STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1509

Ameriquest Mortgage Company
n/k/a Ameriquest Mortgage Services, Inc.,
Appellant,

vs.

Charles T. Cleveland, Jr., et al.,
Defendants,

and

Mortgage Electronic Registration Systems, Inc.,
as nominee for Freemont Investment & Loan,
a California corporation,
Respondent.

Filed July 15, 2008
Affirmed
Connolly, Judge

Hennepin County District Court
File No. 27-CV-05-017263

Mathew M. Meyer, John K. Rossman, Lorie A. Klein, Moss & Barnett, P.A., 4800 Wells Fargo Center, 90 South Seventh Street, Minneapolis, MN 55402-4129 (for appellant)

Thomas B. Olson, Matthew H. Jones, Olson & Lucas, P.A., One Corporate Center I, 7401 Metro Boulevard, Suite 575, Edina, MN 55439 (for respondent)

Considered and decided by Toussaint, Chief Judge; Minge, Judge; and Connolly, Judge.

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

CONNOLLY, Judge

Appellant challenges the district court's grant of summary judgment in favor of respondent, arguing that it erred in concluding that an "affidavit of rescission of mistaken satisfaction of mortgage" is legally insufficient to reinstate an extinguished mortgage under the laws of Minnesota. Because this document lacks the mortgagor's signature and is not recognized as being legally sufficient under Minnesota law to reinstate the mortgage that appellant voluntarily extinguished, we affirm.

FACTS

On May 8, 2003, Charles and Jennifer Cleveland (the Clevelands) mortgaged a property located at 8729 Prestwick Pkwy. N., Brooklyn Park, MN 55443 (the property) to appellant Ameriquest Mortgage Services, Inc.[1] The mortgage secured a loan of $275,400 made by appellant to the Clevelands. On April 6, 2004, the Clevelands executed a second mortgage on the property with Drake Bank as security for a loan of $325,000 made to Pair of Dice Pizza, a business run by the Clevelands.[2] For reasons that remain unclear, appellant mistakenly executed a satisfaction of mortgage on January 28, 2005 that indicated its mortgage with the Clevelands was satisfied.[3] After several months, appellant eventually realized its mistake and attempted to remedy it by filing an "affidavit of rescission of mistaken satisfaction of mortgage" (the affidavit). This affidavit was not

[1] This mortgage was recorded on July 18, 2003.
[2] This mortgage was recorded on May 13, 2004.
[3] This satisfaction was recorded on February 14, 2005.

signed by the Clevelands. The affidavit was executed on May 24, 2005 and recorded on June 20, 2005.

On October 28, 2005, the Clevelands sold the property to Paul and Samantha Kromah (the Kromahs) for $340,000. In order to fund the purchase, the Kromahs borrowed $272,000 from respondent Freemont Investment & Loan Corp. in exchange for a mortgage on the property. This mortgage was executed on October 28, 2005 and recorded on November 22, 2005. On November 3, 2005, appellant commenced the present action by serving a summons and complaint, and filing a notice of lis pendens. The notice of lis pendens was recorded on November 7, 2005. Appellant and respondent both moved for summary judgment. The district court granted respondent's motion for summary judgment concluding, in part, that

> Ameriquest's execution and recording of the Satisfaction of Mortgage on February 14, 2005, extinguished the mortgage on the Property. The unsigned Affidavit of Rescission of Mistaken Satisfaction of Mortgage is legally insufficient to reinstate the extinguished mortgage on the Property as between Ameriquest and the Clevelands and did not act to give notice to the parties. Therefore, Ameriquest no longer owns the mortgage to the Property and their claims against the Property, MERS as nominee for Freemont, and the Kromahs shall be dismissed.

This appeal follows.

D E C I S I O N

"On an appeal from summary judgment, we ask two questions: (1) whether there are any genuine issues of material fact and (2) whether the [district] court[] erred in [its] application of the law." *State by Cooper v. French*, 460 N.W.2d 2, 4 (Minn. 1990).

