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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1370**

Brandon Moore, et al.,
Respondents,

vs.

Mortgage Electronic Registrations Systems Inc., et al.,
Defendants,

May Vang,
Appellant.

**Filed April 1, 2019
Affirmed
Cleary, Chief Judge**

Ramsey County District Court
File No. 62-CV-17-2374

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LLC)

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Considered and decided by Rodenberg, Presiding Judge; Cleary, Chief Judge; and
Stauber, Judge.*

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

UNPUBLISHED OPINION

CLEARY, Chief Judge

In this quiet-title action, appellant May Vang argues that the district court erred in granting summary judgment in favor of respondents Brandon Moore and Pacific Union Financial LLC and reforming a sheriff's certificate of sale. We affirm.

FACTS

In 1986, appellant and her husband, Cherzong Vang, purchased two adjoining parcels of land in St. Paul.¹ The two parcels share a street address, 1259 Arkwright Street, St. Paul, Minnesota 55101, and a tax parcel identification number. But the two parcels have unique legal descriptions. The House Parcel is legally described as the following: "The Southerly 50 feet of the East 3/4 of Lot 17, 'J.W. Bass' Acre Lots.'" And the Pool Parcel is legally described as the following: "The South 50 feet of the West 1/4 and the North 50 feet of the South 100 feet of the West 1/2 of Lot 17, J.W. Bass' Acre Lots, Ramsey County, Minnesota."²

In December 2004, the Vangs applied for a conventional home loan in the amount of \$230,000 to refinance the property. In the application, they indicated that the address for the property was 1259 Arkwright Street, St. Paul, MN 55101, and that the "property will be primary residence." The loan application also stated that the "purpose of the refinance" was "home improvement." The Vangs subsequently granted a mortgage in

¹ Cherzong Vang is now deceased.

² Although the Pool Parcel no longer contains an actual pool, but is instead improved by a gazebo, we refer to the parcels as the "Pool Parcel" and "House Parcel" for consistency with the district court's order.

favor of Mortgage Electronic Registration Systems Inc. (MERS), as nominee for Countrywide Home Loans Inc., and the mortgage was recorded on January 19, 2005. The mortgage included the property's shared address and tax parcel identification number, but only the legal description of the Pool Parcel.

In 2009, the Vangs defaulted on the mortgage. MERS initiated foreclosure-by-advertisement proceedings against the property and issued a notice of foreclosure sale. A foreclosure sale was held on November 5, 2009, and MERS submitted the winning bid of \$97,838.80. The sheriff's certificate of sale issued to MERS mirrored the information contained in the 2005 mortgage, including the property address, tax parcel identification number, and legal description of the Pool Parcel. MERS subsequently assigned the sheriff's certificate of sale to Bank of New York Mellon, and the assignment of sheriff's certificate again included only the legal description of the Pool Parcel. After the six-month redemption period expired in May 2010, the Vangs vacated the property.

In 2011, Bank of New York Mellon conveyed the property to Mark Blom via limited warranty deed, and the deed was recorded with the Office of the Ramsey County Recorder. In January 2016, Moore signed a purchase agreement to purchase the property from Mark and Melissa Blom for \$227,000. Pacific Union Financial LLC (Pacific Union) financed Moore's purchase and secured a mortgage against the property in the amount of \$222,888. The 2011 deed, 2016 deed, and Pacific Union Mortgage also described only the Pool Parcel. The Office of the Ramsey County Recorder rejected the recording of the 2016 deed and Pacific Union mortgage because the legal description created a lot split of one tax parcel.

On April 24, 2018, respondents initiated an action for quiet title. In Count I of their complaint, respondents asserted a reformation action, seeking reformation of the 2005 mortgage, sheriff's certificate of sale, assignment of sheriff's certificate of sale, 2011 deed, 2016 deed, and Pacific Union mortgage to include the legal description of the House Parcel. Additionally, in Count II, respondents asserted a claim for "Quiet Title/Declaratory Judgment," alleging that Moore is the fee owner of the entire property, and that Pacific Union encumbers the property, free and clear of the interest of appellant and the Estate of Cherzong Vang. In the remaining counts of their complaint, respondents asserted claims for an equitable lien, equitable subrogation, and estoppel. Appellant challenged respondents' action and asserted in her answer and counterclaim that, because of the legal-description error in the 2005 mortgage, she has a right to possession of the House Parcel.

