STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1875
A08-2195

Minnwest Bank, M.V.,
Respondent,

vs.

Orville Molenaar,
Appellant,

Elaine Molenaar,
Defendant (A08-1875).

Filed October 6, 2009
Affirmed
Johnson, Judge

Renville County District Court
File Nos. 65-C4-03-000883, 65-C4-93-000010,
65-CV-05-68, 65-CV-06-150

C. Thomas Wilson, Sara N. Wilson, Gislason & Hunter, LLP, 2700 South Broadway, P.O. Box 458, New Ulm, MN 56073-0458 (for respondent)

John E. Mack, Mack & Daby, P.A., 26 Main Street, P.O. Box 302, New London, MN 56273 (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Johnson, Judge; and Harten, Judge.*

*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

JOHNSON, Judge

Orville and Elaine Molenaar appeal from two decisions arising out of the efforts of Minnwest Bank, M.V., to obtain repayment of an unsecured loan by receiving an interest in agricultural land in lieu of cash. In the first case, the district court confirmed a partition by sale of the property, which Minnwest and the Molenaars presently own as tenants in common. We conclude that the Molenaars may not oppose confirmation of the partition sale by enforcing the provisions of Minn. Stat. § 500.24, subd. 3 (2008), which restricts a corporation's right to acquire and own agricultural property, because only the attorney general may do so. In the second case, the district court ruled that the Molenaars do not have a statutory right of first refusal pursuant to Minn. Stat. § 500.245, subd. 1 (2008), when Minnwest sells the property. We conclude that the district court properly determined that the statute does not apply because Minnwest did not acquire the property by enforcing a security interest. Therefore, we affirm.

FACTS

The Molenaars and Bradley and Kristen Myers owned real property in Renville County as tenants in common between 1986 and 2003. When they acquired the property, the Molenaars and the Myerses formed a partnership for the purpose of conducting a livestock operation on the property. Between 1995 and 2002, the Myerses maintained a line of credit of approximately $1 million with Minnwest Bank. In March 2002, the Myerses defaulted on their repayment obligations. In May 2003, pursuant to a mediated settlement agreement, the Myerses deeded their undivided one-half interest in the

property to Minnwest, which caused Minnwest and the Molenaars to become tenants in common. Minnwest did not have a mortgage or other security interest on the property.

Shortly after Minnwest acquired the Myerses' interest in the property, Minnwest negotiated with the Molenaars to sell them Minnwest's interest. The negotiations failed. In October 2003, Minnwest commenced a partition action against the Molenaars so that Minnwest could obtain sole ownership of the property and then divest itself of its interest. In defense of the action, the Molenaars argued that partition of the property would violate section 500.24, and Minnwest argued, among other things, that the Molenaars, as private parties, may not enforce the provisions of section 500.24. In July 2004, the district court granted partial summary judgment to Minnwest, rejecting the Molenaars's argument on the ground that section 500.24 does not create a private right of enforcement. The district court ordered partition of the property and deferred for trial the question whether the partition should be by sale or in kind.

Following trial, the district court ordered partition of the property by sale. The Molenaars appealed that order, arguing that a partition by sale would be inequitable because Minnwest's prior acquisition of its interest in the property violated section 500.24. This court concluded that the district court did not abuse its discretion by rejecting the Molenaars's equitable argument. *Minnwest Bank, M.V. v. Molenaar*, 2006 WL 1390323, *2 (Minn. App. 2006) (citing Minn. Stat. § 500.24, subd. 2(x) (2004)), *review denied* (Minn. Aug. 15, 2006). We also noted that the district court had not yet determined whether Minnwest's acquisition of the property was within an exception to the statute. *Id.*

At the August 2006 partition sale, the Molenaars agreed to purchase the property from Minnwest. In September 2006, the district court confirmed the partition sale and ordered the Molenaars to pay the purchase price within 30 days of the hearing. In November 2006, because the purchase price had not been paid, Minnwest moved to vacate the sale to the Molenaars. The district court granted Minnwest's motion to vacate the sale and ordered another sale. The district court also rejected an argument by the Molenaars that the sale would violate section 500.24 on the ground that the issue was not ripe. At the second partition sale on April 26, 2007, Minnwest purchased the property. The district court confirmed the second partition sale one year later. In doing so, the district court reasoned that Minnwest's "ownership of the land is lawful pursuant to" Minn. Stat. § 500.24, subds. 2(x), 3.