"[T]here is no genuine issue of material fact for trial when the nonmoving party presents evidence which merely creates a metaphysical doubt as to a factual issue and which is not sufficiently probative with respect to an essential element of the nonmoving party's case to permit reasonable persons to draw different conclusions." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 71 (Minn. 1997). A reviewing court is not bound by and need not give deference to a district court's decision on a purely legal issue. *Modrow v. JP Foodservice, Inc.*, 656 N.W.2d 389, 393 (Minn. 2003) (citing *Frost-Benco Elec. Ass'n v. Minnesota Pub. Utils. Comm'n*, 358 N.W.2d 639, 642 (Minn. 1984)).

Generally, a mortgage is discharged when a satisfaction of mortgage is filed and recorded. Minn. Stat. § 507.40 (2006) ("A mortgage may be discharged by filing for record a certificate of its satisfaction executed and acknowledged by the mortgagee, the mortgagee's personal representative, or assignee, as in the case of a conveyance.").

In this case, appellant made a mistake when it, as mortgagee, filed its satisfaction of mortgage. It could have taken immediate steps to correct this mistake. It could have requested that the Clevelands sign a recordable instrument reinstating the mortgage. If they refused, appellant could have immediately commenced an action in the district court to reinstate the mortgage. While the facts in *Errett v. Wheeler* are distinguishable from the present case, it nevertheless supports the general proposition that, in some cases, a court may use its equitable powers to reinstate a mortgage that has been mistakenly satisfied. *See Errett v. Wheeler*, 109 Minn. 157, 163, 123 N.W. 414, 415-16 (1909) ("There can be no doubt of the authority of a court of equity, in a proper case, to reinstate

a satisfied mortgage or other lien upon real estate, when it appears to have been given under mistake, inadvertence, or procured by fraud.").

Instead of taking such action in a timely fashion, appellant did nothing for five months. When it finally did act, it recorded the affidavit in a desperate attempt to reinstate the mortgage. After recording this document, appellant waited an additional five months before actually commencing an action in district court and filing a notice of lis pendens. When the action was heard in district court, appellant received a judgment in its favor against the Clevelands for breach of contract. Appellant now seeks to recover its priority interest in the property at the expense of respondent.

Appellant first argues that the affidavit reinstated the mortgage, but cites no Minnesota authority to support this proposition. Normally, instruments conveying interests in real estate must be duly signed by the party to be bound. A mortgage conveys an interest in real estate. Minn. Stat. § 507.01 (2006). Recorded mortgages "must contain the original signatures of the parties who execute it." Minn. Stat. § 507.24, subd. 2(a) (2006); *see also* Minn. Stat. § 386.39 (2006) ("Except where otherwise expressly provided by law, no county recorder shall record any conveyance, mortgage, or other instrument by which any interest in real estate may be in any way affected, unless the same is duly signed, executed and acknowledged according to law . . . ."). Every conveyance of real estate "shall be recorded" and every conveyance not so recorded "shall be void as against any subsequent purchaser in good faith and for a valuable consideration." Minn. Stat. § 507.34 (2006). Appellant cites a North Carolina appellate court decision, a North Dakota Supreme Court decision, and a "uniform" residential

mortgage satisfaction act that has been adopted by only three states, not including Minnesota.[4] This act would authorize a "Document of Rescission" that would reinstate a mortgage that had been mistakenly satisfied. While authorizing such a document to remedy situations like this may be reasonable, it is not this court's place to adopt such a law. *See Tereault v. Palmer*, 413 N.W.2d 283, 286 (Minn. App. 1987) ("[T]he task of extending existing law falls to the supreme court or the legislature, but it does not fall to this court."), *review denied* (Minn. Dec. 18, 1987). As such, appellant's argument that the affidavit reinstated the mortgage is unavailing.