On May 3, 2018, respondents moved for summary judgment, seeking a declaration that Moore is the fee owner of the property, and that neither appellant nor the Estate of Cherzong Vang has an interest in the property. Respondents also moved for summary judgment on their claim for reformation of the 2005 mortgage and subsequent instruments conveying the property to include the legal description of the House Parcel. MERS, Countrywide Home Loans, and Bank of New York Mellon filed a letter in response to respondents' motion for summary judgment, informing the district court that they did not object to the requested relief.

The district court granted respondents' motion for summary judgment in its entirety. The district court declared that Moore is the fee owner of the property, finding that the 2005 mortgage intended to include the House Parcel. The district court found that the

subsequent conveyances stemming from the 2005 mortgage also intended to convey the House Parcel. Accordingly, the district court found that the Vangs intended to convey the House Parcel in the 2005 mortgage, and the House Parcel passed to MERS in the foreclosure sale. Because no other parties disputed that the chain of title intended to convey the House Parcel, the district court further found that Moore is the proper owner of the House Parcel. The district court concluded that the 2005 mortgage “should be reformed as a matter of equity to correct the error in the 2005 [m]ortgage’s legal description,” and that “[t]he subsequent conveyances should also be reformed to reflect this intention.” This appeal follows.

D E C I S I O N

This court “review[s] a district court’s summary judgment decision de novo. In doing so, [this court] determine[s] whether the district court properly applied the law and whether there are genuine issues of material fact that preclude summary judgment.” *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010) (citation omitted). Summary judgment must be granted “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with [any] affidavits . . . show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law.” Minn. R. Civ. P. 56.03 (2016). A genuine issue of fact exists when reasonable minds can draw different conclusions from the evidence presented. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 69 (Minn. 1997).

Appellant claims that summary judgment was not appropriate and while she does not challenge the reformation of the 2005 mortgage, she does assert that the district court

erred in reforming the sheriff's certificate of sale. She asserts that there is no evidence that the sheriff agreed to sell land other than the Pool Parcel, which was described in the notice of sale, and the House Parcel did not pass in the foreclosure sale. She further argues that the notice of sale failed to include the House Parcel, and its inclusion violates Minn. Stat. § 580.04(a)(4) (2018). Additionally, appellant contends that MERS could have sold less than the full amount of the land mortgaged to satisfy the debt.

As a threshold issue, a sheriff's certificate of sale may be reformed. *Everson v. De Schepper*, 195 N.W. 927, 927 (Minn. 1923); *Nw. Mut. Life Ins. Co. v. Murphy*, 114 N.W. 360, 361 (Minn. 1908). Acquiring property at a foreclosure sale is in the nature of acquiring that land by contract. *See Everson*, 195 N.W. at 928 (describing the process of bidding at a foreclosure sale using the words “offer,” “contract,” “mutual assent,” “contractual operation,” “meeting of the minds,” and “a complete contract of sale”). And “[r]eformation is an equitable remedy that is available when a party seeks to alter or amend language in a contract so that the contract reflects the parties’ true intent when they entered into the contract.” *SCI Minn. Funeral Servs., Inc. v. Washburn-McReavy Funeral Corp.*, 795 N.W.2d 855, 864 (Minn. 2011). Reformation of a contract is appropriate when

(1) there was a valid agreement between the parties expressing their real intentions; (2) the written instrument failed to express the real intentions of the parties; and (3) this failure was due to a mutual mistake of the parties, or a unilateral mistake accompanied by fraud or inequitable conduct by the other party.

