STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2207

Federal National Mortgage Association,
Respondent,

vs.

Elizabeth Soll,
Defendant,

Paul Edward Allen,
Appellant,

Kimberly Allen,
Appellant.

Filed June 27, 2011
Affirmed
Toussaint, Judge

Scott County District Court
File No. 70-CV-10-20162

Michael R. Sauer, Wilford & Geske, P.A., Woodbury, Minnesota (for respondent)

Paul E. Allen, Prior Lake, Minnesota (pro se appellant)

Kimberly Allen, Prior Lake, Minnesota (pro se appellant)

Considered and decided by Toussaint, Presiding Judge; Klaphake, Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Judge

Elizabeth Soll mortgaged registered residential real property to Mortgage Electronic Registration Systems (MERS) as nominee for GreenPoint Mortgage Funding, Inc. Soll also entered a contract for deed to sell the property to appellants Paul Edward Allen and Kimberly Allen. Soll later defaulted on her mortgage, and MERS foreclosed. There was no redemption from the foreclosure, and MERS later conveyed the property to respondent Federal National Mortgage Association, which started an eviction proceeding against appellants. In that proceeding, the parties stipulated that appellants did not need to vacate the property for 60 days. By order filed September 1, 2010, the district court adopted the parties' stipulation. During the 60-day period, appellants unsuccessfully tried to buy the property. They later moved to vacate the stipulation and the district court, by order filed November 24, 2010, denied their motion. We affirm.

D E C I S I O N

I.

While this appeal was pending, a writ of recovery of the premises was executed, removing appellants from the property. Because appellants' vacation of the premises was involuntary, required by the eviction judgment and the execution of the associated writ of recovery of the premises, their vacation of the premises does not render this appeal moot.

Real Estate Equity Strategies, LLC v. Jones, 720 N.W.2d 352, 355 (Minn. App. 2006).

II.

Whether to vacate a settlement is discretionary with the district court and its decision will not be altered on appeal "unless it be shown that the court acted in such an arbitrary manner as to frustrate justice." *Johnson v. St. Paul Ins. Co.*, 305 N.W.2d 571, 573 (Minn. 1981). The reasons that appellants argue that the district court should have vacated the order adopting the stipulation fall into two basic categories. First, they argue that there were defects and fraud in the underlying mortgage-foreclosure proceeding. Second, they argue that respondent never had any intent to convey the property to them.

A. Foreclosure Proceedings

An "eviction" is "a summary court proceeding to remove a tenant or occupant from or otherwise recover possession of real property by the process of law set out in [chapter 504B]." Minn. Stat. § 504B.001, subd. 4 (2010). "[G]enerally the only issue for determination [in an eviction proceeding] is whether the facts alleged in the complaint are true." *Cimarron Village v. Washington*, 659 N.W.2d 811, 817 (Minn. App. 2003). Thus, if parties to an eviction proceeding have equitable or other disputes that are beyond the narrow scope of summary process set out in chapter 504B, and if it is possible to litigate those questions in a non-eviction proceeding, it is not appropriate to litigate those questions in the eviction proceeding. *Bjorklund v. Bjorklund Trucking, Inc.*, 753 N.W.2d 312, 318 (Minn. App. 2008), *review denied* (Minn. Sept. 23, 2008); *Fraser v. Fraser*, 642 N.W.2d 34, 40-41 (Minn. App. 2002). This general prohibition on litigating non-eviction

matters in eviction proceedings applies specifically to alleged defects in a mortgage foreclosure that underlies an eviction. *See Amresco Residential Mortg. Corp. v. Stange*, 631 N.W.2d 444, 445-46 (Minn. App. 2001) (ruling that, because tenants had non-eviction arenas in which to litigate non-eviction claims, litigating those claims in an eviction proceeding was inappropriate).

Here, appellants filed a separate action in district court in which they alleged defects in the foreclosure process. Review of the district court's electronic case management system shows that, on May 9, 2011, the district court dismissed that action without prejudice. Because of the existence of a non-eviction arena in which to address alleged defects in the foreclosure process, it was—under *Bjorklund*, *Fraser*, and *Amresco*—improper to litigate those questions in the eviction proceeding. Thus, to the extent appellants based their motion to vacate the order adopting the stipulated settlement in the eviction proceeding on alleged defects in the mortgage-foreclosure process, which it was inappropriate to litigate in the eviction proceeding, the district court did not abuse its discretion by denying that motion.

