

IN THE COURT OF APPEALS OF IOWA

No. 0-295 / 09-1788
Filed June 30, 2010

**CITIMORTGAGE, INC., As Successor
In Interest by Merger to CITIFINANCIAL
MORTGAGE COMPANY, INC.,**
Plaintiff-Appellant,

vs.

MARK R. WATKINS, ROXY L. WATKINS,
and PARTIES IN POSSESSION,
Defendants,

**LT STANDING, LTD, DON JONES
and CAROL JONES,**
Intervenors-Appellees.

Appeal from the Iowa District Court for Pottawattamie County, James M. Richardson, Judge.

Citimortgage, Inc., appeals from the district court ruling denying its motion to be recognized as the successful bidder or alternatively to set aside a sheriff's sale. **AFFIRMED.**

Matthew Laughlin and Sara K. Franklin of Davis Brown Law Firm, Des Moines, for appellant.

Curtis Heithoff, Council Bluffs, for appellees.

Heard by Vaitheswaran, P.J., and Doyle and Tabor, JJ.

TABOR, J.

Citimortgage, Inc. appeals from the district court ruling denying its motion to be recognized as the successful bidder or alternatively to set aside a sheriff's sale. The mortgage company contends that enforcing the sale after the sheriff misread its bid would impose an oppressive burden on the company and vacating the sale would result in no substantial hardship to the winning bidder other than rescinding the bargain. Because Citimortgage has not carried its burden, we affirm.

I. Background Facts and Procedures

In December of 2004, Mark and Roxy Watkins¹ borrowed \$92,292.74 through an adjustable rate note from Citifinancial Mortgage Company, Inc. (later known as Citimortgage, Inc.). To secure payment on the note, the lender accepted a mortgage on residential real estate in Council Bluffs from the borrowers. On November 14, 2008, lender Citimortgage filed a foreclosure petition because the Watkins fell behind on their payments. On January 16, 2009, the district court entered judgment in rem against the mortgaged premises for \$89,617.33—the unpaid balance of the principal—plus costs and interest. The court also ordered that special execution issue for the sale of the real estate for the purpose of paying the judgment rendered in favor of Citimortgage.

A sheriff's sale was scheduled for April 1, 2009. That morning, the attorney for Citimortgage sent a bid by facsimile to the Pottawattamie County Sheriff's Office. The bid amount was \$45,807.50. Problems with transmission of

¹ The Watkins are not parties in this appeal.

the facsimile caused the sheriff's office to read the bid as \$15,807.50. The sheriff started bidding at \$15,807.50, believing that price was Citimortgage's intended opening. LT Standing, Ltd. (also known as LT Standing Ltd., Don Jones and Carol Jones)—an intervenor in this action—submitted a bid of \$15,808.50 and was recognized by the sheriff as the winning bidder.

Immediately after the sale, a foreclosure paralegal from the Davis Brown Law Firm contacted the sheriff to determine if Citimortgage was the successful bidder. The sheriff's representative told her Citimortgage was outbid by one dollar. The paralegal assumed that the winning bid was \$45,808.50.

On April 6, 2009, Citimortgage filed a release and satisfaction of judgment, stating that the foreclosure judgment was fully satisfied by the sheriff's sale. The release did not mention the sale price. The sheriff issued a deed to LT Standing for the real estate, which was recorded in the county records on April 8, 2009. About one month later, Citimortgage applied to condemn the funds in the amount of \$45,808.50 bid by a third party at the sheriff's sale. The district court entered an order on May 7, 2009, granting the application to condemn funds. The order used the figure provided in Citimortgage's motion, noting that the proceeds of \$45,808.50 from the sheriff's sale had yet to be paid.

LT Standing took immediate possession of the real estate after the sheriff's sale and began remodeling. The company invested in improvements to the house with the intent to sell the property for a profit. LT Standing entered a contract for sale of the property before Citimortgage started the instant litigation.

Citimortgage eventually discovered the discrepancy in the sheriff's reading of its bid and on July 6, 2009, filed a motion to be recognized as the successful bidder. In the alternative, the motion sought to set aside the sheriff's sale. LT Standing applied to submit to jurisdiction of the court, alleging Citimortgage's motion cast a cloud on its title to the real estate. After the court granted LT Standing's application, the company responded to Citimortgage's motion. LT Standing acknowledged purchasing the Council Bluffs property for \$15,808.50 and argued that Citimortgage was estopped from obtaining the remedies it seeks because it waited three months to verify the amount of the winning bid. LT Standing alternatively argued that if the court granted relief to Citimortgage, LT Standing was entitled to reimbursement for the purchase price, the cost of improvements, interest on both of those amounts, lost rental value, and loss of its bargain from a pending sale contract. In reply to LT Standing's response, Citimortgage asserted that it would be "oppressively burdened" if not recognized as the successful bidder or if the sale was not set aside. Citimortgage argued that it could not have anticipated the mistake of fact by the sheriff's office in misreading the opening bid and contended that its damages would be at least \$30,000 if the sale were not vacated.

