

STATE OF MINNESOTA

DISTRICT COURT

ANOKA COUNTY

TENTH JUDICIAL DISTRICT

FILED
Jane P. Morrow
County Clerk

APR 28 2010

██████████ Gustafson,

Plaintiff,

ORDER

vs.

Anoka County, MN
NIVKIA STRECHER
Deputy

Court File No. 02-CV-09-682

Brian J. Smith; Midwest Equity Consultants, Inc.;
Bradley R. Pederson; Amy L. Pederson;
Lake Elmo Bank,

Defendants.

The above captioned matter came before the Honorable Sean C. Gibbs, Judge of District Court, Anoka County, on February 25, 2010 at 9:00 a.m., pursuant to Plaintiff's Motion for Summary Judgment on Count XI of its Complaint. Jane N. Bowman, Esq., and Mark R. Ireland, Esq., appeared on behalf of Plaintiff. Steven R. Little, Esq., appeared on behalf of Defendant Lake Elmo Bank. Travis M. Huddy, Esq., appeared on behalf of Defendants Bradley and Amy Pederson. Defendants Brian J. Smith and Midwest Equity Consultants, Inc., did not appear.

NOW, THEREFORE, based upon all of the files, records and proceedings and upon the Court being fully advised in the premises, the Court makes the following:

ORDER

1. Plaintiff's Motion for Summary Judgment as to Count XI of the Complaint is **GRANTED**.

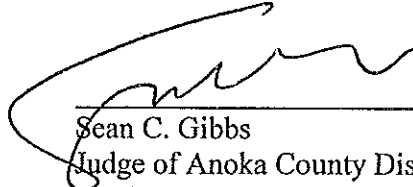
The Office of the Recorder of Anoka County may take whatever steps are necessary to void and discharge the mortgage currently recorded against the property.

2. The attached memorandum of law is incorporated herein.

LET THE JUDGMENT BE ENTERED ACCORDINGLY

BY THE COURT

Dated: 4/28, 2010



Sean C. Gibbs
Judge of Anoka County District Court
Tenth Judicial District

JUDGMENT

The above Conclusions of Law and/or Order for
Judgment constitute the Judgment of the Court.

Court Administrator
Anoka County, MN

Date: 4-30-10 By: Heidi Raske
Deputy

FILED
Jane F. Murray
Court Administrator

APR 30 2010

Anoka County, MN
Deputy

MEMORANDUM

I. FACTUAL BACKGROUND

In the spring of 2007 Plaintiff [REDACTED] Gustafson ("Plaintiff") became delinquent on her monthly mortgage payments. Her property was foreclosed on and a sheriff's sale took place in August 2007. The property was sold at the sale for \$90,156. During the time that Plaintiff was delinquent on her mortgage payments, she became acquainted with Defendant Smith and Defendant Midwest Equity Consultants, Inc. ("MWE"), who informed her that they could help her regain ownership of her property. On September 6, 2007, Plaintiff, Defendant Smith (an employee of MWE), and MWE entered into a "consulting contract" whereby Smith and MWE would assess Plaintiff's equity position, find a suitable investor to purchase her property, resell the property to Plaintiff on a contract for deed, and arrange for the closing.

Defendants Smith and MWE arranged for Defendants Bradley and Amy Pederson ("Pederson") to purchase the home and lease it back to Plaintiff on a contract for deed. Plaintiff and Defendants Pederson executed a contract for deed on September 6, 2007. The contract for deed included the following terms: Plaintiff sold her property to Defendants Pederson for \$140,000; \$90,156 of the sale proceeds redeemed the property from the sheriff's sale; \$24,956 of the proceeds were placed into an escrow account for future monthly payments on the contract for deed (\$1,664.33 per month for 15 months of interest, taxes, and insurance only at 12.5%); \$11,000 of the proceeds went to Defendant MWE for fees and services; \$7,722.73 were to be placed in a separate escrow for the purpose of repairing Plaintiff's credit; \$5,305 of the sale proceeds went to cover closing costs; the remaining \$850 went to Plaintiff. At the end of the contract for deed, Plaintiff was responsible for paying off the remaining balance of \$140,000.