In June 2008, Minnwest commenced a separate action against the Molenaars to void mechanic's liens that had been filed against the property. The Molenaars counterclaimed, seeking a declaratory judgment that, before selling the property to a third party, Minnwest is required to give the Molenaars an opportunity to purchase the property on the same terms because, they assert, they have a right of first refusal pursuant to Minn. Stat. § 500.245 (2008). In October 2008, the district court denied the Molenaars's request for a declaratory judgment and entered judgment against the Molenaars on their counterclaim.

The Molenaars appeal from both the judgment entered on the April 2008 order and the judgment entered on the October 2008 order. We consolidated the two appeals.

D E C I S I O N

I. Private Right of Enforcement

The Molenaars first argue that the district court erred by confirming the partition sale because Minnwest's acquisition of the property would violate section 500.24, subdivision 3. We apply a *de novo* standard of review to the district court's interpretation of the statute. *Goldman v. Greenwood*, 748 N.W.2d 279, 282 (Minn. 2008).

The statute on which the Molenaars rely provides: "No corporation . . . shall engage in farming; nor shall any corporation . . . , directly or indirectly, own, acquire, or otherwise obtain any interest, in agricultural land other than a bona fide encumbrance taken for purposes of security." Minn. Stat. § 500.24, subd. 3(a). The statute contains several exceptions, including an exception for "agricultural land acquired by a corporation . . . by process of law in the collection of debts," so long as the land "is disposed of within five years after acquiring the title." *Id.*, subd. 2(x) (2008). The district court concluded that Minnwest's acquisition of its interest in the property is within the exception in subdivision 2(x).

We first address Minnwest's argument that the Molenaars, as private parties, may not enforce the provisions of section 500.24 as a means of defeating confirmation of the partition sale. In a subdivision entitled "Enforcement," the statute provides:

> With reason to believe that a corporation . . . is violating subdivision 3, the attorney general shall commence an action in the district court in which any agricultural lands relative to such violation are situated . . . . In addition, any prospective or threatened violation may be enjoined by an action brought by the attorney general in the manner provided by law.

Id., subd. 5 (2008). Minnwest contends that the attorney general is the only person who may enforce section 500.24, subdivision 3, and, thus, the Molenaars do not have a private right of enforcement.

The courts do not recognize a private cause of action that does not exist at common law unless the legislature has provided for such an action, either in a statute's express terms or by clear implication. *Becker v. Mayo Found.*, 737 N.W.2d 200, 207 (Minn. 2007); *Toth v. Arason*, 722 N.W.2d 437, 442 (Minn. 2006); *Bruegger v. Faribault County Sheriff's Dept.*, 497 N.W.2d 260, 262 (Minn. 1993). This court considers three factors to determine whether a cause of action may be implied from a statute: "(1) whether the plaintiff belongs to the class for whose benefit the statute was enacted; (2) whether the legislature indicated an intent to create or deny a remedy; and (3) whether implying a remedy would be consistent with the underlying purposes of the legislative enactment." *Mutual Serv. Cas. Ins. Co. v. Midway Massage, Inc.*, 695 N.W.2d 138, 142 (Minn. App. 2005), *review denied* (Minn. June 14, 2005); *see also Becker*, 737 N.W.2d at 207 n.4. We will imply a private cause of action only if all three factors are satisfied. *Dicks v. Minnesota Dept. of Admin.*, 627 N.W.2d 334, 336 (Minn. App. 2001). The party seeking to invoke the statute bears the burden of establishing that a statute implies a private cause of action. *See Mutual Serv. Cas. Ins. Co.*, 695 N.W.2d at 143.