Id. at 865 (quotation omitted). Provided the elements for reformation have been established by “evidence which is clear and consistent, unequivocal and convincing,” the sheriff’s certificate may be reformed. *Id.*

Citing the language of the sheriff’s certificate of sale, appellant maintains that there is no evidence that the Ramsey County Sheriff intended to sell the House Parcel, in addition to the Pool Parcel, at the sale in November 2009. While the sheriff or deputy sheriff must conduct the sale, Minn. Stat. § 580.06 (2018), the sheriff or deputy sheriff must be directed by the holder of the power of sale in order to do so. “[T]he sale must be made by the sheriff . . . who, in his capacity as auctioneer, is not the agent of either of the parties in making the sale, but the agent of the law to secure a fair sale.” *Klotz v. Jeddeloh*, 276 N.W. 244, 245 (Minn. 1937) (quotation omitted). The sheriff’s intent is therefore inapplicable; instead, the relevant intent belongs to MERS as the acting holder of the power of sale for the 2005 mortgage. And the district court found that MERS agreed that the sheriff’s certificate contained only the legal description of the Pool Parcel due to a scrivener’s error. Given that MERS intended to foreclose on both the House Parcel and Pool Parcel, appellant’s argument that the sheriff intended otherwise is unpersuasive.

Appellant next asserts that the notice of foreclosure sale failed to comply with Minn. Stat. § 580.04(a)(4) because it did not contain the legal description of the House Parcel. In a foreclosure by advertisement, a notice of foreclosure sale must contain, among other things, “a description of the mortgaged premises, conforming substantially to that contained in the mortgage, and the commonly used street address of the mortgaged premises.” Minn. Stat. § 580.04(a)(4). Here, the notice of foreclosure sale contained the

legal description of the Pool Parcel and the shared street address for the two parcels. The 2005 mortgage, as unreformed, also contained only the legal description of the Pool Parcel. At the time of the sheriff's sale, the notice of foreclosure substantially conformed to the mortgage in compliance with Minn. Stat. § 580.04(a)(4).

Appellant further asserts that the foreclosure sale could have sold less than the full amount of the land mortgaged. In support of her argument, appellant cites Minn. Stat. § 580.08 (2018) as analogous authority. Minn. Stat. § 580.08 applies to separate tracts of land or farms and requires that they be sold separately. *See Hunter v. Anchor Bank, N.A.*, 842 N.W.2d 10, 13, 17 (Minn. App. 2013) (concluding that a foreclosure sale was void because two separate mortgaged properties were sold in one foreclosure sale in violation of Minn. Stat. § 580.08), *review denied* (Minn. Mar. 18, 2014). But in this case, the property at issue shares a street address and tax parcel identification number. The Office of the Ramsey County Recorder also rejected the Pacific Union mortgage and 2016 deed because the legal description, describing solely the Pool Parcel, created an improper lot split. Because the parcels were required to be sold together to avoid lot-split issues, Minn. Stat. § 580.08 does not support appellant's contention that the parcels could have been sold separately.

The district court appropriately reformed the 2005 mortgage to reflect the parties' intent to include the House Parcel in the mortgage. On their loan application for the 2005 mortgage, the Vangs indicated that they applied for a conventional loan to refinance their property. The Vangs identified the "subject property address" as the full address of the property—an address that applies to the House Parcel. Moreover, the Vangs stated that the

“property will be primary residence,” and they identified the “purpose of refinance” as “home improvement.” Given these facts, the district court determined that the parties to the 2005 mortgage intended to include the House Parcel in the instrument and reformed the 2005 mortgage to reflect that objective.

The sheriff’s certificate of sale mirrored that same intention. Following the foreclosure sale, the legal description contained in the sheriff’s certificate of sale conformed to the legal description contained in the 2005 mortgage. There is nothing in the record to suggest that the parties intended to foreclose on less than the full amount of the property mortgaged. Because there is no genuine issue of material fact and respondents are entitled to judgment as a matter of law, the district court did not err in granting respondents’ motion for summary judgment.

Affirmed.