This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2016).

STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1263

Wells Fargo Bank, N.A.,
Respondent,

vs.

Scott H. Lansing,
Appellant,

John Doe and Mary Roe,
Defendants.

Filed March 13, 2017
Affirmed
Bjorkman, Judge

Hennepin County District Court
File No. 27-CV-HC-16-1976

Kalli L. Ostlie, Shapiro & Zielke, LLP, Burnsville, Minnesota (for respondent)

Daniel M. Eaton, Cole W.R. Langsdorf, Christensen Law Office PLLC, Minneapolis, Minnesota (for appellant)

Considered and decided by Peterson, Presiding Judge; Bjorkman, Judge; and Klaphake, Judge.[*]

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[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

BJORKMAN, Judge

On appeal from a post-foreclosure eviction judgment, appellant challenges the denial of his motion to stay the eviction proceedings. We affirm.

FACTS

In 2004, World Savings Bank was granted a mortgage on property appellant Scott H. Lansing owned in Minnetonka. In 2008, World Savings Bank changed its name to Wachovia Mortgage. The following year, Wachovia Mortgage merged with Wells Fargo Bank Southwest, National Association to form respondent Wells Fargo Bank, National Association.

Lansing has not made any mortgage payments since November 2009. Wells Fargo foreclosed by advertisement and purchased the property at a 2011 sheriff's sale. Lansing sued Wells Fargo in Hennepin County District Court, alleging the bank did not strictly comply with Minnesota's foreclosure statutes. Wells Fargo removed the case to federal court, and the parties reached a settlement. Wells Fargo agreed to rescind the sheriff's sale and recommence foreclosure proceedings. Lansing agreed to cooperate with the new foreclosure, vacate the property upon expiration of the redemption period, and waive any challenge to the new foreclosure proceeding.

Wells Fargo commenced a foreclosure by judicial action in 2013. Lansing interposed an answer, and Wells Fargo moved for summary judgment, which the district court granted. The judgment awarded Wells Fargo a decree of foreclosure, and Wells Fargo purchased the property at the sheriff's sale. Lansing appealed, in part arguing that

Wells Fargo violated Minn. Stat. § 582.043 (2016), Minnesota's loss-mitigation statute. *Wells Fargo Bank, N.A. v. Lansing*, No. A14-0868, 2015 WL 506655, at *2-3 (Minn. App. Feb. 9, 2015). This court affirmed, expressly rejecting Lansing's loss-mitigation claim: "There is no evidence in the record indicating that [Lansing] completed or submitted a loss-mitigation application to Wells Fargo. . . . Because there is no evidence in the record to support [Lansing's] claim, there is no evidence to suggest that Wells Fargo was required to stop foreclosure proceedings." *Id.* at *3.

The sheriff's sale was confirmed by an order entered on February 19, 2015. Two days prior to the expiration of the six-month redemption period, Lansing sued Wells Fargo in Hennepin County District Court, alleging loss-mitigation, quiet-title, and slander-of-title claims. The case was removed to federal court, and Wells Fargo asserted a counterclaim for breach of contract based on Lansing's failure to comply with the 2012 settlement agreement. *See Lansing v. Wells Fargo Bank, N.A.*, No. 15-CV-03530 MJD/JSM, 2016 WL 3390400, at *5 (D. Minn. Apr. 25, 2016).

Wells Fargo moved the federal court for judgment on the pleadings. *Id.* at *6. On April 25, 2016, a magistrate judge filed a report recommending that Wells Fargo's motion be granted, that Lansing's claims be dismissed and his motion to amend his complaint be denied, and that Wells Fargo have judgment in its favor on its counterclaim. *Id*. at *16. The magistrate judge concluded that res judicata bars Lansing's loss-mitigation claims and that his other claims lack evidentiary support. *Id.* at *13, *15-16. That same day, Wells Fargo initiated this eviction proceeding, alleging Lansing was holding over the property after the redemption period expired. In May, Lansing filed a motion to stay the eviction proceedings pending the outcome of the federal case. Wells Fargo opposed the stay request and moved for summary judgment. The district court conducted a hearing.

On June 17, the federal court issued an order granting judgment on the pleadings in favor of Wells Fargo. *See Lansing v. Wells Fargo Bank, N.A.*, No. 15-CV-03530 MJD/JSM, 2016 WL 3406085, at *1 (D. Minn. June 17, 2016).[1] On July 22, the district court denied Lansing's motion to stay and granted Wells Fargo's motion for summary judgment. Lansing appeals.