The Molenaars seek to rely on section 500.24, subdivision 3, not as a plaintiff alleging a cause of action but, rather, as a defendant alleging an affirmative defense. We are not aware of any caselaw specifically intended to determine whether a defendant may rely on a statute as the basis of an affirmative defense. In the absence of such caselaw,

we will apply the above-described caselaw concerning whether a plaintiff may allege a cause of action. Because section 500.24, subdivision 3, does not expressly provide for a private right of enforcement, we must determine whether such a right may be implied by considering the three-factor test developed in our caselaw.

A. Class Benefited by Statute

The first factor asks whether the plaintiff belongs to the class for whose benefit the statute was enacted. *Id.* at 142. The statute itself states that it is intended to protect and promote the "family farm." Minn. Stat. § 500.24, subd. 1 (2008). The term "family farm" is defined as "an unincorporated farming unit owned by one or more persons residing on the farm or actively engaging in farming," *Id.*, subd. 2(b) (2008), and "farming" is defined as "the production of . . . livestock or livestock products," not including "the feeding and caring for livestock that are delivered to a corporation for slaughter or processing for up to 20 days before slaughter or processing," *id.*, subd. 2(a) (2008).

The Molenaars and the Myerses have used the property as a cattle-feeding facility. At the time of the district court proceedings, the property could accommodate 900 head of feeder cattle and was actively used as a cattle feedlot, even though a portion of the lot is tillable. The record does not indicate whether the cattle fed on the property were "delivered to a corporation for slaughter or processing for up to 20 days before slaughter or processing." *Id.* In the absence of such evidence, it appears that the Molenaars operated the property as an "unincorporated farming unit" while "actively engaging in

farming" in the form of "the production of . . . livestock." *Id.*, subd. 2(a)-(b). Thus, the Molenaars have satisfied the first factor.

B. Intent to Create Remedy

The second factor asks whether the legislature "indicated an intent to create or deny a private remedy." *Alliance for Metro. Stability v. Metropolitan Council*, 671 N.W.2d 905, 916 (Minn. App. 2003); *see also Mutual Serv. Cas. Ins. Co.*, 695 N.W.2d at 142. The delegation of enforcement to a governmental authority "indicates intent to exclude private enforcement." *Id.*; *see also Mutual Serv. Cas. Ins. Co.*, 695 N.W.2d at 143. Section 500.24, subdivision 5 expressly delegates enforcement authority to the attorney general. This express delegation indicates that the legislature did not intend to create a private remedy. *See Alliance for Metro. Stability*, 671 N.W.2d at 916-17; *Mutual Serv. Cas. Ins. Co.*, 695 N.W.2d at 143. Thus, the Molenaars have not satisfied the second factor.

C. Legislative Purposes

The third factor asks whether implying a remedy would be consistent with the underlying purposes of the legislative enactment. *Mutual Serv. Cas. Ins. Co.*, 695 N.W.2d at 142. The legislature's express purpose in enacting the statute was to "encourage and protect the family farm as a basic economic unit, to insure it as the most socially desirable mode of agricultural production, and to enhance and promote the stability and well-being of rural society in Minnesota and the nuclear family." Minn. Stat. § 500.24, subd. 1. The statute, however, permits corporate acquisition of

agricultural land for certain purposes, such as the collection of a debt. *See id.*, subds. 2(x), 3(a).

It is unclear whether implying a private right of action in this case would promote the purpose of the statute. The district court record does not indicate the identity of any person who might purchase the property and whether that person would conduct a farming operation on the land. The record also does not indicate whether permitting the Molenaars to enforce the statute would "enhance and promote the stability and well-being of rural society in Minnesota and the nuclear family." *Id.*, subd. 1. There is no apparent reason why either the Molenaars or the attorney general would be better suited to promote the purposes of the statute. Thus, the Molenaars have not satisfied the third factor.

In sum, the Molenaars have failed to establish all three factors. Accordingly, they may not enforce the provisions of section 500.24, subdivision 3, to oppose confirmation of the partition sale. *See Mutual Serv. Cas. Ins. Co.*, 695 N.W.2d at 142; *Dicks*, 627 N.W.2d at 336.

