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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1262**

Citimortgage, Inc.,
Respondent,

vs.

Peter Fehlen,
Appellant.

**Filed March 19, 2012
Affirmed
Collins, Judge***

Anoka County District Court
File No. 02-CV-10-7239

Jason Andrew Adams, Rausch, Sturm, Israel, Enerson & Hornik, LLC, Minneapolis,
Minnesota (for respondent)

Diane Lynn Longrie, Maplewood, Minnesota (for appellant)

Considered and decided by Johnson, Chief Judge; Cleary, Judge; and Collins,
Judge.

UNPUBLISHED OPINION

COLLINS, Judge

Appellant Peter Fehlen challenges the district court's order granting summary
judgment to respondent Citimortgage Inc., which brought a personal action against him to

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

collect the balance due and owing on a note secured by a second mortgage on his property. Because Citimortgage's decision not to redeem on its second mortgage after the foreclosure of the first mortgage did not extinguish Fehlen's underlying debt on the second mortgage or Citimortgage's ability to collect on that debt by way of a personal action against Fehlen, we affirm.

D E C I S I O N

A district court must grant a motion for summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. When reviewing a grant of summary judgment, this court reviews de novo whether there are genuine issues of material fact and whether the district court erred in its application of the law. *STAR Ctrs., Inc. v. Faegre & Benson, L.L.P.*, 644 N.W.2d 72, 76-77 (Minn. 2002).

Fehlen argues that the note and the mortgage are "inextricably linked" such that foreclosure of the second mortgage or redemption of that mortgage from the foreclosure of the first mortgage were the only remedies available to Citimortgage in the event of Fehlen's default. We disagree. A note "is a distinct instrument enforceable according to its terms and independently of the mortgage." *Lundberg v. Nw. Nat'l Bank of Minneapolis*, 299 Minn. 46, 48, 216 N.W.2d 121, 123 (1974). The terms of the note associated with the second mortgage expressly provide for the remedy of a personal action against Fehlen in the event of a default. Specifically, Paragraph 6(I) states: "If a default occurs under this Note or the Security Instrument, [Citimortgage] shall have the

right to exercise any and all of its rights and remedies set forth herein and under the Security Instrument and as otherwise allowed by law, including but not limited to” any of three remedies: (1) “the right to demand payment in full of all amounts due and owing with respect to [the] Loan”; (2) the right “to bring an action against [Fehlen]”; or (3) “the right to bring a foreclosure action against [the] Property.” Thus, the bargained-for terms of the note allowed Citimortgage to bring a personal action against Fehlen to collect on the debt in the event of a default.

The pursuit of this remedy despite Citimortgage’s decision not to redeem its mortgage from the foreclosure of the first mortgage is both permissible and consistent with Minnesota caselaw dating since the 19th century. In *Slingerland v. Sherer*, the Minnesota Supreme Court recognized that a “mortgage may be discharged or released without affecting the personal liability of the mortgagor.” 46 Minn. 422, 425, 49 N.W. 237, 238 (1891). “Redemption, like mortgage foreclosure, is a concurrent remedy with a personal action on the debt.” *City of St. Paul v. St. Anthony Flats Ltd. P’ship*, 517 N.W.2d 58, 62 (Minn. App. 1994), *review denied* (Minn. Aug. 24, 1994). A mortgagee is allowed to pursue any of these remedies so long as there is no double recovery on the debt. *Id.*

Here, the second mortgage was discharged when Citimortgage did not redeem from the foreclosure of the first mortgage. *See Graybow-Daniels Co. v. Pinotti*, 255 N.W.2d 405, 407 (Minn. 1977) (“[I]n order to preserve any rights under a junior lien, the junior creditor must redeem under it from the senior creditor who made the redemption next prior in time. . . .” (quotation omitted)). But the extinguishment of the security

interest does not affect Fehlen's personal liability on the debt. *Slingerland*, 46 Minn. at 425, 49 N.W. at 238; *see also Ed Peters Jewelry Co. v. C & J Jewelry Co.*, 124 F.3d 252, 267 (1st Cir. 1997) (“[A]lthough foreclosure by a senior lienor often wipes out junior-lien interests in the same collateral, it does not discharge the debtor’s underlying obligation to junior lien creditors.” (citation omitted)). Thus, to recover on the debt, it was permissible for Citimortgage to bring a personal action against Fehlen. *See St. Anthony Flats*, 517 N.W.2d at 62.

Fehlen has not offered any authority to cast doubt on these time-honored precedents. Reference to the foreclosure statute is unavailing because, although the statute gives junior mortgage-holders the opportunity to redeem after a senior mortgage-holder forecloses by advertisement, it does not require redemption to the exclusion of other remedies. *See* Minn. Stat. § 580.24 (2010) (establishing procedures for redemption by creditor); *St. Anthony Flats*, 517 N.W.2d at 62 (noting that redemption is a concurrent remedy with a personal action on the debt). And reliance on *First National Bank of Glencoe/Minnetonka v. Pletsch* is likewise unavailing because the appellant’s choice of remedies in that case in no way limits the choice of remedies available to other litigants. 543 N.W.2d 706, 707 (Minn. App. 1996), *review denied* (Minn. Apr. 16, 1996). Those remedies are well-established and include the option of suing personally on the note, even after the security interest in the property is extinguished. *See Slingerland*, 46 Minn. at 425, 49 N.W. at 238; *St. Anthony Flats*, 517 N.W.2d at 62. Moreover, in the event of a default, the express terms of the note in this case reserve not only an explicit remedy of bringing a personal action against Fehlen, but generally reserve remedies “otherwise

allowed by law.” As noted above, one such remedy “otherwise allowed by law” is the right to bring a personal action against the debtor despite discharge of the mortgage securing the debt. *See Slingerland*, 46 Minn. at 425, 49 N.W. at 238; *St. Anthony Flats*, 517 N.W.2d at 62. We see no error in the district court’s grant of summary judgment.

Affirmed.