2015 IL App (3d) 140863-U

Order filed December 10, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

UNITED CENTRAL BANK,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellee,	)	Will County, Illinois,
	)	
v.	)	
	)	
BHARATI PATEL, VIJAY PATEL, JAGDISH PATEL and DAKSHA PATEL,	)	Appeal No. 3-14-0863
	)	Circuit No. 12-CH-1372
	)	
Defendants-Appellants	)	
	)	
(Monee Hospitality, Inc., Unknown Owners and Non-Record Claimants,	)	The Honorable
	)	Thomas A. Thanas,
Defendants).	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Presiding Justice McDade and Justice O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court properly confirmed sale and entered deficiency judgment against guarantors following mortgage foreclosure where mortgaged property was sold as directed by bankruptcy court and guarantors signed agreed order acknowledging that their liability was not extinguished by sale. Trial court properly ordered guarantors to pay statutory interest from date of foreclosure judgment, as well as attorney fees to plaintiff based on guaranties.

¶ 2 Plaintiff, United Central Bank, filed a complaint against defendants Bharati Patel, Vijay Patel, Jagdish Patel and Daksha Patel, alleging foreclosure and breach of guaranties. The trial court granted summary judgment to plaintiff and entered a judgment of foreclosure and sale. The mortgaged property was sold pursuant to a bankruptcy court order after the mortgagee, Monee Hospitality Inc., filed for bankruptcy. The trial court confirmed the sale and entered deficiency judgments against defendants, which included interest from the date of foreclosure, as well as attorney fees. Defendants appeal, arguing that the court erred in (1) entering deficiency judgments against them, (2) confirming the sale of the property, (3) ordering them to pay interest from the date of the foreclosure judgment, and (4) awarding plaintiff attorney fees. We affirm.

¶ 3 FACTS

¶ 4 In October 2001, Monee Hospitality Inc. executed a promissory note in the amount of $2,418,750, payable to Mutual Bank of Harvey. The note was secured in exchange for a promissory note and mortgage on property located in Monee. The note allowed Mutual Bank to recover "reasonable attorneys' fees incurred by Bank" upon default of the note. The note stated that in the event of default, "Bank is entitled to all rights and remedies provided at law or equity whether or not expressly stated in this note." The mortgage and note were signed by Jagdish Patel, as President of Monee.

¶ 5 At the same time Monee entered into the promissory note and mortgage, defendants Bharati Patel, Vijay Patel, Jagdish Patel and Daksha Patel each executed personal guaranties, guaranteeing "all indebtedness arising under" the promissory note and mortgage. Each guaranty stated in part: "the undersigned *** agrees to pay all expenses (including without limitation, reasonable attorneys' fees and court costs) paid or incurred by the Lender in endeavoring to collect the Liabilities, or any part thereof, and in enforcing this Guaranty."

¶ 6 In 2004, Monee entered into a debt modification agreement with Mutual Bank. Thereafter, Monee and defendants executed several amendments to extend the terms of the promissory note and guaranties and reaffirm the guaranties. Each amendment was signed by Monee as "borrower" and defendants as "guarantor[s]." In July 2009, plaintiff United Central Bank purchased the note, mortgage and guaranties executed by Monee and defendants. Soon thereafter, Monee defaulted on the mortgage and promissory note.

¶ 7 In March 2012, plaintiff filed a six-count complaint against Monee and defendants. Count I was a foreclosure claim and sought "[a] judgment of foreclosure and sale, which provides for attorneys fees, costs and expenses incurred in connection herewith" and "[a] personal judgment of deficiency against Defendants, Monee Hospitality Inc., Bharati Patel, Vijay Patel, Jagdish Patel [and] Daksha Patel." Counts II through V alleged breach of guaranties against each individual defendant, and count VI alleged breach of note against Monee.

¶ 8 Plaintiff filed a motion for summary judgment, seeking a judgment against Monee and the individual defendants "in the amount of any deficiency that results from the judicial sale yielding insufficient funds to satisfy UCB's lien." Defendants did not respond to plaintiff's motion.