B. Respondent's Intent

Appellants assert that, under Minn. Stat. § 504B.285, subd. 1a (2010), they were entitled to 90-days written notice to vacate, that they did not initially realize this, and that respondent's initial agreement to allow appellants to stay on the property for 60 days shows that respondent was taking advantage of appellants' lack of knowledge of the law in an attempt to get them off the property earlier than otherwise required. This,

appellants infer, shows that respondent never intended to convey the property to them and hence that the settlement should be vacated. We reject this argument for two reasons.

First, Minn. Stat. § 504B.285, subd. 1a, requires 90-days written notice to vacate for certain tenants who, under a lease, occupy foreclosed property. Here, while appellants assert that they paid "rent," to whom they paid that rent is unclear on this record. Nor is there a lease in the record. Thus, the current record does not necessarily show that appellants were entitled to the 90-day notice on which they base their argument. Second, even if appellants were entitled to 90-days written notice to vacate, they received it. The September 1, 2010 order stayed issuance of the writ of recovery of the premises for 60 days—until November 1, 2010—and the November 24, 2010 order, in addition to denying appellants' motion to vacate, extended that stay through November 30.

Appellants also assert that respondent's attorney perjured himself when, in an August 25, 2010 application in a proceeding for a new certificate of title for the property, he asserted that the property was unoccupied. Appellants argue that the falsity of this statement shows that respondent never intended to convey the property to them, which, they contend, justifies vacating the stipulation adopted in the September 1, 2010 order, arguing that they entered that stipulation believing that they would be given an opportunity to buy the property from respondent. The existence and effect of alleged defects in the proceeding in which respondent sought a new certificate of title are beyond the scope of this eviction proceeding and can be addressed in that proceeding. Further,

while owners of registered land may convey it as if it were not registered, it is "the act of registration" of a document conveying the land or an interest therein that is "the operative act to convey or affect the land." Minn. Stat. § 508.47, subd. 1 (2010). Thus, because MERS bought the land at a sheriff's sale, if appellants are going to buy the property from respondent, title must be transferred to respondent and that transfer must be recognized on a certificate of title issued in respondent's name. *See* Minn. Stat. § 508.52 (2010) (addressing issuance of a new certificate of title when registered property is conveyed). We note that issuance of a new certificate of title to respondent precludes neither appellants from offering to buy the property from respondent nor respondent from selling to appellants.

Appellants also observe that the application for a new certificate of title asserting that the property was unoccupied is dated the same day that Paul Allen visited the offices of respondent's attorney to state that appellants wanted to buy the property. But regardless of whether the statement in the application was made in bad faith, as noted above issuance of a new certificate of title in respondent's name will not preclude a sale of the property to appellants. Further, the effect of any error in the application can be addressed in the separate proceeding addressing whether to issue a new certificate of title. Indeed, the district court's electronic case management system shows that, in the proceeding for the new certificate of title, the initial application was accompanied by a report of the examiner of titles, presumably consistent with the assertions in the application, but that an amended report was filed on November 5, 2010 and that a hearing

is yet to occur in that proceeding.

On this record, appellants have not shown that, in denying their motion to vacate the order adopting the stipulation, the district court "acted in such an arbitrary manner as to frustrate justice" under *Johnson*, 305 N.W.2d at 573.

III.

To the extent that appellants argue that the eviction court should have stayed the eviction proceeding pending their related action challenging the foreclosure, we reject their argument. Under *Bjorklund*, a

> district court abuses its discretion by denying a motion to stay an eviction action when (1) an existing, separate district court action would be dispositive of the issues of possession and title to commercial real property involved in the eviction action and (2) the district court in the eviction action has concluded that some of the claims asserted in the first-filed action are essential to the defense of the eviction action.

753 N.W.2d at 313.

Appellants filed their separate action challenging the underlying foreclosure on December 6, 2010, almost two weeks after the district court's November 23, 2010 order denying appellants' motion to vacate the settlement, and four days after an eviction judgment was entered on December 2, 2010. Thus, there was no "existing, separate district court action" during the pendency of the eviction proceeding. Further, the mortgage that was foreclosed was Soll's mortgage, and appellants cite no authority indicating that any defects in the foreclosure process relative to themselves would have precluded the foreclosure of Soll's mortgage. Nor did the district court indicate that any aspect of the appellants' related challenge to the foreclosure was essential to their defense

of the eviction proceeding as discussed in *Bjorklund*. Indeed, because appellants' related action was ultimately dismissed, albeit without prejudice, that action was not resolved in their favor. Absent more, this record does not show that a stay was required under *Bjorklund*.

Affirmed.