IN THE COURT OF APPEALS OF IOWA

No. 9-194 / 08-1473
Filed May 29, 2009

CITIMORTGAGE, INC.,
Plaintiff-Appellant,

vs.

MATTHEW D. DANIELSON a/k/a
MATTHEW DANIELSON and
JAMIE DANIELSON,
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Karen A. Romano, Judge.

Citimortgage, Inc. appeals from a district court ruling declaring the real estate mortgage it held on property owned by Matthew Danielson to be void under Iowa Code section 561.13 (2007). **AFFIRMED.**

Mollie Pawlosky and Jon P. Sullivan of Dickinson, Mackaman, Tyler & Hagen, P.C., Des Moines; Theodore R. Boecker of Petosa, Petosa & Boecker, L.L.P., Clive; and Thomas J. Miller, Attorney General, and Grant Dugdale, Assistant Attorney General, for appellant.

Jerrold Wanek of Garten & Wanek, Des Moines, for appellee.

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

DOYLE, J.

Citimortgage, Inc. appeals from a district court ruling declaring the real estate mortgage it held on property owned by Matthew Danielson to be void under Iowa Code section 561.13 (2007). We affirm the judgment of the district court.

I. Background Facts and Proceedings.

In late April 2007, Matthew Danielson entered into an agreement to purchase a newly constructed home in Ankeny for $320,228. Matthew and his wife, Jamie, met with their real estate agent, the builder, and the builder's real estate agent on several occasions and walked through the home together multiple times before deciding to purchase it. The purchase agreement was contingent upon Matthew obtaining financing for one hundred percent of the purchase price at or below seven percent interest. A closing date of May 10, 2007, was set.

Because Jamie's credit was poor, Matthew decided to apply for a loan on his own. He contacted mortgage broker Jason Larson, who was employed by One Source Mortgage, Inc., for assistance in securing a loan. Matthew knew Larson because their children attended the same daycare. Larson arranged for Matthew to obtain a loan through Citimortgage and retained attorney David Pulliam to act as the closing agent. In anticipation of the closing, an attorney for the builder's real estate agent prepared a warranty deed conveying title in the property to Matthew as "a married person." The deed was later changed by someone else to refer to Matthew as "an unmarried person."

The closing date was pushed back several times. Finally, on May 24, 2007, Larson called Matthew and asked him to meet in "about 45 to 50 minutes" at a food court in a shopping mall for the closing. Matthew asked Larson if his wife needed to be present. Larson said no. Matthew attempted to call Jamie anyway because she handled the couple's finances and was employed as a loan originator for a mortgage banker. He was unable to reach Jamie and attended the closing alone with Larson.[1]

At the closing, which Matthew described as "rushed," Larson had Matthew sign a large packet of documents. Included in that packet were two uniform residential loan applications. One application appears to have been generated by One Source Mortgage while the other was apparently generated by Citimortgage. Both loan applications identify Larson as the interviewer and indicate the application was taken by telephone. Matthew and Larson signed both applications at the closing on May 24, 2007.[2] The applications refer to Matthew as "unmarried" and as a "[s]ingle man." Matthew also signed a promissory note in the amount of $320,228 at the May 24 closing. The note is payable to Citimortgage and secured by a purchase money mortgage on Matthew's home. The mortgage, which contains a homestead exemption waiver clause, identifies the borrower as "Matthew D. Danielson, a single man."

[1] It appears Larson handled the closing himself. Pulliam testified that he had no recollection of the closing or Matthew. Matthew likewise testified that he had never met Pulliam prior to the trial and that Larson had conducted the closing on his own.

[2] Although Larson's signature appears on both loan applications, Pulliam testified that he actually signed Larson's name for him on the Citimortgage loan application as indicated by Pulliam's initials that appear after Larson's name.

Matthew, Jamie, and their son have resided in the house since the closing. They failed, however, to make payments on the mortgage. Citimortgage consequently initiated foreclosure proceedings in December 2007 against Matthew. Matthew filed an answer and raised Citimortgage's failure to secure Jamie's signature on the mortgage as required by Iowa Code section 561.13 as an affirmative defense. Citimortgage amended its petition to add Jamie as a defendant. The Danielsons then filed a counterclaim to quiet title to the property, seeking an order from the court that Matthew's mortgage with Citimortgage is void under section 561.13.

The district court denied summary judgment motions filed by Citimortgage and the Danielsons, and the matter proceeded to trial before the court. At the close of the evidence, the court ruled from the bench that the mortgage was void under section 561.13 and denied Citimortgage's claim that Matthew fraudulently misrepresented his marital status. Citimortgage appeals.

