COURT OF APPEALS
DECISION
DATED AND FILED

April 10, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP2483-FT **Cir. Ct. No. 2010CV77**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

SCHANON MORTGAGE, INC.,

PLAINTIFF-APPELLANT,

V.

WILEMAR W. STUDTMANN, DENISE STUDTMANN, CITIFINANCIAL MORTGAGE CO. AND CITIFINANCIAL, INC.,

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment of the circuit court for Polk County: MOLLY E. GALEWYRICK, Judge. *Affirmed in part; reversed in part.*

Before Hoover, P.J., Peterson and Mangerson, JJ.

¶1 PER CURIAM. Schanon Mortgage, Inc., appeals a summary judgment dismissing its foreclosure lawsuit against Wilemar and Denise

Studtmann (collectively, the Studtmanns) and Citifinancial Mortgage Co. and Citifinancial, Inc. (collectively, Citifinancial).[1] We conclude the circuit court properly dismissed Schanon's claim regarding the mortgage the Studtmanns executed on December 1, 2003. However, the court incorrectly granted summary judgment regarding the mortgage Wilemar Studtmann executed on January 3, 2006. Accordingly, we affirm in part and reverse in part.

BACKGROUND

¶2 On October 8, 2003, the Studtmanns executed a promissory note in favor of Mercantile Mortgage Company. The note was secured by a mortgage on property the Studtmanns owned in St. Croix County. The mortgage was not recorded until April 28, 2004. Mercantile Mortgage assigned the mortgage to Citifinancial on July 24, 2004.

¶3 In the meantime, on December 1, 2003, the Studtmanns executed a promissory note in favor of Schanon in the amount of $108,000, secured by a mortgage over the same St. Croix County property. Schanon recorded this mortgage on December 5, 2003.

¶4 On January 12, 2005, the Studtmanns executed a second promissory note in favor of Schanon, in the amount of $200,000. The note provided, "The

[1] This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

indebtedness evidenced by this Note is secured by a Mortgage, dated … 12-01-2003[.]"[2]

¶5 In February 2005, the Studtmanns paid the full amount of the December 1, 2003 note. However, even though the underlying note was paid in full, Schanon did not execute a satisfaction of the December 1, 2003 mortgage.

¶6 On September 28, 2005, Schanon made a third loan to the Studtmanns, this time for $51,000. Like the January 12, 2005 note, the September 28 note provided it was secured by "a Mortgage dated 12/01/03[.]"[3]

¶7 On January 3, 2006, Wilemar Studtmann executed a fourth promissory note in favor of Schanon, in the amount of $160,000. The note provided it was secured by both the December 1, 2003 mortgage and a mortgage executed on January 3, 2006. The January 3 mortgage was a newly-executed mortgage over property Wilemar Studtmann owned in Polk County.

¶8 By January 11, 2007, the Studtmanns had fully paid the amounts owed under the January 12, 2005 and September 28, 2005 notes. However, they eventually defaulted on the January 3, 2006 note. In response to the default, Schanon commenced this lawsuit to foreclose the December 1, 2003 mortgage and the January 3, 2006 mortgage.

[2] The January 12, 2005 note was also secured by a mortgage executed on January 12, 2005 over a different property the Studtmanns owned in St. Croix County. The January 12, 2005 mortgage is not at issue in this appeal.

[3] Again, the September 28 note was also secured by a September 28, 2005 mortgage on the Studtmanns' other St. Croix County property. The September 28, 2005 mortgage is not at issue in this appeal.

¶9 The Studtmanns and Citifinancial moved for summary judgment, arguing Schanon could not foreclose the December 1, 2003 mortgage because that mortgage ceased to exist when the Studtmanns fully paid the underlying note. The circuit court agreed. The court also noted that the plain language of an unambiguous mortgage contract controls, and "since the [December 1,] 2003 … mortgage does not[,] by its terms, secure future advances, it cannot cover the note of January [3,] 2006." The court therefore dismissed Schanon's complaint in its entirety.

DISCUSSION

¶10 We review a grant of summary judgment independently, using the same methodology as the circuit court. *See* ***Novell v. Migliaccio***, 2008 WI 44, ¶23, 309 Wis. 2d 132, 749 N.W.2d 544. Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2). Here, the facts are undisputed, leaving only issues of law for our consideration. The interpretation of a written agreement, such as a mortgage contract, is a question of law that we review independently. *See* ***Schmitz v. Grudzinski***, 141 Wis. 2d 867, 871, 416 N.W.2d 639 (Ct. App. 1987).