¶ 9 On January 10, 2013, the trial court entered an order granting summary judgment to plaintiff, as well as a Judgment of Foreclosure and Sale. In both the order and judgment, the court stated that "[t]here are no genuine issues of material fact with respect to the Complaint" and ruled that plaintiff "is entitled to the entry of judgment against Defendants." The court found that plaintiff had a valid lien in the amount of $3,000,335.54, including attorney fees and costs of $18,396.62. The court held that plaintiff was entitled to a monetary judgment against Monee and defendants in the amount of any deficiency that resulted from the sale of the

property. The court's judgment set forth the procedure for the sale of the property in accordance with the Illinois Mortgage Foreclosure Law (Foreclosure Law) (735 ILCS 5/15-1506, 1507 (West 2012)).

¶ 10 Thereafter, Monee filed for bankruptcy. An agreed order signed by Monee, United Central Bank and the individual defendants was entered by the bankruptcy court. The order allowed Monee to hire a real estate broker to sell the property pursuant to section 363 of the United States Bankruptcy Code (11 U.S.C. §363 (2011)). The parties agreed that plaintiff would have the right to a credit bid of 80% of the appraised value of the property. Plaintiff agreed not to contest the sale as long as the winning bid was higher than the credit bid. The agreed order stated in part: "Nothing herein shall be deemed to waive any deficiency claim after the sale or refinancing of the [property] or release any guarantor of the [borrower's] debts or the Secured Claim. The Bank reserves all rights with respect to the guarantors."

¶ 11 Plaintiff made a credit bid for the property. A third party bid one dollar more than plaintiff. On October 3, 2013, the bankruptcy court entered an order approving the sale of the property. Plaintiff ultimately received $1,737,775.40 from the sale and protection payments.

¶ 12 Plaintiff then filed a motion to ratify and confirm sale and for entry of an order for monetary judgment and memorandum of judgment. Plaintiff sought judgment against defendants in the amount of the deficiency, $1,247,560.14, plus interest from January 10, 2013, the date of the foreclosure judgment. Plaintiff also filed a petition for attorney fees. Defendants responded, arguing that plaintiff was not entitled to a deficiency against them because a bankruptcy sale, not a judicial sale, had taken place. Defendants also filed a motion to vacate the judgment the trial court entered against them on January 10, 2013.

¶ 13 On May 2, 2014, the trial court held a hearing. Following the hearing, the trial court granted plaintiff's motion to ratify and confirm. On June 16, 2014, the trial court entered judgment against the individual defendants for $1,641,303.35, which included interest of $78,270.18 that accrued from January 10, 2013, and attorney fees of $100,724.66.

¶ 14 Defendants filed a motion to reconsider and vacate the court's judgment, arguing that the trial court should not have approved the sale because it was not a "judicial sale" under the Foreclosure Law (735 ILCS 5/15-1507 (West 2012)). The trial court denied the motion.

¶ 15 ANALYSIS

¶ 16 I

¶ 17 Defendants first argue that the trial court erred in entering judgment against them because the court's grant of summary judgment to plaintiff was only on the foreclosure count of the complaint. They contend that the trial court never entered judgment on counts II through V of the complaint, which were actions on their guaranties.

¶ 18 Upon default, a mortgagee may choose to foreclose on the mortgage, proceed on the guaranty, or both. See 735 ILCS 5/15-1501(a), (b)(5) (West 2012); *LP XXVI, LLC v. Goldstein*, 349 Ill. App. 3d 237, 241 (2004); *Northern Trust Co v. VIII South Michigan Associates*, 276 Ill. App. 3d 355, 369 (1995). Because a mortgage and guaranty constitute separate contracts, they give rise to legally distinct remedies and must be pursued in separate counts. *Goldstein*, 349 Ill. App. 3d at 241. A deficiency judgment cannot be entered against a guarantor without a separate count seeking relief pursuant to the guaranty. *Hickey v. Union National Bank & Trust Co. of Joliet*, 190 Ill. App. 3d 186, 190 (1989).

¶ 19 A foreclosure action results "in a diminution of the debt for which the guarantors are liable and of this they are of course in no position to complain." *Berea College v. Killian*, 304

Ill. App. 296, 299-300 (1940). When a mortgagee proceeds with foreclosure and the mortgage foreclosure and sale results in a deficiency, the mortgagee may pursue the deficiency from the guarantors. See *Goldstein*, 349 Ill. App. 3d at 242; 735 ILCS 5/15-1504(f) (West 2012).

