SUPREME COURT OF UTAH

Timm v. Dewsnup

86 P.3d 699 (Utah 2003) · No. No. 20010818 · Decided October 31, 2003

SUMMARY

The Utah Supreme Court affirmed a district court judgment upholding a nonjudicial foreclosure sale of trust deed property. The court held that the foreclosure was timely, did not improperly foreclose on an unsecured debt, did not violate Utah's one-action rule, and complied with statutory notice requirements. The court also declined to consider issues raised for the first time on appeal.

CASE DETAILS

COURT	Supreme Court of Utah
WRITING FOR THE COURT	Justice Nehring; Chief Justice Durham; Associate Chief Justice Durrant; Justice Parrish; Justice Russon; Justice Wilkins; District Judge Ronald E. Nehring
JURISDICTION	Utah
DECIDED	October 31, 2003
DOCKET	No. 20010818
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the district court's grant of summary judgment in favor of the lenders following a nonjudicial foreclosure sale and repeated remands in prior appeals.
STANDARD OF REVIEW	Summary judgment is reviewed for correctness. Findings of fact are reviewed for clear error under Utah Rule of Civil Procedure 52(a), and the challenging party must marshal the evidence supporting the findings and show why they are clearly erroneous. Issues raised for the first time on appeal are reviewed only for exceptional circumstances or plain error.
PRECEDENTIAL VALUE	Published Utah Supreme Court opinion; precedential.
PARTIES	Louis L. Timm, John Neiuwland, Floyd M. Childs, trustees of United Precision Machine and Engineering Company Profit Sharing Trust, ABCO Insurance Agency, Inc., Joseph L. Henriod, trustee for the Annette Jacob Trust v. T. Lamar Dewsnup, Aletha Dewsnup, Arrow Investment Company, Federal Land Bank of Berkeley, Imperial Land

Title, Inc., Eugene L. Carson, Elaine Carson, Stringham, Mazuran, Larsen & Sabin, Mineral Fertilizer Company, Harry V. Kaps

TOPICS

foreclosure · wrongful foreclosure · summary judgment · appellate procedure · statute of limitations

PRACTICE AREAS

real estate · foreclosure · appellate procedure · civil procedure · bankruptcy

QUESTIONS PRESENTED

1. Whether the 1994 nonjudicial foreclosure sale was barred by the statute of limitations.
2. Whether the foreclosure was defective because the lenders foreclosed for an amount that included debt not secured by the trust deed.
3. Whether conducting a nonjudicial foreclosure sale violated Utah's one-action rule.
4. Whether defects in the foreclosure-sale notice required setting aside the sale.
5. Whether the court should consider arguments concerning disputed material facts and an uncredited payment when those issues were raised for the first time on appeal.

HOLDINGS

1. The foreclosure sale was not barred by the statute of limitations because the bankruptcy stays tolled or suspended the limitations period, leaving less than six years of nonstayed time between default and foreclosure.
2. The foreclosure sale was not defective merely because the lenders' debt included the separate Arrow-contract judgment lien; the lenders were entitled to apply surplus proceeds as junior lienholders, and the debtor suffered no damages because the surplus was insufficient to satisfy that lien fully.
3. A nonjudicial foreclosure sale under a deed of trust is not an 'action' within Utah's one-action rule and therefore does not violate that rule.
4. The notice irregularities did not invalidate the foreclosure sale because the debtor had actual notice and failed to show that any defect prevented protection of her interests, chilled bidding, or caused an inadequate price.
5. The court declined to consider the debtor's newly raised arguments concerning disputed material facts and an uncredited payment because she showed neither exceptional circumstances nor plain error.

KEY QUOTATIONS

> *“Because we conclude that it does not, the sale of the Dewsnups' property does not violate the one-action rule.”* (704-705)

> *“The fundamental lesson to be drawn from our cases interpreting the one-action rule is that its primary objective is to place the personal assets of a mortgagor beyond the reach of a mortgagee until the value of the*

> *pledged property is exhausted."* (705)

> *"Defects in the notice of foreclosure sale that will authorize the setting aside of the sale must be those that would have the effect of chilling the bidding and causing an inadequacy of price."* (706)

FACTUAL BACKGROUND

The Dewsnups borrowed $119,000 to purchase a motel, securing the notes with a trust deed on their farm, an assignment of an adjacent-land purchase contract, and a security agreement concerning water rights. After the Dewsnups defaulted, the lenders paid amounts necessary to preserve the adjacent-land contract, obtained a judgment, and eventually conducted a nonjudicial foreclosure sale of the trust-deed property in 1994. The district court found that $88,911.67 in attorney fees and costs remained secured by the trust deed and that the lenders were entitled to apply the surplus from the sale toward their junior judgment lien.

PROCEDURAL HISTORY

The lenders obtained an earlier judgment against the Dewsnups and pursued foreclosure on property secured by a trust deed. After multiple bankruptcy filings and three prior appeals, the district court found that $88,911.67 in attorney fees and costs remained secured by the trust deed and granted summary judgment for the lenders on claims challenging the foreclosure. The Utah Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- Timm v. Dewsnup, 851 P.2d 1178, 1185 (Utah 1993)
- Timm v. Dewsnup, 921 P.2d 1381, 1394 (Utah 1996)
- Timm v. Dewsnup, 1999 UT 105, ¶¶ 12, 15, 990 P.2d 942
- Citicorp Mortgage, Inc. v. Hardy, 834 P.2d 554, 556 (Utah 1992)
- Dewsnup v. Timm, 502 U.S. 410, 413, 112 S. Ct. 773, 116 L. Ed. 2d 903 (1992)
- West Valley City v. Majestic Investment Co., 818 P.2d 1311, 1313 (Utah Ct. App. 1991)
- Randall v. Valley Title, 681 P.2d 219, 221 (Utah 1984)
- Utah Mortgage & Loan Co. v. Black, 618 P.2d 43, 45 (Utah 1980)
- Lockhart v. Equitable Realty Inc., 657 P.2d 1333, 1334-1335 (Utah 1983)
- First National Bank of Coalville v. Boley, 90 Utah 341, 61 P.2d 621, 623 (1936)
- Concepts, Inc. v. First Security Realty Services, Inc., 743 P.2d 1158, 1159 (Utah 1987)
- Salt Lake City v. Ohms, 881 P.2d 844, 847 (Utah 1994)
- Security Pacific National Bank v. Wozab, 51 Cal. 3d 991, 275 Cal. Rptr. 201, 800 P.2d 557, 562 (1990)
- Bank of America v. Daily, 152 Cal. App. 3d 767, 199 Cal. Rptr. 557 (1984)
- City Consumer Services, Inc. v. Peters, 815 P.2d 234, 236 (Utah 1991)

- In re Dewsnup, 87 B.R. 676 (Bankr. D. Utah 1988), aff'd, 908 F.2d 588 (10th Cir. 1990), aff'd, Dewsnup v. Timm, 502 U.S. 410 (1992)
