

**IN THE COURT OF APPEALS OF IOWA**

No. 9-772 / 09-0694  
Filed October 21, 2009

**NAVAJO ASSOCIATES, L.L.C.,**  
Plaintiff-Appellee,

**vs.**

**CURT DANIELS and LELIBETH LEQUIN CANDO,**  
Defendants/Third-Party Plaintiffs-Appellants,

**vs.**

**DAVID L. WETSCH,**  
Third-Party Defendant-Appellee.

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Appeal from the Iowa District Court for Lucas County, Eliza J. Ovrom,  
Judge.

Curt Daniels and Lelibeth Cando, husband and wife, appeal from a decree  
of foreclosure. **AFFIRMED.**

Curt N. Daniels, Chariton, pro se, and as attorney for appellant Cando.  
John Conger of Conger Law Firm, P.L.C., Des Moines, for appellees.

Considered by Vaitheswaran, P.J., Mansfield, J., and Mahan, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2009).

**MAHAN, S.J.**

Curt Daniels and Lelibeth Cando, husband and wife, appeal from a decree of foreclosure. As no genuine issue of material fact remains in the foreclosure action, the district court properly granted summary judgment. We affirm.

On November 1, 1994, Indian Creek Corporation (ICC) executed and delivered to Constance Daniels a written promissory note for the principal sum of \$127,685.31, together with interest. As security for the note, ICC executed a mortgage for certain real estate in Lucas County, which is the subject of the instant proceeding. Curt Daniels personally guaranteed the note and mortgage. The note provides that if it is not paid when due, and remains unpaid after a date specified, the entire principal amount outstanding and accrued interest shall at once become due and payable.

On August 5, 2003, ICC conveyed the real estate described in the mortgage to Curt Daniels. Curt Daniels is the current titleholder of the real estate, and Lelibeth Cando has a dower interest in the property by virtue of her marriage to Curt Daniels.

On September 1, 2006, Constance Daniels assigned all her rights, title, and interest in the note and mortgage to Navajo Associates. The note was in default, and Navajo Associates provided Curt Daniels with notice of right to cure and, being as the real estate is partially agricultural land, also obtained a mediation release.

Navajo Associates brought this action against defendants Curt Daniels and Lelibeth Cando seeking judgment on a promissory note and the foreclosure

of a mortgage given as security for the note. Defendants answered, admitting to the relevant facts noted above.

Navajo Associates sought summary judgment. Defendants did not contest the material allegations of the statement of undisputed facts, but argued instead that collateral matters barred plaintiff's right to recover in equity.<sup>1</sup> The district court ruled, in part, as follows:

Based on the undisputed facts, Navajo Associates has received a valid assignment of the promissory note and the mortgage. Daniels is the assignee of the original borrower and mortgagor, Indian Creek Corporation, pursuant to an assignment executed in 2003. Whether or not the interests of Indian Creek Corporation were properly valued at a sheriff's sale in 2006 is not a defense to the present action. . . . The court concludes that there are no genuine issues of material fact and that Navajo Associates is entitled to judgment as a matter of law.

Curt Daniels and Lelibeth Cando now appeal, again asserting that collateral matters should preclude plaintiff from seeking relief in equity. They do not directly challenge the propriety of summary judgment. They have admitted the material allegations entitling Navajo Associates to relief as assignee of the promissory note and mortgage.

Summary judgment is upheld when the moving party shows no genuine issues of material fact exist and it is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Rodda v. Vermeer Mfg.*, 734 N.W.2d 480, 482 (Iowa 2007). Because there is no genuine dispute as to any material matter relating to Navajo

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<sup>1</sup> Defendants filed a counterclaim and cross-claim against Navajo's attorney, David Wetsch. The district court stayed further proceedings on those claims pending the resolution of three appeals being prosecuted by Daniels.

Associates' foreclosure proceeding, we affirm. See Iowa Ct. R. 21.29(1)(a), (d), (e).

**AFFIRMED.**