A concurrent part of the transaction, taking place on the same day, involved Defendants Pederson executing a mortgage ("the Mortgage") on the property with Defendant Lake Elmo Bank ("LEB") at 8.25% financing. After receiving the monthly payment from Plaintiff and making their monthly mortgage payment to Defendant LEB, Defendants Pederson kept the difference of approximately \$500.

Plaintiff rescinded the contract for deed on December 30, 2008. Defendants Pederson did not recognize the rescission and Plaintiff commenced this action to void the transactions she made with Defendants, alleging violations of numerous consumer protection statutes. Count XI seeks to void the Mortgage held by Defendant LEB.

On August 25, 2009, the Honorable Barry A. Sullivan, Judge of District Court, Anoka County, granted Plaintiff summary judgment against Defendants Smith and MWE on Counts V, IX, and X of the Complaint, ruling that these Defendants violated Minn. Stat. §§ 325N.01-09 (Foreclosure Consultant Statute) and 15 U.S.C. § 1679 et seq. (Credit Repair Organizations Act). Judge Sullivan also granted summary judgment against Defendants Pederson as to Count VI of the Complaint, holding that the Pedersons violated Minn. Stat. § 325N.10-18 (Foreclosure Purchaser Statute). Because the contract for deed violated the Foreclosure Purchaser Statute, Judge Sullivan ruled that that contract for deed was illegal and thus unenforceable. In addition, Judge Sullivan found that the Mortgage was illegal in violation of Minn. Stat. § 325N.17(f).

Before the Court is Plaintiff's Motion for Summary Judgment on Count XI of the Complaint. Plaintiff seeks a declaratory judgment holding that the Mortgage is void and unenforceable due to the illegality of the contract for deed between Plaintiff and Defendants Pederson and because Judge Sullivan found the Mortgage violated Minn. Stat. § 325N.17(f). Defendant argues that the Mortgage is valid and enforceable because Plaintiff ratified it by

accepting it and retaining its benefits. In the alternative, Defendant requests that the Court impose a constructive trust in the amount of loan proceeds paid for Plaintiff's benefit.

II. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate where the "pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact" and as a result, the moving party is entitled to judgment "as a matter of law." Minn. R. Civ. P. 56.03; Britton v. Koep, 470 N.W.2d 518, 524 (Minn. 1991). Where there are no material facts in dispute, summary judgment is an appropriate method for the determination of pure legal issues. Burns v. Sands, 570 N.W.2d 17, 19 (Minn. App. 1997).

For the purposes of the cross-motions now before the Court, the facts are undisputed. Therefore, the Court will apply the law to the undisputed facts.

III. ANALYSIS

A. THE SUMMARY JUDGMENT MOTION OF DEFENDANT LAKE ELMO BANK IS UNTIMELY AND NOT BEFORE THE COURT

Defendant responded to Plaintiff's Motion for Summary Judgment by filing a Memorandum of Law in opposition to Plaintiff's Motion. The Memorandum of Law also states that it is "In Support of Its Motion for Summary Judgment." Defendant LEB never filed a notice of motion and motion for summary judgment. Rule 115.03 of the Rules of Practice for the District Courts requires a moving party to serve a notice of motion and motion, among other things, upon the court administrator at least 28 days prior to the hearing. Defendant LEB filed its Memorandum of Law on February 16, 2010, only nine days prior to the hearing. In addition, Defendant was required to serve a notice of motion and motion on opposing counsel at least ten days prior to the hearing. Minn. R. Civ. P. 56.03. Defendant LEB served its Memorandum of Law on opposing counsel on February 16, 2010, nine days prior to the hearing. Based on Minn.

R. Gen. Prac. 115.03 and Minn. R. Civ. P. 56.03, Defendant LEB's purported motion for summary judgment is procedurally deficient and will not be considered by this Court.

B. IS THE MORTGAGE VOID?

Judge Sullivan's August 25, 2009 Order found that the Mortgage "clearly violates § 325N.17(f)." Minn. Stat. § 325N.17(f) prohibits a foreclosure purchaser from encumbering any interest in the property to a third party within the five-day period the foreclosed homeowner has to cancel the contract as prescribed in Minn. Stat. § 325N.13. In the case at bar the Mortgage was executed on the same day as the contract for deed and the other documents comprising the transaction. The issue for this Court is whether the Mortgage is void due to the fact that it violated Minn. Stat. § 325N.17(f).