I. The December 1, 2003 mortgage

¶11 The circuit court concluded Schanon could not foreclose the Studtmanns' December 1, 2003 mortgage because that mortgage was extinguished when the December 1, 2003 note was paid in full. We agree. Wisconsin courts have long recognized a strict rule that a mortgage is extinguished by payment of the underlying note. *See* ***Connor v. Connor***, 218 Wis. 336, 343, 259 N.W. 729 (1935) (after underlying debt was satisfied, mortgage no longer existed); ***Marshall***

& Ilsley Bank v. Ewig, 230 Wis. 353, 356-57, 283 N.W. 795 (1939) (mortgage ceased to exist after the incident indebtedness was satisfied); *see also* ***In re Carley Capital Grp.***, 117 B.R. 951, 954 (Bankr. W.D. Wis. 1990) (same). "'[A] mortgage is not property at all independent of the debt it secures. The extinguishment of the debt … extinguishes the mortgage.'" ***Marshall & Ilsley Bank***, 230 Wis. at 357 (quoted source omitted). Applying this strict rule, the Studtmanns' payment of the December 1, 2003 note extinguished the December 1, 2003 mortgage. Consequently, Schanon cannot now foreclose the December 1, 2003 mortgage based on the Studtmanns' failure to satisfy the January 3, 2006 note.

¶12 Citing ***Krugmeier v. Hackett***, 134 Wis. 57, 113 N.W. 1103 (1907), Schanon argues that payment of an underlying note does not necessarily extinguish the accompanying mortgage. In ***Krugmeier***, Wason was indebted to Hackett pursuant to a note and mortgage for $5,700. ***Id.*** at 58. Wason was also indebted to a bank, as well as other creditors. ***Id.*** at 59. He sold certain assets for a price yet to be fully calculated, and it was agreed that the purchaser would pay the purchase price to the bank, that all other creditors would submit their bills to the bank, and that the bank would use the purchase price to satisfy the amounts due to itself, to Hackett, and to the other creditors. ***Id.*** at 58-59. However, the purchase price was ultimately insufficient to cover all of Wason's debts. ***Id.*** at 59. Consequently, Wason, Hackett, and the bank agreed the bank would use the funds from the sale to pay Wason's $5,700 debt to Hackett, would pay Wason's other creditors, and would also advance additional sums to Wason. ***Id.*** In exchange, Wason's $5,700 note and mortgage to Hackett were assigned to the bank. ***Id.*** Thereafter, Wason went bankrupt, and the bankruptcy trustee brought suit arguing

that the bank's payment to Hackett had extinguished the $5,700 mortgage, which therefore could not be used as security for Wason's debt to the bank. ***Id.*** at 59-60.

¶13 The ***Krugmeier*** court noted the "strict rule" that "payment of a debt secured by a mortgage extinguishe[s] the mortgage completely, and … such mortgage cannot be revived and become a valid lien upon real estate without the formalities required by law for the execution of mortgages." ***Id.*** at 60. However, the court then determined the strict rule did not apply under the facts before it and held that the $5,700 mortgage continued to exist, despite the bank's payment to Hackett. ***Id.*** The court reasoned that Wason, Hackett, and the bank had all agreed that the bank "should take over and continue to carry" Wason's $5,700 debt to Hackett and that "the mortgage should not be satisfied or extinguished, but should continue as a security for that debt." ***Id.***

¶14 This case is factually distinguishable from ***Krugmeier***. Unlike the bank in ***Krugmeier***, Schanon did not pay off the Studtmanns' obligation to a third party and take an assignment of that obligation. Instead, the Studtmanns' original note and mortgage were to the bank, and after the Studtmanns paid the original note in full, the bank attempted to use the original mortgage as security for a new note. Thus, the circumstances that justified the court's refusal to follow the strict rule in ***Krugmeier*** are not present here.