The parties submitted the equitable action on stipulated facts. On October 23, 2009, the district court issued an order overruling Citimortgage's motion to be recognized as the successful bidder or alternatively to set aside the sheriff's sale. Citimortgage challenges that order on appeal.

II. Standard of Review

We review equitable actions de novo. Iowa R. App. P. 6.907; *Fed. Land Bank of Omaha v. Reinhardt*, 428 N.W.2d 672, 672 (Iowa Ct. App. 1988).

In the interest of preserving the stability of sheriff's sales, a court of equity should be hesitant to set aside a sheriff's sale where one party claims a mistake of fact or law. *Farmers Sav. Bank v. Gerhart*, 372 N.W.2d 238, 244 (Iowa 1985). Relief should be granted only when enforcement of the sale would impose an oppressive burden on the party seeking vacation and vacation of the sale would result in no substantial hardship other than rescinding the bargain. *Id.* The showing of an oppressive burden must be similar to that required to set aside a contract on the grounds of unconscionability. *Id.*

III. Analysis

Citimortgage alleges it is entitled to relief in the form of recognition as the successful bidder or vacation of the sheriff's sale based on the sheriff's mistake of fact in reading its bid on the foreclosed property. The burden rests with Citimortgage to show that enforcement of the sale would impose an oppressive burden on Citimortgage as the unsuccessful bidder and that vacation of the sale would not result in a substantial hardship on LT Standing as the successful bidder other than rescinding the bargain. See *Farmers Sav. Bank*, 372 N.W.2d at 244.

We do not believe that Citimortgage has established that it faces an oppressive burden from enforcement of the sale. The district court concluded Citimortgage met the first prong of the test by showing it was "faced with the loss

of \$30,000 by virtue of the erroneous bid if the sale is allowed to stand.”² The record does not support that conclusion. The stipulated facts presented by the parties do not include any reference to the value of the foreclosed property. On appeal, LT Standing argues that Citimortgage presented no evidence that the property was worth more than the \$15,808.50 bid by LT Standing. The mortgage company’s only response is that its intended bid of \$45,807.50³ indicates the property was worth more than \$15,808.50. We are not convinced that the amount of Citimortgage’s intended bid, standing alone, proves the value of the property at auction. Without an appraisal of the property’s value in the record, we are unable to determine whether enforcement of the sale would impose an oppressive burden on Citimortgage.

Citimortgage relies on *Farmers Savings Bank v. Gerhart*, 372 N.W.2d 238, 244 (Iowa 1985) and *Federal Land Bank of Omaha v. Reinhardt*, 428 N.W.2d 672 (Iowa Ct. App. 1988) to bolster its position that Iowa courts will set aside a sheriff’s sale when a mistake of fact or law taints the bidding process. However, the value of the property was not disputed in either of those cases. In *Gerhart*, an executive vice president of the bank appraised the value of the property

² The district court, however, determined that Citimortgage could not satisfy the second prong because “granting relief from the sheriff’s sale would certainly cause substantial hardship beyond a mere rescission of the bargain” because LT Standing had invested time and money to improve the property with the intent to obtain a profit from the resale. Concluding both parties would suffer a loss in the event of an adverse ruling, the district court gravitated to the “longstanding rule of equity” that the loss “must be borne by the one whose act of omission or commission made the loss possible.” See *Keefe v. Cropper*, 196 Iowa 1179, 1185, 194 N.W. 305, 308 (Iowa 1923). The district court found Citimortgage was in a better position than LT Standing to prevent the flawed bidding process by following up with the sheriff to confirm he received the facsimile and to verify the amount of the bid or by having a representative present for the auction.

³ Citimortgage’s bid was just greater than half the foreclosure judgment of \$89,617.33.

between \$20,000 and \$22,000. 372 N.W.2d at 245. The Iowa Supreme Court affirmed the district court's decision to set aside the sheriff's sale because bank officials received truthful, but misleading advice resulting in a bid exceeding the actual value of the property by as much as \$32,000. *Id.* Likewise, in *Reinhardt*, we found a sheriff's sale was properly set aside when the foreclosed-upon farm sold for \$500 while its undisputed value was \$50,000 because the Land Bank through inadvertence did not attend the sale. *Reinhardt*, 428 N.W.2d at 673. These cases analogize the oppressive burden standard, which justifies setting aside a sheriff's sale, to unconscionability principles, which justify setting aside a contract. *Gerhart*, 372 N.W.2d at 244; *Reinhardt*, 428 N.W.2d at 673. A bargain is unconscionable if on the one hand no person in his or her right senses would make the deal and on the other hand no honest and fair person would accept it. *Gerhart*, 372 N.W.2d at 244; *Reinhardt*, 428 N.W.2d at 673. Here, it is difficult to determine if LT Standing received a windfall rising to the level of unconscionability without proof of the fair market value of the property sold.

Having determined that Citimortgage failed to demonstrate that it faced an oppressive burden from enforcement of the sale, we are not required to reach the question whether vacation of the sale would result in a substantial hardship to LT Standing. We affirm the district court's order declining to recognize Citimortgage as the successful bidder or to set aside the sheriff's sale.

AFFIRMED.