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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0813**

First Minnesota Bank, f/k/a First Minnesota Bank, N. A.,
Appellant,

vs.

Overby Development, Inc., et al.,
Respondents,

Great Woods Cabinetry, Inc., et al.,
Defendants.

**Filed March 24, 2009
Affirmed in part, reversed in part, and remanded
Shumaker, Judge**

Cass County District Court
File No. 11-CV-07-548

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Considered and decided by Shumaker, Presiding Judge; Stoneburner, Judge; and
Collins, Judge.*

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

UNPUBLISHED OPINION

SHUMAKER, Judge

In this mortgage-foreclosure action, the mortgagee challenges the district court's determination that an overbid at the sheriff's sale by the mortgagee satisfied the judgment awarded the mortgagee and produced a surplus to which the mortgagor was entitled. We affirm in part, reverse in part, and remand.

FACTS

The principal question in this appeal is: Who is entitled to the amount of a mortgagee's overbid in a mortgage-foreclosure sale?

Respondent Overby Development, Inc. borrowed \$3,600,000 from appellant First Minnesota Bank; promised in a note to repay that sum with interest; and gave to the bank a mortgage against several parcels of real estate that Overby owned to secure the loan.

Overby defaulted, and the bank brought an action to foreclose the mortgage. After issue was joined, the bank moved for summary judgment. Overby opposed the motion.

The district court granted the bank's motion, awarded judgment against Overby in the sum of \$3,396,051.37, consisting of the outstanding principal amount of the loan, interest, fees and costs; granted a judgment of foreclosure; and ordered the sale of the encumbered real estate at public auction. The parties agreed to exclude from the summary judgment and the foreclosure two parcels as to which sales were pending.

The sheriff held a public auction sale. The bank was the sole bidder, and it bid a sum that was \$274,898.32 in excess of the summary-judgment award. The bank's bid

was greater than the judgment amount because the bank included all sums allegedly due on the mortgage and viewed the summary judgment only as a partial judgment.

The bank moved to confirm the sale. A dispute arose as to which party is entitled to the amount of the overbid and as to whether the judgment against Overby was satisfied by the foreclosure sale. The bank contended that a portion of the mortgage amount was still outstanding and that the judgment was not the equivalent of the mortgage debt. Overby argued that the judgment against it was satisfied by the foreclosure sale and that the overbid was a surplus amount to which it is entitled.

The district court ruled that Overby is entitled to the amount of the overbid and to a satisfaction of the judgment against it. Contending that both rulings are errors of law, the bank appealed.

DECISION

In its principal brief on appeal, the bank states that it “appeals only the trial court’s application of Minnesota law to the facts at hand [and] this Court reviews the Order at issue under a de novo standard of review” In its brief, Overby acknowledges that the bank has “set forth the proper standard of review.” We review issues of law de novo. *Ill. Farmers Ins. Co. v. Glass Serv. Co.*, 683 N.W.2d 792, 803 (Minn. 2004)

The district court found that “Minn. Stat. § 582.30 is the controlling statute in this case.” That section deals with deficiency judgments after mortgage-foreclosure sales. It provides, in part, that a mortgagee may obtain a deficiency judgment against a mortgagor if the amount that the mortgagor receives from a foreclosure sale is less than the amount remaining on the mortgage under chapter 580 (pertaining to mortgage sales by

advertisement) or the amount of a judgment entered under chapter 581 (pertaining to foreclosures by action). Minn. Stat. § 582.30, subd. 1(1), (2) (2008). Applying section 582.30, the court held that the bank's overbid necessarily extinguished the judgment against Overby and that, because there was an overage rather than a deficiency, Overby is entitled to the surplus.

The bank argues that the court erred in its application of section 582.30 because the disjunctive language of the statute allows the mortgagee to obtain a deficiency judgment if, after a foreclosure sale, there is an amount yet unpaid on the mortgage or on a judgment against the mortgagor. The bank misreads the statute, the language of which is clear. *ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412, 419 (Minn. 2005) (“When a statute’s meaning is plain from its language . . . a judicial construction is not necessary.”). The question with which that section deals is how to determine whether there is a deficiency after a foreclosure sale. To make that determination, there first needs to be an amount of indebtedness against which to measure the foreclosure-sale amount. The amount of indebtedness depends on what type of sale occurred. If it was a sale by advertisement under chapter 580, the indebtedness is the outstanding amount of the mortgage. There is no other sum against which the sale amount could be measured. On the other hand, if the mortgagee foreclosed by action, the lawsuit, if successful, would result in a judgment in the amount of the outstanding indebtedness. Very likely this will be the same sum as that still owing on the mortgage, but under section 582.30, the reference for purposes of ascertaining a deficiency is no longer the amount remaining unpaid on the mortgage but rather the amount of the judgment. The bank’s argument that

the court is to use the sum of the outstanding mortgage debt if it is greater than the judgment amount is incorrect. The disjunctive language of the statute simply reflects the type of foreclosure that occurred. The foreclosure here, having occurred through action, is controlled by chapter 581.

