislature's policy favoring finality of foreclosure judgments.
4. Sanctions were not warranted because, although the appeal was weak, counsel had no directly contrary controlling case and appeared to have made a good-faith argument that condominium assessment-lien foreclosures should be treated differently from mortgage foreclosures.

KEY QUOTATIONS

> *"the legislative policy of promoting the finality of foreclosure judgments would be thwarted if §4601 could be circumvented simply by filing a motion to reopen weeks or months after the entry of the foreclosure judgment."* (458)

> *"the term 'it may be foreclosed' must include all the actions necessary to obtain a foreclosure decree, including if necessary, the appeal."* (458)

> *"Sanctions are meant to reduce unnecessary appellate caseload, but they are not meant to chill an attorney's enthusiasm or creativity."* (459)

FACTUAL BACKGROUND

The Lowes fell behind on condominium association assessments, and Woodbine Condominium Association filed a foreclosure complaint based on its assessment lien. The Lowes did not respond or appear at the default-judgment hearing, and the trial court entered a default judgment and foreclosure decree. After the redemption period expired, the Lowes sought Rule 60(b) relief, asserting that the Association had failed to join Chittenden Bank, a junior lienholder, and raising other equitable grounds.

PROCEDURAL HISTORY

The Association obtained a default judgment and decree of foreclosure after the Lowes failed to respond to the foreclosure complaint or appear at the default-judgment hearing. After the redemption period expired and a certificate of nonredemption and writ of possession issued, the Lowes moved for relief under Rule 60(b), arguing in part that a junior lienholder had not been joined. The trial court denied that motion and a subsequent motion to reconsider. The Vermont Supreme Court dismissed the appeal because the Lowes had not obtained the trial court's permission to appeal within ten days of the foreclosure judgment, but denied sanctions.

DISPOSITION

dismissed

CASES CITED

- Citibank, N.A. v. Groshens, 171 Vt. 639, 768 A.2d 1272 (2000) (mem.)
- Denlinger v. Mudgett, 151 Vt. 208, 559 A.2d 661 (1989)
- Darden v. O'Keefe, 171 Vt. 571, 762 A.2d 852 (2000) (mem.)