¶ 20 Here, plaintiff brought a six-count complaint, seeking foreclosure against Monee, actions on the guaranties against defendants, and an action on the note against Monee. The mortgage and note were signed only by Jagdish Patel, as President of Monee. The guaranties were signed by the individual defendants. In granting plaintiff summary judgment, the court stated: "There are no genuine issues of material fact with respect to the Complaint." The court further stated that plaintiff "is entitled to the entry of judgment against Defendants."

¶ 21 Since the individual defendants were not parties to the mortgage, their liability was based entirely on the guaranties, which plaintiff sought to enforce in counts II through V of its complaint. The trial court's "entry of judgment against Defendants" had to be predicated on the personal guaranties. Thus, the trial court's entry of summary judgment encompassed the counts of the complaint alleging breach of the guaranties.

¶ 22 In this case, plaintiff chose to first foreclose on the mortgaged property, thereby reducing defendants' liability under the guaranties. Once the foreclosure was complete, plaintiff was entitled to recover the deficiency from defendants. See *Goldstein*, 349 Ill. App. 3d at 242. The trial court properly entered deficiency judgments against defendants.

¶ 23 II

¶ 24 Defendants next argue that the trial court erred in confirming the sale of the property because the sale did not comply with the trial court's judgment or the Foreclosure Law.

¶ 25 When confirming a sale of property, the circuit court has broad discretion in approving or disapproving sales. *Mortgage Electronic Registration Systems, Inc. v. Thompson*, 368 Ill. App.

3d 1035, 1037 (2006). Through an order of confirmation, a court makes a sale its own, adjudicates the conformity of the steps taken with those prescribed by the order authorizing the sale and consummates the sale so as to vest equitable title in the purchaser. *Id*. Confirmation cures irregularities, and gives the sale the same validity and effect as if made upon the precise terms of the decree. *Illinois Midwest Joint Stock Land Bank v. McMahon*, 249 Ill. App. 555, 556 (1928). If the sale departs from the direction of the decree, the court, by confirming the sale, may ratify the action as long as the court had power to direct the terms so ratified in the first instance. *Id*. If there is an alleged failure to comply with some direction of the decree or of the law with which the court had power to dispense before the sale, it may dispense with it afterwards, and the confirmation is equivalent to dispensing with such direction. *Id*. at 557.

¶ 26 Section 1507 of the Foreclosure Law sets forth the procedures for a judicial sale. 735 ILCS 5/15-1507 (West 2012). However, pursuant to section 1506 of the Foreclosure Law, a court is not bound by the procedures set forth in section 1507 and may alter those procedures, including the manner of sale, who conducts the sale, fees or commissions paid out of the sale proceeds, signs posted on the property, where and when bids shall be received, where notice shall be published, the format for advertising, and any other matters "to ensure sale of the real estate for the most commercially favorable price for the type of real estate involved." 735 ILCS 5/1506 (West 2012). Where a judicial sale of property is completed in federal court pursuant to a bankruptcy order, it can be confirmed by a trial court in a foreclosure proceeding. See *Trustees of Central States, Southeast & Southwest Areas Pension Fund v. LaSalle National Bank*, 185 Ill. App. 3d 734 (1989).

¶ 27 Here, although the procedures employed by the bankruptcy court were not identical to those set forth in the foreclosure judgment or the Foreclosure Law, the trial court had the

authority to confirm the sale of the property that was ordered and supervised by the bankruptcy court. The court did not abuse its discretion in confirming the sale of the property since it was directed and approved by the bankruptcy court, defendants signed an order acknowledging the sale, and there is no allegation that the sale was unfair or unconscionable.

¶ 28 III

¶ 29 Next, defendants argue that the trial court erred in ordering them to pay interest from the date of the foreclosure judgment, rather than the date of the confirmation of sale.