Appellant next argues that respondent and the Kromahs had constructive notice of the unsatisfied mortgage through the affidavit and that such constructive notice was sufficient to disqualify respondent and the Kromahs as good faith purchasers.

The Minnesota Recording Act protects the property interest of purchasers of property who purchase in good faith and for valuable consideration and who properly record their interests:

> Every conveyance of real estate shall be recorded in the office of the county recorder of the county where such real estate is situated; and *every such conveyance not so recorded shall be void as against any subsequent purchaser in good faith and for a valuable consideration of the same real estate*, or any part thereof, whose conveyance is first duly recorded, and as against any attachment levied thereon or any judgment lawfully obtained at the suit of any party against the person in whose name the title to such land appears of record prior to the recording of such conveyance.

[4] The cites for these three sources are, respectively: *G.E. Capital Mortgage Services, Inc. v. Neely*, 519 S.E.2d 553, 556 (N.C. Ct. App. 1999); *Westgard v. Farstad Oil, Inc.*, 437 N.W.2d 522, 524-25 (N.D. 1989); Unif. Residential Mortgage Satisfaction Act, 7B U.L.A. 417 (2006).

Minn. Stat. § 507.34 (emphasis added). A "subsequent purchaser in good faith and for a valuable consideration" is a purchaser "who gives consideration in good faith without actual, implied, or constructive notice of inconsistent outstanding rights of others." *Anderson v. Graham Inv. Co.*, 263 N.W.2d 382, 384 (Minn. 1978). "[U]nder Minn. St. 507.32 a purchaser is charged as a matter of law with constructive notice of any properly recorded instrument." *Id.*; Minn. Stat. § 507.32 (2006) ("The record, as herein provided, of any instrument properly recorded shall be taken and deemed notice to parties.").

In this case, the parties do not dispute that the affidavit of recission of mistaken satisfaction of mortgage was filed and recorded. Appellant argues that because the affidavit was recorded, it follows that, under Minn. Stat. § 507.32, respondent and the Kromahs had constructive notice of it. However, the question still remains as to the legal effect of this constructive notice. To put it more plainly, what precisely was respondent on notice of? *See Anderson*, 263 N.W.2d at 385 (explaining that "a recorded interest is constructive notice only of the facts appearing on the face of the record"). Specifically, did the affidavit disqualify respondent and the Kromahs from being considered good faith purchasers because it provided constructive notice of the "inconsistent outstanding rights of others?" *Id.* at 384.

Appellants argue that the "[affidavit], at a minimum, provided the same notice to the Kromahs and respondent that a notice of Lis Pendens is intended to provide." We disagree. A notice of lis pendens is a statutorily recognized means of providing "notice to purchasers and encumbrancers of the rights and equities of the party filing the same to

the premises." Minn. Stat. § 557.02 (2006). Appellant's affidavit, on the other hand, has not been recognized by Minnesota as a valid means of giving notice of a property interest.

While the affidavit does say appellant "rescinds the aforementioned Satisfaction of Mortgage," it is not signed by the Clevelands. We decline to rule that the use of an "affidavit of rescission of mistaken satisfaction of mortgage," a type of affidavit appellant has not shown to be recognized by statute, rule, or caselaw, reinstates a mortgage where that affidavit is not signed by the owners of the property on which the mortgage is reinstated.

Similarly, we decline to use the unrecognized "affidavit of rescission of mistaken satisfaction of mortgage" to create notice in potential buyers of the possible reinstatement of a creditor's previously discharged interest where no lawsuit is pending when the affidavit is filed and where the affidavit is not signed by the owner of the property. *Cf. Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (stating that "[t]he function of the court of appeals is limited to identifying errors and then correcting them"). For these reasons and on this record, we conclude that appellant has shown neither the existence of a genuine issue of material fact nor that the district court erred in its application of the law. Therefore, we conclude that the affidavit did not give notice of the inconsistent rights of others because it has no legal effect.

Affirmed.