

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002788-MR

DONALD W. WOLTER, LAWRENCE J.
WOLTER, AND CEDAR LANE RESORT, INC.

APPELLANTS

v. APPEAL FROM MARSHALL CIRCUIT COURT
HONORABLE DENNIS R. FOUST, JUDGE
ACTION NO. 02-CI-00554

US BANCORP

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; JOHNSON AND MINTON, JUDGES.

COMBS, CHIEF JUDGE: Donald W. Wolter, Lawrence J. Wolter, and Cedar Lane Resort, Inc., appeal from a portion of a judgment of the Marshall Circuit Court entered on December 1, 2003, which denied their claim for damages sought under the provisions of KRS¹ 382.385. The statute addresses the timely release of liens

¹ Kentucky Revised Statutes.

on real property. After our review of the facts and pertinent law, we affirm.

In October 1991, Donald Wolter and Lawrence Wolter executed a promissory note for \$100,682.00, payable to the Bank of Marshall County, predecessor in interest to the appellee, U.S. Bancorp. The note was secured by a security agreement on certain business goods and a mortgage on the Wolters' real estate. It bore a variable interest rate and was payable on a monthly basis. In deference to the seasonal nature of the business, the note also contained provisions to permit the Wolters to avoid payments in December, January, and February -- the months when business at their lake resort was slow.

Due to intermittent adjustments to the interest rate, the original schedule of payments was insufficient to satisfy the Wolters' debt. In February 2000, in order to avoid having a balloon payment due at the end of the original term of the note, the bank offered to modify the agreement to extend its maturity date to May 3, 2002. The Wolters agreed and executed a modification agreement. Pursuant to its terms, the Wolters tendered a final payment on April 30, 2002.

However, the modification agreement contained a calculating error in the amortization schedule that was not discovered until after the final payment of April 30, 2002. On May 13, 2002, a computer-generated amortization statement

revealed a past-due payment in the amount of \$2,213.59. Accordingly, the bank refused to release the mortgage. On May 31, 2002, the Wolters corresponded with the bank and explained that the note had been satisfied. They demanded that the bank return the note marked "paid in full" and that it release the mortgage. Instead of meeting those demands, the bank sent another invoice dated August 22, 2002. The Wolters reiterated their demand in correspondence with the bank on August 29, 2002. Nonetheless, the bank took no action to release the mortgage.

On November 27, 2002, the appellants filed this action against U.S. Bancorp in Marshall Circuit court. They sought release of the mortgage, damages pursuant to the provisions of KRS 382.365, and attorney's fees. In its answer, the bank acknowledged that it had erroneously calculated the amortization contained in the modified agreement based upon twelve monthly payments rather than the nine that had been set forth in the parties' original agreement. Consequently, an outstanding balance of \$2,213.59 remained even after the Wolters tendered their final payment in April 2002. Although the bank finally released the mortgage in January 2003, it denied that the Wolters were entitled to the release. The bank demanded payment of the outstanding balance, interest, and attorney's fees.

Following a bench trial, the court concluded that the Wolters had complied fully with the terms of the modified

agreement. Despite the bank's accounting errors, the court agreed that the Wolters' final payment of April 30, 2002, sufficed as a matter of law to extinguish the debt. It entered judgment in favor of the Wolters with respect to their full satisfaction of the note but denied their claim for damages for an untimely release of the mortgage sought under KRS 382.385. In ruling in favor of the bank on this issue, the judgment recited the following language:

While the [bank] did not release it as demanded, it is clear that a legitimate controversy did exist between the parties, and [the Wolters] have shown no damage. Further good cause has been shown by [the bank]. . . .

Order and Judgment at 4.

On appeal, the Wolters contend that the trial court erred in concluding that they were not entitled to damages pursuant to the provisions of KRS 382.365. We disagree.

KRS 382.365 provides in part as follows:

- (1) A holder of a lien on real property, including a lien provided for in KRS 376.010, shall release the lien in the county clerk's office where the lien is recorded within thirty (30) days from the date of satisfaction.
- (2) A proceeding may be filed by any owner of real property or any party acquiring an interest in the real property in District Court or Circuit Court against a lienholder that violates subsection (1) of this section. A proceeding filed under this

section shall be given precedence over other matters pending before the court.

(3) Upon proof to the court of the lien being satisfied, the court shall enter a judgment releasing the lien. The judgment shall be with costs including a reasonable attorney's fee. If the court finds that the lienholder received written notice of its failure to release **and lacked good cause for not releasing the lien**, the lienholder shall be liable to the owner of the real property in the amount of one hundred dollars (\$100) per day for each day, beginning on the fifteenth day after receipt of the written notice, of the violation for which good cause did not exist. (Emphasis added.)

The trial court concluded that even though the Wolters' final payment was sufficient as a matter of law to satisfy the debt, the bank had shown good cause for refusing to release the mortgage securing the debt. The Wolters' disagree and contend that the bank's good faith belief (based on its computer analysis of its accounting) did not equate with good cause for its refusal to release the mortgage. Our review reveals that the court carefully and correctly analyzed the law, the facts, and the competing equities.

During discovery, the bank acknowledged that its loan officer erred in his calculation of the amortization schedule contained in the modification agreement. Because of the accounting error, a balance of \$2,213.59 remained outstanding at the end of the term. The Wolters did not dispute the

calculation of the amortization schedule that showed an outstanding balance. But they contended that their full payment under the terms of the modification agreement alone was sufficient to extinguish the debt as a matter of law and that, therefore, the bank's immediate release of the mortgage was required. The bank argues that because there was no actual payment of the full principal and interest due and owing, it had an adequate reason (and therefore good cause under the statute) to justify its refusal to release the mortgage.

The court correctly observed that a legitimate controversy existed. Therefore, good cause as contemplated by the statute supported the bank's refusal to release the lien under the circumstances. Since the competing legal positions were not resolved until entry of the judgment, the Wolters were not legally entitled to a release of the mortgage. Thus, there was no untimely release of the mortgage in this case. The court properly held that the Wolters were not entitled to damages pursuant to the provisions of KRS 382.365.

The judgment is affirmed in all respects.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Robert L. Prince
Benton, Kentucky

BRIEF AND ORAL ARGUMENT FOR
APPELLEE:

Tom Blankenship
Benton, Kentucky

ORAL ARGUMENT FOR APPELLANTS:

William F. McGee, Jr.
Benton, Kentucky