The district court found that, because the foreclosure-sale amount exceeded the judgment, the judgment necessarily was satisfied. We agree. The bank sought a judgment in a particular amount and sought to foreclose its mortgage on certain real estate to satisfy that judgment. The foreclosure sale produced an amount sufficient to fully satisfy the judgment that was the entire basis of the action. That there still might be sums owing under the mortgage on parcels excepted from the action is not relevant to the dispositive issues here. The court did not err in concluding that the bank's judgment against Overby is deemed satisfied.

Because the bank sought and obtained a judgment in its foreclosure action and because the sale produced an amount at least equivalent to the judgment sum, there was not, and could not be, a deficiency on the judgment. Instead the sale produced a surplus.

Minn. Stat. § 581.06 (2008) provides that in a "cash" sale, any sums remaining "after satisfying the "mortgage debt . . . shall be brought into court for the benefit of the mortgagor or the person entitled thereto, subject to the order of the court."

The court held that the sale here was the equivalent of a cash sale. The bank takes issue with that holding, and further points to the language in section 581.06 that refers to the satisfaction of the "mortgage debt." The bank contends that the mortgage debt has not been satisfied, so there was no surplus. The bank argues that it bid the entire

“mortgage debt” at the sale and thereby exceeded the allegedly partial summary judgment.

We reject the bank’s argument that its bid did not constitute a “cash” sale. Minn. Stat. § 581.05 (2008) permits a mortgagee to “bid off the premises” at the sale in a foreclosure by action and that such bid “shall have the same effect as a receipt for money paid upon a sale for cash.” The bank argues that the term “cash” in section 581.06 literally means cash and that nothing other than cash can produce a surplus. The logical effect of a cash sale in a mortgage foreclosure is the transfer of the sale amount to the mortgagee. When the mortgagee bids at its own foreclosure sale, a requirement that it pay cash only to have the payment returned is illogical and cannot be what the statute intends. Minn. Stat. § 645.17 (1) (2008) (allowing courts to presume the “legislature does not intend a result that is absurd, impossible of execution, or unreasonable”). Thus, when the mortgagee bids, the bid is treated as if it were a cash sale. The district court concluded that this was the equivalent of a cash sale and, under section 581.06, the court’s conclusion was not error. The bank’s bid had the effect of a cash sale and its overbid produced a surplus when measured against the judgment against Overby.

Section 581.06 refers to the “mortgage debt” rather than the “judgment.” Other sections in chapter 581 refer to the “judgment.” *See* Minn. Stat. §§ 581.03 (stating that a “judgment shall be entered” and that a “certified transcript of the judgment shall be delivered to the sheriff”); .07 (2008) (referring to situations before and after the “judgment of sale” where a debtor redeems; but after a “judgment of sale” a “court shall enter judgment of foreclosure and sale” enforceable upon subsequent default);

.09 (instructing court administrator to enter “satisfaction of judgment” upon confirmation of sale unless a deficiency is allowed under section 582.30); .12 (2008) (allowing “[j]udgment for the strict foreclosure of a mortgage”). The bank contends that the use of the term “mortgage debt” is an acknowledgment that a judgment is not necessarily the equivalent of the entire outstanding mortgage debt. It is not apparent why the legislature chose “mortgage debt” over “judgment debt” in a chapter that specifically deals with judgments in mortgage-foreclosure actions. Furthermore, neither party has persuasively addressed the issue. The court and Overby intimate that the bank’s overbid might have been done in error. The bank suggests that the overbid was intentional. We are not convinced that the court accurately applied section 581.06 to achieve a just result. Minn. Stat. § 581.08 (2008) provides that the court need not confirm a sale if “justice has not been done” and may order a resale. Neither party seeks a resale, and there seems to be no basis for a resale. But it is not clear why or how the overbid amount, although technically a “surplus,” belongs to Overby. It is possible that the term “mortgage debt” in section 581.06 means precisely that. Furthermore, under that section, a surplus is not automatically payable to the mortgagor but is to be deposited with the court “for the benefit of the mortgagor *or* the person entitled thereto.” Minn. Stat. § 581.06 (emphasis added). We conclude that the district court erred in its strict application of section 581.06 and hold that to ensure that justice has been done in this foreclosure sale, this issue must be remanded for further proceedings as the district court deems appropriate.

Affirmed in part, reversed in part, and remanded.