Minnesota law makes void any contract that violates law or public policy. Barna, Guzy, & Steffen, Ltd. v. Beens, 541 N.W.2d 354, 356 (Minn. App. 1995), citing Independent Sch. Dist. No. 877 v. Loberg Plumbing & Heating Co., 123 N.W.2d 793, 799 (Minn. 1963). The legislature may set the public policy of the state through statute. Giacomo v. State Farm Mut. Automobile Ins. Co., 280 N.W.2d 653, 657 (Minn. 1938). Judge Sullivan found the contract for deed void, finding that it contravened "the strong consumer protection policy reflected in the provisions of Chapter 325N."

This Court finds that the Mortgage is void in that it violated Minn. Stat. § 325N.17(f) as well as the consumer protection policy behind Chapter 325N. Plaintiff should have had a five-day window to cancel the entire transaction. During this five-day period, the foreclosure purchasers (Defendants Pederson) were prohibiting from encumbering an interest in the property to a third party. The Mortgage violates statute and public policy and is therefore void.

C. DID PLAINTIFF RATIFY THE MORTGAGE?

Defendant LEB argues that Plaintiff ratified the Mortgage by accepting and using its funds to redeem her home from the sheriff's sale purchaser and failing to object to the validity of the Mortgage for more than fifteen months. Plaintiff argues that a void contract may not be ratified by any of its parties.

The word void is defined as "Of no legal effect; null; unenforceable." Black's Law Dictionary 657 (Bryan A. Garner ed., pocket ed., West 1996). Comment a to Restatement (Second) of Contracts § 7 states that

A promise for breach of which the law neither gives a remedy nor otherwise recognizes a duty of performance by the promisor is often called a void contract. Under § 1, however, such a promise is not a contract at all; it is the 'promise' or 'agreement' that is void of legal effect.

On the other hand, a voidable contract "is valid and binding until it is avoided by the party entitled to avoid it. Furthermore, the defect may be cured by ratification by the party at whose instance it might have been avoided." Spariz v. Rimnac, 208 N.W.2d 764, 767 (Minn. 1973), quoting 17 Am. Jur. 2d Contracts § 7.

It follows that only a voidable contract may be ratified by one of its parties. A void contract is legally defective and unenforceable from its inception and may not be ratified by word or conduct. Plaintiff cites a host of cases from other jurisdictions that state this established principle of law. The Court finds that Plaintiff did not, and legally could not, ratify the Mortgage by her actions following the execution of the Mortgage on September 6, 2007.

D. IS DEFENDANT LEB ENTITLED TO A CONSTRUCTIVE TRUST OR EQUITABLE LIEN?

Defendant LEB next argues that the Court should impose a constructive trust or equitable lien in its favor against Plaintiff in an amount to be proven at trial. Defendant correctly points out that Plaintiff used over \$90,000 of its funds to redeem her property from the purchaser at the

sheriff's sale. Plaintiff has certainly benefited from Defendant LEB's money and it would seem the posture of the case demands equitable intervention. "An equitable lien arises in an equity proceeding when a person is allowed to reach the property of another and hold it as security for a claim on the ground that otherwise the latter would be unjustly enriched." Fredin v. Farmers State Bank of Mountain Lake, 384 N.W.2d 532, 535 (Minn. App. 1986) (citations omitted). An equitable lien is a form of constructive trust. Id. The existence of a constructive trust is a question of fact for the trial court. Freundschuh v. Freundschuh, 559 N.W.2d 706, 711 (Minn. App. 1997), rev. denied (Apr. 24, 1997), citing Ferguson v. Shea, 373 N.W.2d 575, 576-77 (Minn. App. 1985).

The existence and amount of Defendant LEB's proposed constructive trust or equitable lien is a disputed question of fact and it is not the province of this Court to rule on such questions. Defendant LEB may argue these theories to the trial court, the proper arbiter of such disputed fact questions.

IV. SUMMARY

In sum, the Court finds that the Mortgage is void and should be discharged from the property. Plaintiff did not have the ability to ratify the void Mortgage by word or conduct. The question of the existence and amount of a constructive trust or equitable lien in favor of Defendant LEB is reserved for the trial court.

SCG
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