¶ 30 The Foreclosure Law does not contain a provision for the collection of postjudgment interest. *Citimortgage, Inc. v. Sharlow*, 2014 IL App (3d) 130107, ¶ 17. However, the Foreclosure Law incorporates and includes application of the provisions of the Illinois Code of Civil Procedure (Code) to the extent that those provisions are not contrary to the provisions of the Foreclosure Law. See 735 ILCS 5/15-1107(a) (West 2012). Section 2-1303 of the Code provides that "[j]udgments recovered in any court shall draw interest at the rate of 9% per annum from the date of the judgment until satisfied." 735 ILCS 5/2-1303 (West 2012).

¶ 31 While nothing in section 2-1303 of the Code requires that a judgment be final and appealable in order to earn interest, we have read such a requirement into the statute. See *Sharlow*, 2014 IL App (3d) 130107, ¶ 18. Pursuant to Illinois Supreme Court Rule 304(a), a trial court can make an order final and appealable by making an express written finding that "there is no just reason for delaying either enforcement or appeal or both." Ill. S. Ct. R. 304(a) (eff. Feb. 26, 2010).

¶ 32 We recently held that postjudgment interest should be computed from the date of the foreclosure judgment if Rule 304(a) language is contained in the judgment, but we refused to decide whether that would be the case for a foreclosure judgment without Rule 304(a) language.

Sharlow, 2014 IL App (3d) 130107, ¶¶ 19-20, n4. More recently, the First District held that postjudgment interest can be recovered once a foreclosure judgment has been entered even without Rule 304(a) language. *BAC Home Loans Servicing, LP v. Popa*, 2015 IL App (1st) 142053, ¶ 34.

¶ 33 The First District reasoned that a foreclosure judgment does not have to contain Rule 304(a) language because there is no requirement in section 1303 that a judgment be "final and appealable" but only that it be "recovered in any court." *Id*. The First District also relied on section 1504(e)(3) of the Foreclosure Law. *Id*. That section provides that a plaintiff's request for foreclosure is construed to mean that the plaintiff requests "in default of *** payment in accordance with the judgment, the mortgaged real estate be sold as directed by the court, to satisfy the amount due to the plaintiff as set forth in the judgment, together with the interest thereon at the statutory judgment rate from the date of the judgment." 735 ILCS 5/15-1504(e)(3) (West 2012). The First District concluded that this section "by its language, provides that a plaintiff is entitled to the statutory interest rate from the date of the foreclosure judgment." *Popa*, 2015 IL App (1st) 142053, ¶ 35.

¶ 34 Here, there was no Rule 304(a) language in the foreclosure order, so our decision in *Sharlow* does not apply. However, we agree with the First District's decision in *Popa*. Section 15-1303 of the Foreclosure Law does not require that a judgment be "final and appealable" for interest to begin accruing. Thus, the presence or absence of Rule 304(a) language is not controlling. Read together, section 2-1303 of the Code and section 15-1504 of the Foreclosure Law provide for the recovery of interest once the foreclosure judgment has been entered. See *Popa*, 2015 IL App (1st) 142053, ¶ 35. The trial court did not err in awarding plaintiff postjudgment interest from the date of the foreclosure judgment.

¶ 35 IV

¶ 36 Finally, the defendants argue that the trial court erred in awarding plaintiff attorney fees. They contend that plaintiff was not entitled to such fees because the court never ruled on the counts of the complaint seeking enforcement of the guaranties.

¶ 37 Contractual provisions for attorney fees must be strictly construed. *Anest v. Audino*, 332 Ill. App. 3d 468, 479 (2002). The language of a guaranty may fully entitle the plaintiff to recover all attorney fees incurred in proceedings related to the note and/or guaranty. *McHenry Savings Bank v. Autoworks of Wauconda, Inc.*, 399 Ill. App. 3d 104, 112 (2010).

¶ 38 We will not vacate an award of attorney fees without a showing of an abuse of discretion by the trial court. *Anest*, 332 Ill. App. 3d at 479. An abuse of discretion occurs when no reasonable person would take the trial court's view. *Id.*

¶ 39 Here, the plain language of the guaranties executed by defendants allowed plaintiff to recover attorney fees. As set forth above, the trial court granted plaintiff judgment on the counts of the complaint seeking to enforce the guaranties. The trial court did not abuse its discretion in awarding plaintiff attorney fees under the terms of the guaranties.

¶ 40 CONCLUSION

¶ 41 The judgment of the circuit court of Will County is affirmed.

¶ 42 Affirmed.