D E C I S I O N

I. The district court did not abuse its discretion in denying Lansing's motion to stay the eviction proceedings.

We review a district court's denial of a request to stay eviction proceedings for abuse of discretion. *Bjorklund v. Bjorklund Trucking, Inc.*, 753 N.W.2d 312, 317 (Minn. App. 2008), *review denied* (Minn. Sept. 23, 2008). A district court abuses its discretion when it declines to stay an eviction action when there is a pending civil claim involving counterclaims and defenses necessary to a fair determination of the action. *Id*. at 318-19. But "[a] party is not entitled to a stay of an eviction proceeding merely because a related action is pending." *Fed. Home Loan Mortg. Corp. v. Nedashkovskiy*, 801 N.W.2d 190, 193 (Minn. App. 2011). Rather, a party must show a case-specific reason why denying the stay compromises his or her interests. *Id*. Even if such a showing is made, the district court has discretion to deny the stay. *Id*.

[1] The federal court also ordered judgment in favor of Wells Fargo's counterclaim. But final judgment was not entered because Wells Fargo's damages had not been determined. *Lansing*, 2016 WL 3406085, at *1.

Lansing contends that the district court should have stayed the eviction action because his federal claim was pending and involved counterclaims and defenses necessary to a fair determination of the eviction action. He further argues that a stay is necessary to protect his interest in the home, which may fall into disrepair if it is vacant. And he suggested in oral argument, without citation to legal authority, that his loss-mitigation claim either constitutes a case-specific reason or eliminates the need to make such a showing to obtain a stay. We find his arguments unpersuasive.

First, Lansing did not have a pending federal claim at the time the district court granted Wells Fargo's dispositive motion. The federal district court judge adopted the magistrate judge's recommendations in their entirety on June 17, ordering dismissal with prejudice of Lansing's claims. *Lansing*, 2016 WL 3406085, at *1. Wells Fargo notified the district court of the dismissal before the court ruled on the parties' motions. The dismissed federal action does not provide a case-specific reason to stay the eviction action.

Second, this court previously rejected the claims Lansing advanced in federal court. *See Lansing*, 2015 WL 506655, at *3. As noted in the magistrate judge's report, Lansing's federal claims arose out of the same factual circumstances addressed in the 2013 foreclosure action that this court reviewed. And Lansing's federal complaint refers to the same loan-modification argument this court rejected for a lack of evidentiary support. *See id.*

Third, Lansing's reliance on our unpublished decision in *U.S. Bank Nat'l Ass'n v. Litterer*, No. A15-0988, 2016 WL 363524 (Minn. App. Feb. 1, 2016), is misplaced. Unpublished opinions of this court are not precedential. Minn. Stat. § 480A.08, subd. 3(c)

(2016). And *Litterer* is distinguishable because it involved a pending, related civil matter in which the dismissal motion of the party seeking eviction had been denied. 2016 WL 363524, at *2. In contrast, Lansing's related civil matter was no longer pending when the eviction case came before the district court for decision. Moreover, we noted in *Litterer* that we reached our conclusions "[i]n light of the unique facts" of the case, which included demonstrable and repeated efforts to work with a lender's loss-mitigation manager, the lender's apparent failure to communicate essential information about appellants' loan-modification request, and determinations by state and federal courts "that the equities favor[ed]" appellants. *Id.* at *1-2, *4-5. The facts of Lansing's case are not analogous to *Litterer*'s unique facts; *Litterer* is not persuasive.

In sum, Lansing did not have a pending action involving counterclaims and defenses necessary to a fair determination of the eviction proceedings. And Lansing failed to state another case-specific reason to stay the eviction proceedings. On this record, we discern no abuse of discretion by the district court in denying Lansing's motion to stay the eviction proceedings.

II. Wells Fargo is entitled to summary judgment.

On appeal from summary judgment, we review de novo whether there are genuine issues of material fact and whether the district court erred in applying the law. *Dahlin v. Kroening*, 796 N.W.2d 503, 504 (Minn. 2011).

A person entitled to possess real property "may recover possession by eviction when" a person holds over the property "after the expiration of the time for redemption on foreclosure of a mortgage." Minn. Stat. § 504B.285, subd. 1(a)(1)(ii) (2016). To prevail in an eviction action based on a foreclosed mortgage, a party must show that (1) the other party remains on the real property, (2) the mortgage has been foreclosed, (3) the time for redemption has expired, and (4) the plaintiff is entitled to possession of the property. *See id.* When a foreclosure sale occurs, the sheriff's certificate is the record of sale and provides prima facie evidence that all the requirements of law have been met and that the purchaser has obtained title. *See* Minn. Stat. §§ 580.12, .19 (2016).

Lansing does not deny that he defaulted on the mortgage, that Wells Fargo purchased the property at the sheriff's sale, or that a sheriff's certificate was issued to Wells Fargo. Nor does he dispute the facts that he did not redeem the property but has continued to possess it. On this undisputed record, Wells Fargo has satisfied the statutory requirements to evict Lansing from the property and is entitled to summary judgment.

Affirmed.