¶15 Schanon nevertheless contends the strict rule should not apply in this case because the parties intended the December 1, 2003 mortgage to secure the January 3, 2006 note. In support of its argument, Schanon points to language in the 2006 note stating the note is "secured by a Mortgage … dated 12/01/03[.]" However, the mortgage contract itself is silent as to whether the December 1, 2003 mortgage secures future debts. Under WIS. STAT. § 706.02(1)(c), to be valid, a

mortgage must identify "any material term … upon which the interest is to arise[.]" Whether a mortgage will secure future debts is certainly a material term; thus, if a mortgage is intended to secure future debts, the mortgage itself must say so. The purpose of recording a mortgage is to give notice to others that the property is encumbered. *See* ***Jeske v. Hotz Mfg. Co.***, 233 Wis. 500, 509, 290 N.W. 208 (1940); 59 C.J.S. *Mortgages* § 248 (2009). If a mortgage does not state that it applies to future debts, then, even if the mortgage is recorded, future lenders and purchasers will have no notice that the mortgage secures future obligations. Consequently, if a mortgage contract does not state that it secures future debts, any attempt to use it to secure future debts is invalid.

¶16 Furthermore, "[u]nambiguous language in a contract must be enforced as it is written." ***Teacher Ret. Sys. of Texas v. Badger XVI Ltd. P'ship***, 205 Wis. 2d 532, 555, 556 N.W.2d 415 (Ct. App. 1996). Again, there is no language in the December 1, 2003 mortgage to suggest the parties intended that mortgage to secure future debts. Moreover, after executing the January 3, 2006 note, the parties did not amend the December 1, 2003 mortgage to state that it also secured the later note. Thus, under the plain language of the mortgage contract, the mortgage did not secure any obligation other than the December 1, 2003 note.

¶17 If Schanon wanted the December 1, 2003 mortgage to serve as security for future obligations, it should have included a dragnet clause in the mortgage agreement. A dragnet clause is a clause stating that a mortgage secures all the debts the mortgagor may owe to the mortgagee at any time, including future debts. *See* ***Mitchell Bank v. Schanke***, 2004 WI 13, ¶3 n.1, 268 Wis. 2d 571, 676 N.W.2d 849; ***Capocasa v. First Nat'l Bank of Stevens Point***, 36 Wis. 2d 714, 726-27, 154 N.W.2d 271 (1967). To constitute an enforceable dragnet clause, "the original agreement must make clear its applicability to future debts[.]" ***In re***

Kazmierczak, 24 F.3d 1020, 1021 (7th Cir. 1994). Nothing in the December 1, 2003 mortgage makes it clear that the mortgage applies to future debts. Accordingly, the December 1, 2003 mortgage did not secure the January 3, 2006 note, and the circuit court properly granted summary judgment dismissing Schanon's claim for foreclosure of that mortgage.[4]

II. The January 3, 2006 mortgage

¶18 Schanon's complaint sought foreclosure of two mortgages on two separate properties: the December 1, 2003 mortgage on the St. Croix County property, and the January 3, 2006 mortgage on the Polk County property. On summary judgment, the Studtmanns and Citifinancial argued Schanon could not foreclose the December 1, 2003 mortgage. The circuit court agreed, concluding that the December 1, 2003 mortgage was extinguished when the underlying note was paid in full and that, by its terms, the mortgage did not serve as security for any future obligations.

¶19 However, the court dismissed Schanon's complaint in its entirety, including Schanon's claim for foreclosure of the January 3, 2006 mortgage. The court's dismissal of the entire complaint was apparently inadvertent. There were no pending motions regarding Schanon's claim to foreclose the January 3, 2006 mortgage, and the court's decision did not address that mortgage's validity. None of the court's findings of fact and conclusions of law pertain to the January 3,

[4] The Studtmanns and Citifinancial raise alternative grounds for affirming the court's dismissal of Schanon's claim for foreclosure of the December 1, 2003 mortgage. Because we affirm the dismissal on other grounds, we need not address these alternative arguments. *See* ***Gross v. Hoffman***, 227 Wis. 296, 300, 277 N.W.2d 663 (1938) (only dispositive issues need be addressed).

2006 mortgage. The court did not articulate any basis for dismissing Schanon's claim to foreclose the January 3, 2006 mortgage, and, on appeal, the Studtmanns and Citifinancial do not present any justification for the dismissal. Accordingly, we reverse that portion of the judgment dismissing Schanon's claim for foreclosure of the January 3, 2006 mortgage.[5]

By the Court.—Judgment affirmed in part; reversed in part.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

[5] Additionally, we note that, on remand, Schanon may also seek judgment on the January 3, 2006 note.