II. Scope and Standards of Review.

"Review of an equitable claim to foreclose a mortgage is de novo." *Iowa State Bank & Trust Co. v. Michel*, 683 N.W.2d 95, 98 (Iowa 2004). We give weight to the fact findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(*g*).

III. Discussion.

"Homestead rights are jealously guarded by the law." *Michel*, 683 N.W.2d at 101; *see also Merchants Mut. Bonding Co. v. Underberg*, 291 N.W.2d 19, 21 (Iowa 1980) ("Homestead laws are creatures of public policy, designed to

promote the stability and welfare of the state by preserving a home where the family may be sheltered and live beyond the reach of economic misfortune."). One way in which the legislature has sought to protect homesteads is through Iowa Code section 561.13, which invalidates encumbrances of the homestead not signed by both spouses "unless and until the spouse of the owner executes the same or a like instrument." *See Thayer v. Sherman*, 218 Iowa 451, 458, 255 N.W. 506, 509 (1934) ("The provisions of this section are for the benefit of all who are interested in the homestead. It is designed as a protection to the wife, the children, and the husband himself."). If section 561.13 is not satisfied, the transaction is invalid as to both the husband and the wife. *See Martin v. Martin*, 720 N.W.2d 732, 736 (Iowa 2006) (finding deed attempting to convey a homestead invalid where it was not signed by the owner's spouse); *Beal Bank v. Siems*, 670 N.W.2d 119, 124 (Iowa 2003) (holding mortgage on homestead void because not signed by owner's spouse as required by section 561.13).

Section 561.13 was not satisfied in this case because the mortgage encumbering the parties' homestead was signed only by Matthew, who was married to Jamie at the time of the encumbrance. The mortgage is therefore invalid and void as to both Matthew and Jamie. *See Martin*, 720 N.W.2d at 738 (emphasizing section 561.13 makes a conveyance or encumbrance of the homestead "*invalid*—that is, *void*—without the signature of both spouses, not merely voidable by the spouse who did not sign").

Citimortgage attempts to avoid the harsh effect of section 561.13 in this case by asserting Matthew procured the mortgage by fraudulently

misrepresenting his marital status, which it contends should result in the imposition of an equitable mortgage. The district court denied this claim, finding there was "not one piece of evidence to indicate Mr. Danielson knowingly or with any intent to defraud gave false information to anyone throughout this transaction." Citimortgage claims the district court erred in so concluding.[3] We do not agree.

Our supreme court has recognized in "other circumstances that 'courts of equity are bound by statutes and follow the law in [the] absence of fraud or mistake.'" *Michel*, 683 N.W.2d at 107 (quoting *Mensch v. Netty*, 408 N.W.2d 383, 386 (Iowa 1987)). It is a well-settled principle of equity that misrepresentations amounting to fraud in the inducement of a contract, whether innocent or not, give rise to a right of avoidance on the part of the defrauded party. *First Nat'l Bank v. Brown*, 181 N.W.2d 178, 182 (Iowa 1970). Here, however, Citimortgage attempts to use the Danielsons' supposed fraud in procuring their mortgage to enforce that mortgage rather than avoid it. In any event, to prevail on such a claim, Citimortgage must prove "(1) a representation,

---

[3] Citimortgage raises a variety of alternative theories on appeal seeking to preclude the application of section 561.13, including mutual mistake, equitable estoppel, and ratification. It additionally challenges the status of the property as a homestead at the time the property was encumbered, arguing,

> With . . . a purchase money mortgage, the party that is purchasing the property is not using the property as a homestead at the time that the mortgage is executed, because the purchase money mortgage is necessary for the party to acquire the initial ownership in the property.

Although it appears some of these theories were raised in the district court proceedings, the only issue decided by the district court was Citimortgage's claim of fraud. *See Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) ("It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal."). "When a district court fails to rule on an issue properly raised by a party, the party who raised the issue must file a motion requesting a ruling in order to preserve error for appeal." *Id.* No such motion was filed in this case. We therefore confine our analysis to Citimortgage's claim of fraud.

(2) falsity, (3) materiality, (4) an intent to induce the other to act or refrain from acting, and (5) justifiable reliance." *City of Ottumwa v. Poole*, 687 N.W.2d 266, 269 (Iowa 2004). We believe this case fails on the last two elements.

