SUPREME COURT OF OKLAHOMA

HUB PARTNERS XXVI, LTD. v. BARNETT

453 P.3d 489 · No. 115995 · Decided October 29, 2019

SUMMARY

The Oklahoma Supreme Court held that a foreclosure judgment is subject to Oklahoma's five-year judgment dormancy statute and became dormant because Hub Partners did not timely renew or execute on the judgment. The Court further held that the underlying mortgage lien did not merge into or become extinguished by the dormant foreclosure judgment and continued to secure the debt. The Court vacated the Court of Civil Appeals' opinion, affirmed in part and reversed in part the district court's judgment, and remanded.

CASE DETAILS

COURT	Supreme Court of Oklahoma
WRITING FOR THE COURT	Winchester, J.; Gurich, C.J.; Darby, V.C.J.; Edmondson, J.; Colbert, J.; Combs, J.; Kane, J.
JURISDICTION	Oklahoma
DECIDED	October 29, 2019
DOCKET	115995
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Hub Partners sought certiorari from the Oklahoma Supreme Court after the district court released its foreclosure judgment as dormant and vacated the execution and sheriff's sale, and the Court of Civil Appeals affirmed.
STANDARD OF REVIEW	De novo review applies because statutory construction and the application of the dormancy statute to foreclosure judgments are questions of law. The court exercises plenary, independent, and non-deferential authority over those legal rulings.
PRECEDENTIAL VALUE	published Oklahoma Supreme Court opinion; precedential
PARTIES	HUB PARTNERS XXVI, LTD. v. THOMAS BURNELL BARNETT

TOPICS

foreclosure · bankruptcy · statutory interpretation · appellate procedure · remedies

PRACTICE AREAS

civil procedure | appellate procedure | bankruptcy | real estate | remedies | statutory interpretation

QUESTIONS PRESENTED

1. Whether a foreclosure judgment is subject to Oklahoma's five-year judgment dormancy statute, 12 O.S. § 735.
2. Whether bankruptcy-plan payments, the bankruptcy stay, or the additional period provided by 11 U.S.C. § 108(c) prevented the foreclosure judgment from becoming dormant.
3. Whether a mortgage lien merges into or is extinguished by a foreclosure judgment that later becomes dormant.

HOLDINGS

1. A foreclosure judgment is a judgment filed in a court of record and is subject to Oklahoma's dormancy statute, 12 O.S. § 735. The 2011 foreclosure judgment therefore became dormant when Hub failed to take one of the statutory renewal actions within five years.
2. Barnett's payments under the bankruptcy plan did not prevent the dormancy period from running. The bankruptcy did not prevent Hub from renewing the judgment during the bankruptcy proceeding, and Hub also failed to act within the additional thirty-day period allowed after dismissal under 11 U.S.C. § 108(c).
3. The mortgage lien did not merge into or become extinguished by the foreclosure judgment. The mortgage lien remains effective to secure Barnett's obligation and may support a new action, although the prior foreclosure judgment is dormant.

KEY QUOTATIONS

> *"The lien can only be extinguished by a sale and application of the proceeds to the judgment, which has not yet occurred."* (¶ 15)

> *"COURT OF CIVIL APPEALS' OPINION VACATED; DISTRICT COURT'S JUDGMENT AFFIRMED IN PART AND REVERSED IN PART; REMANDED WITH INSTRUCTIONS."* (¶ 16)

FACTUAL BACKGROUND

Hub Partners obtained a money and foreclosure judgment against Thomas Barnett in February 2011. Barnett filed Chapter 13 bankruptcy shortly thereafter, and his confirmed plan required payments to Hub; the bankruptcy case was dismissed in July 2016 after he failed to maintain those payments. Hub issued alias executions in August and September 2016 and a sheriff's sale was held in December 2016, but more than five years had passed since entry of the judgment without a statutory renewal. Barnett successfully moved to release the judgment as dormant and to vacate the execution and sale.

PROCEDURAL HISTORY

Hub obtained a money judgment and foreclosure judgment in 2011. Barnett subsequently filed Chapter 13 bankruptcy, which stayed execution, but the bankruptcy case was dismissed in 2016 after Barnett failed to make required payments. Hub then attempted execution more than five years after entry of judgment. The district court held the judgment dormant under 12 O.S. § 735, vacated the execution and sale, and held that the note and mortgage merged into the judgment; the Court of Civil Appeals affirmed. The Oklahoma Supreme Court granted certiorari, vacated the Court of Civil Appeals' opinion, affirmed in part and reversed in part the district court, and remanded with instructions.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The district court's release of the dormant foreclosure judgment and vacation of the execution and sheriff's sale were affirmed. The ruling that the note and mortgage merged into the foreclosure judgment was reversed. The case was remanded for proceedings consistent with the opinion, with recognition that Hub may prosecute a new action based on the mortgage lien.

CASES CITED

- State ex rel. Protective Health Servs. State Dep't of Health v. Vaughn, 2009 OK 61, 222 P.3d 1058
- In re Initiative Petition No. 397, 2014 OK 23, 326 P.3d 496
- Chandler-Frates & Reitz v. Kostich, 1981 OK 74, 630 P.2d 1287
- North v. Haning, 1950 OK 280, 229 P.2d 574
- State ex rel. Commissioners of Land Office v. Landess, 1955 OK 148, 293 P.2d 574
- State ex rel. Commissioners of Land Office v. Keller, 1953 OK 371, 264 P.2d 742
- 3M Dozer Serv., Inc. v. Baker, 2006 OK 28, 136 P.3d 1047
- First of Denver Mortg. Investors v. Riggs, 1984 OK 36, 692 P.2d 1358
- Drllevich Constr., Inc. v. Stock, 1998 OK 39, 958 P.2d 1277
- FDIC v. Tidwell, 1991 OK 119, 820 P.2d 1338
- Anderson v. Barr, 1936 OK 471, 62 P.2d 1242
- Methvin v. American Sav. & Loan Ass'n of Anadarko, 1944 OK 177, 151 P.2d 370
- Bank of the Panhandle v. Irving Hill, 1998 OK CIV APP 140, 965 P.2d 413
- State ex rel. Commissioners of Land Office v. Weems, 1946 OK 28, 168 P.2d 629