STATE OF MICHIGAN

COURT OF APPEALS

AMIE J. KNAPP,

Plaintiff-Appellee,

v

NATIONAL CITY BANK OF MICHIGAN/ILLINOIS, a national banking association,

Defendant-Appellant.

UNPUBLISHED
September 11, 2003

No. 241118
Ottawa Circuit Court
LC No. 01-041303-CZ

Before: Cooper, P.J., and Fitzgerald and Kelly, JJ.

PER CURIAM.

This matter concerns a subsequent mortgage of property owned in fee simple by Brent Knapp. The mortgage, signed by both Mr. Knapp and his wife, plaintiff Amie Knapp, secured a $1.5 million indebtedness of a business loan that Mr. Knapp guaranteed for his company. When defendant bank sought to foreclose on the mortgage for lack of payment, plaintiff requested relief on the basis that her dower rights to the property were superior to defendant bank's interest. The trial court ultimately held that the mortgage did not secure the couples' individual debts and granted plaintiff summary disposition under MCR 2.116(I)(2). After reviewing the mortgage, however, we disagree and reverse the trial court's decision.

I. Background Facts

The facts in this case are undisputed. Plaintiff acquired an inchoate dower interest in property, located in Blendon Township, after her marriage to Brent Knapp. At all times relevant to this action, Brent Knapp was the owner and operator of Grand Rapids Auto Auction, Inc.

On April 1, 1999, defendant bank extended credit to Auto Auction in the form of a promissory note for $1.5 million. Auto Auction defaulted on the note. And Brent Knapp thereafter agreed to personally guarantee the note in exchange for defendant bank's assurance that it would forebear from exercising its right to immediate payment. In the forbearance agreement, dated March 21, 2000, Brent Knapp agreed that he and plaintiff would provide their home as additional collateral for the outstanding balance on the note. Later that day, plaintiff and Brent Knapp executed a mortgage on the property. This mortgage was recorded on May 9, 2000.

The mortgage identifies the mortgagor as "Alan Brent Knapp and Amie J. Knapp, husband and wife . . . ." The terms of the mortgage provide in pertinent part that the mortgagor agrees to mortgage the Blendon Township property to defendant Bank:

> TO SECURE the performance of the covenants and agreements herein contained, and the payment when the same shall become due, of the principal sum of One Million Five Hundred Thousand ($1,500,000.00) DOLLARS, according to a Note of even date herewith, executed and delivered to said Mortgagee by said Mortgagor, or one of them, all extensions, modification and renewals thereof (the "Note") and for the further purpose of securing the payment of any and all sums, indebtedness and liabilities of any and every kind now or hereafter owing and to become due from the Mortgagor to the Mortgagee . . . .

The mortgage further provides that "if the Mortgagor consists of more than one-person, such Mortgagor shall be jointly and severally liable under any and all obligations, covenants, and agreements of the Mortgagor contained herein." The Mortgagor also agreed to refrain from claiming the benefit of dower laws.

The trial court originally entered summary disposition in favor of defendants, pursuant to MCR 2.116(C)(10), on December 19, 2001. In a written opinion, the trial court stated that the mortgage "secures the payment of *any* indebtedness owed to National City by Brent Knapp . . . ." Holding that there was no "note of even date herewith," the trial court nevertheless found that the above language of *any indebtedness* was broad enough to encompass the forbearance agreement.

On January 25, 2002, the trial court granted plaintiff's motion for reconsideration on the ground that the terms of the mortgage only secured those debts owed by "Alan Brent Knapp *and* Amie J. Knapp, husband *and* wife . . . (the 'Mortgagor') to National City Bank . . . (the 'Mortgagee')." (Emphasis added.) Because Brent Knapp executed the promissory note and forbearance agreement in his individual capacity, as opposed to the legal entity of "Brent Knapp and Amie J. Knapp," the trial court determined that neither was secured by the mortgage. The trial court further noted that plaintiff never signed the forbearance agreement.

The trial court subsequently denied defendant bank's motion for reconsideration and granted plaintiff summary disposition. In its opinion, the trial court held that the mortgage could not be interpreted to secure the obligations of *either* Brent Knapp *or* plaintiff because the mortgage identifies them collectively as "Mortgagor." The trial court further declared that the clause in the mortgage requiring joint and several liability for any or all mortgagors, merely indicates that Brent Knapp and plaintiff are jointly and severally liable for those obligations of "Alan Brent Knapp and Amie J. Knapp, husband and wife."