II. Statutory Right of First Refusal

The Molenaars also argue that the district court erred by ruling that they are not entitled by statute to a right of first refusal in connection with a future sale of the property by Minnwest. We apply a *de novo* standard of review to the district court's interpretation of the statute. *Goldman*, 748 N.W.2d at 282.

The statute on which the Molenaars rely provides that a "corporation . . . may not lease or sell agricultural land or a farm homestead before offering or making a good faith

effort to offer the land for sale or lease to the immediately preceding former owner at a price no higher than the highest price offered by a third party that is acceptable to the seller or lessor." Minn. Stat. § 500.245, subd. 1(a). The district court concluded that the Molenaars did not have a right of first refusal under this statute because Minnwest's prior acquisition of the property is within an exception that provides:

> This subdivision applies only to a sale . . . when the seller or lessor acquired the property by enforcing a debt against the agricultural land . . . including foreclosure of a mortgage, accepting a deed in lieu of foreclosure, terminating a contract for deed, or accepting a deed in lieu of terminating a contract for deed.

Id.

For purposes of this case, the key word in the exception is "against." It has long been common to use the word "against," with reference to real or personal property, to indicate the existence of a security interest in the property. *See, e.g., Moyer v. International State Bank*, 404 N.W.2d 274, 277 (Minn. 1987) (discussing "lien against . . . property that can be foreclosed"); *Structural Plastics Corp. v. Walsh*, 281 Minn. 362, 367, 161 N.W.2d 639, 643 (1968) (discussing "lien against the property"); *Bradley v. Bradley*, 554 N.W.2d 761, 765 (Minn. App. 1996) (discussing "foreclosure of respondent's equitable lien against appellant's interest in the property"), *review denied* (Minn. Dec. 23, 1996). When the legislature enacts a statute, it is presumed to have done so with full knowledge of existing caselaw. *See Goodyear Tire & Rubber Co. v. Dynamic Air, Inc*., 702 N.W.2d 237, 244 (Minn. 2005); *State v. Fleming*, 724 N.W.2d 537, 540 (Minn. App. 2006). The statute provides examples of enforcing a debt against

agricultural land that are consistent with the caselaw in that they reflect the existence and enforcement of a security interest in property. Furthermore, in each of the prior cases concerning this statute, the corporation acquired title to the property by enforcing a security interest. *See Lilyerd v. Carlson*, 499 N.W.2d 803, 810 (Minn. 1993); *Crowell v. Delafield Farmers Mut. Fire Ins. Co.*, 463 N.W.2d 737, 737-38 (Minn. 1990); *Harbal v. Federal Land Bank*, 449 N.W.2d 442, 444-45 (Minn. App. 1989), *review denied* (Minn. Feb. 21, 1990); *Travelers Ins. Co. v. Tufte*, 435 N.W.2d 824, 826-27 (Minn. App. 1989), *review denied* (Minn. Apr. 19, 1989). For these reasons, we interpret the statute to provide that a corporation "acquire[s] the property by enforcing a debt *against* the agricultural land," Minn. Stat. § 500.245, subd. 1(a) (emphasis added), when it has a security interest in the land and enforces the security interest.

The district court found that Minnwest did not have a mortgage on the property. Indeed, the Molenaars concede that Minnwest "did not have an encumbrance on the land, much less one taken for purposes of security." In the absence of such a security interest, Minnwest did not "acquire[] the property by enforcing a debt against the . . . land." *See id*. Thus, the district court did not err by concluding that section 500.245, subdivision 1, is inapplicable and that the Molenaars do not have a statutory right of first refusal.

Minnwest also argues that the Molenaars are not entitled to a statutory right of first refusal because they are not the "immediately preceding former owner[s]" of the property. *See id.*; *see also Lilyerd*, 499 N.W.2d at 809-10. Because we have resolved

this issue on other grounds, we need not determine whether the Molenaars are the "immediately preceding former owner[s]." Minn. Stat. § 500.245, subd. 1(a).

Affirmed.