The evidence presented at trial establishes, as the district court found, that "everyone involved who actually had a role in this actual transaction . . . knew that Mr. Danielson was married." Matthew and Jamie toured the home together with their real estate agent, the builder, and the builder's real estate agent before Matthew agreed to purchase it. They also met with those individuals on several other occasions to discuss matters related to the purchase of the home. The warranty deed prepared by the attorney for the builder's real estate agent originally referred to Matthew as "a married person," though someone later changed that deed to identify him as "an unmarried person." Matthew, whom the district court found to be credible, *see* Iowa R. App. 6.14(6)(*g*) (stating we give weight to the district court's credibility determinations in equity cases), testified that Larson "absolutely" knew he was married. He specifically asked Larson before the closing if his wife needed to be present, and Larson said no. Matthew nevertheless attempted to contact her on his way to the closing. In light of the foregoing, we do not believe the record reveals any intent on Matthew's part to induce Citimortgage to act on the basis of the representations in the closing documents regarding his marital status.

Indeed, it appears Citimortgage approved Matthew for the loan before receiving a signed copy of his loan application. Matthew did not sign the loan applications prepared by Larson until the closing on May 24, 2007. Yet

Citimortgage issued a commitment letter to Matthew on May 16 advising him that his application for a mortgage had been approved. No evidence was presented as to what information Citimortgage relied on in approving the loan to Matthew and preparing the mortgage that identified him as a "single man." We cannot see how Citimortgage could have justifiably relied on the representations contained in the loan applications and the mortgage itself regarding Matthew's marital status in agreeing to loan him $320,228 on May 16 when those documents were not executed until May 24. *See Lockard v. Carson*, 287 N.W.2d 871, 878 (Iowa 1980) (stating the recipient of a fraudulent representation cannot recover "if he blindly relies on a misrepresentation the falsity of which would be patent to him if he had utilized his opportunity to make a cursory examination or investigation"). Finally, even if we were to assume for the sake of argument that Matthew fraudulently induced Citimortgage to enter into the mortgage by representing that he was not married, there is no evidence present in the record from which we could conclude that Jamie had any part in that supposed fraud.

It is clear from our review of cases applying section 561.13 that the statute is intended to protect "the whole family unit." *Martin*, 720 N.W.2d at 736, 739 ("If the statute is not satisfied, the deed is invalid as to both the husband and the wife."); *see also Beal Bank*, 670 N.W.2d at 124 (voiding mortgage in favor of spouse whose signature was omitted); *Hostetler v. Eddy*, 128 Iowa 401, 406, 104 N.W. 485, 487 (1905) (holding contract not signed by wife "was void in favor of both husband and wife"). As we alluded to earlier, "[o]ur law has chosen to

provide special procedures to protect homestead rights, and has defined this protection in a comprehensive manner." *Martin*, 720 N.W.2d at 738.

> [T]he purpose of the homestead laws is to provide a margin of safety to the family, not only for the benefit of the family, but for the public welfare and social benefit which accrues to the State by having families secure in their homes.

Id. (citation omitted). We therefore construe homestead laws "broadly and liberally" in favor of the beneficiaries of the legislation, which include "the wife, the children, and the husband himself," *Thayer*, 218 Iowa at 458, 255 N.W. at 509, to secure its benevolent purposes. *See Martin*, 720 N.W.2d at 738.

While it may be tempting for courts to fashion remedies deemed to be fair and just under the particular circumstances of a case, "the law has defined those concepts and must dominate the decision making process." *Id.* "[I]t is not for courts to overlook the language of a statute to reach a particular result deemed unjust under the particular circumstances of a case." *Id.* "This rule protects the integrity of the legislature's judgment that certain transactions will be given effect only if they comply with the requirements set out in the statute." *Michel*, 683 N.W.2d at 107 (refusing to apply equitable mortgage where bank did not comply with the disclosure requirements of section 561.22 even though debtors knew they were mortgaging their homestead); *see also Thayer*, 218 Iowa at 458, 255 N.W. at 509 ("The homestead right is created by statute, and this can only be alienated in the manner provided by statute."). We are thus bound to apply section 561.13 to invalidate the mortgage in this case as it did not contain the signatures of both spouses and Citimortgage did not establish any fraud on the part of either spouse in obtaining the mortgage. *See Michel*, 683 N.W.2d at 109

n.6 ("[A] creditor is bound by statutory requirements in the absence of fraud or mistake.").[4]

IV. Conclusion.

We conclude the mortgage was entered into while Matthew was married, and his wife did not execute the same or a like instrument joining in the encumbrance. It was therefore void under Iowa Code section 561.13. Citimortgage has not established any fraud on the part of either spouse that would avoid the effect of section 561.13. We therefore affirm the judgment of the district court dismissing Citimortgage's petition to foreclose its mortgage on the property and declaring that mortgage to be void under section 561.13.

AFFIRMED.

[4] We note, as did the court in *Michel*, that our decision does not leave Citimortgage without remedies. *See Michel*, 683 N.W.2d at 107 n.5 (observing the bank could pursue a personal judgment against the debtors).