To the extent defendant bank argued that the mortgage "secure[s] the performance of the covenants and agreements herein contained . . . *according to a Note of even date herewith*, executed and delivered . . . by said Mortgagor or one of them . . . ," the trial court determined that there was no such note and that the language therefore secured a non-existent obligation. (Emphasis in original.) Absent a mutual obligation of Brent Knapp and plaintiff on the note or forbearance agreement, the trial court concluded that this portion of the mortgage had no bearing on the subject of plaintiff's complaint. The trial court held that there were no sums secured under the mortgage and a final judgment was entered on April 15, 2002.

II. Standard of Review

A trial court's decision on a motion for summary disposition is reviewed de novo on appeal.[1] Summary disposition is properly granted to the opposing party under MCR 2.116(I)(2) if the trial court determines that the opposing party is entitled to summary disposition as a matter of law.[2] Issues concerning the proper interpretation of a contract are also reviewed de novo.[3] But we review a trial court's decision on a motion for reconsideration for an abuse of discretion.[4]

III. Mortgage

Defendant claims that the trial court erred when it held that the mortgage was ineffective to subordinate plaintiff's inchoate dower rights to the property. We agree.

To begin our analysis we must examine the plain language of the mortgage to ascertain the intent of the parties.[5] "Clear, unambiguous, and definite contract language must be enforced as written and courts may not write a different contract for the parties or consider extrinsic evidence to determine the parties' intent."[6] When the language in a contract is clear, however, its construction is a matter of law for the court to decide.[7] But if the wording is susceptible to multiple meanings, interpretation becomes a question for the trier of fact.[8]

Plaintiff possesses an inchoate dower right in the mortgaged property. Dower is defined as a widow's right to "the use during her natural life, of one-third [1/3] part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage . . . ."[9] A wife's inchoate right of dower is a contingent estate that vests on the death of her husband.[10] As explained in *Bonfoey*, a dower right "is entitled to protection as well before as after it has become vested, and no act of the husband alone can prejudice this right."[11] The wife,

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[1] *Hazle v Ford Motor Co*, 464 Mich 456, 461; 628 NW2d 515 (2001).

[2] *Washburn v Michailoff*, 240 Mich App 669, 672; 613 NW2d 405 (2000).

[3] *Archambo v Lawyers Title Ins Corp*, 466 Mich 402, 408; 646 NW2d 170 (2002).

[4] *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

[5] *Wausau Underwriters Ins Co v Ajax Paving Industries, Inc*, 256 Mich App 646, 650; ___ NW2d ___ (2003).

[6] *Id*.

[7] *Port Huron Ed Ass'n v Port Huron Area School Dist*, 452 Mich 309, 323; 550 NW2d 228 (1996).

[8] *D'Avanzo v Wise & Marsac, PC*, 223 Mich App 314, 319; 565 NW2d 915 (1997).

[9] MCL 558.1.

[10] See *Bonfoey v Bonfoey*, 100 Mich 82, 85; 58 NW 620 (1894).

[11] *Id*.

however, may surrender her inchoate dower right by joining in a mortgage and thereby permitting potential mortgagees to receive interests free from future dower claims.[12]

Plaintiff acknowledges that she signed a mortgage to secure a $1.5 million payment on a note executed the same day by her husband. But she now argues that she is without liability under the mortgage as she claims that she did not agree to secure her husband's individual debts under the "forbearance agreement." Although the mortgage specifically describes a "Note" signed earlier that day, as opposed to a "forbearance agreement," it is clear that the parties were referencing the forbearance agreement. The forbearance agreement was executed on the same day as the mortgage and concerned the $1.5 million debt. Indeed, it was in the forbearance agreement where Brent Knapp agreed to mortgage the Blendon Township property as further collateral. We also note that the forbearance agreement contains an integration clause expressly incorporating the loan documents (including the $1.5 million promissory note) and the forbearance agreement as the "entire agreement and understanding" among the parties.

Even if defendant Bank mistakenly inserted the term "Note" instead of "forbearance agreement," this miscue does not automatically invalidate the mortgage. Our Supreme Court has upheld a mortgage where the debt was unspecified but there were other means to ascertain the unpaid balance.[13] Because plaintiff agreed to secure the $1.5 million payment under a note that was executed "by said Mortgagor *or one of them*," we find that plaintiff's inchoate dower right is subordinate to defendant bank's interests. To hold otherwise would be to exalt form over substance.[14]

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jessica R. Cooper
/s/ E. Thomas Fitzgerald
/s/ Kirsten Frank Kelly

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[12] See *Continental Nat'l Bank v Gustin*, 297 Mich 134, 148; 297 NW 214 (1941).

[13] *Michigan Ins Co of Detroit v Brown*, 11 Mich 265, 271-272 (1863); see also Restatement Property, Mortgages, 3d, § 1.5(a) and (c), p 28.

[14] See *In re Brucap Assocs*, 158 BR 10 (ED NY, 1993) (refusing to elevate form over substance and grant a windfall to mortgagor where the mortgage contained an improper date).