

# In the United States Bankruptcy Court

for the Northern District of Iowa

Western Division

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CRAIG HEMMINGSEN

*Debtor(s).*

Bankruptcy No. 97-01536S

Chapter 12

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CRAIG HEMMINGSEN

*Plaintiff(s)*

Adversary No. 97-9117S

vs.

Farm Service Agency

*Defendant(s)*

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## MOTION FOR SUMMARY JUDGMENT

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The matter before the court is the motion filed by the United States, on behalf of the Farm Service Agency, for summary judgment on the debtor's claim under 11 U.S.C. § 548(a). Hearing was held January 28, 1998. Donald H. Molstad appeared for Debtor-Plaintiff Craig Hemmingsen. Donna Webb, Assistant United States Attorney, appeared for Defendant United States (FSA).

The parties have set out facts relevant to this adversary proceeding in their Joint Pretrial Statement. Docket No. 12, Admitted or Uncontested Facts. The court finds and concludes that there is no genuine issue of material fact and that the matter is ripe for summary judgment. Fed.R.Bankr.P. 7056, Fed.R.Civ.P. 56(c).

Debtor Craig Hemmingsen filed a Chapter 12 petition on May 20, 1997. Prior to filing, he was the owner of property in Akron, Iowa. The property was subject to a first mortgage held by First Federal Savings Bank, and a second mortgage to FSA. On May 19, 1995, the Bank filed a petition in the Iowa District Court for Plymouth County to foreclose its mortgage. Hemmingsen and FSA were named as defendants in the state court action. FSA did not crossclaim for foreclosure of its mortgage. The judgment and decree of foreclosure was entered September 5, 1995. On November 14, 1995, the Bank purchased the property for \$19,476.61 at sheriff's sale on special execution.

Under the terms of the foreclosure decree, Hemmingsen had the right to redeem the property for a period of six months after the date of sale. Uncontested Facts ¶ 7. FSA had a one year redemption period pursuant to 28 U.S.C. § 2410(c). On October 21, 1996, FSA filed a notice of redemption and deposited \$21,000 with the Plymouth County clerk of court. FSA filed an affidavit with the redemption notice stating that Hemmingsen's debt as of June 14, 1995 was \$186,260.56, and that FSA would credit Hemmingsen's note in the amount of \$71,000. [\(1\)](#) Uncontested Facts ¶ 12. FSA received a sheriff's deed dated October 23, 1996.

On November 13, 1996, Hemmingsen filed a notice of redemption and deposited the sum of \$21,000 with the Plymouth County clerk of court. On February 4, 1997, Judge Michael S. Walsh ruled in the Plymouth County

equity action that Hemmingsen had not made a valid redemption. FSA was the holder of the certificate. After the hearing on the matter before this court, the parties provided the court with a copy of Judge Walsh's decision. Judge Walsh stated that Hemmingsen would have had to tender an additional \$71,000 in order to redeem. Judge Walsh implicitly assumed for purposes of the decision that Hemmingsen had the right to redeem from FSA. It was not necessary for him to decide the issue.

### Discussion

On June 16, 1997, Hemmingsen brought this action to avoid FSA's redemption as a fraudulent transfer under 11 U.S.C.

§ 548(a). Section 548(a) provides:

The trustee may avoid any transfer of an interest of the debtor in property ... that was made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily

...

(2)(A) received less than a reasonably equivalent value in exchange for such transfer ... and

(B)(i) was insolvent on the date that such transfer was made ....

11 U.S.C. § 548(a)(2). A Chapter 12 debtor in possession has the avoidance powers of a trustee. 11 U.S.C. § 1203. Hemmingsen claims that the price paid by FSA to redeem was less than a "reasonably equivalent value" in relation to the value of the property FSA received.

On January 7, 1998, FSA filed a motion for summary judgment on the ground that Hemmingsen, as a matter of law, cannot prove that FSA gave less than reasonably equivalent value by virtue of its redemption. FSA relies upon the United States Supreme Court's decision in BFP v. Resolution Trust Corp., 511 U.S. 531, 114 S.Ct. 1757 (1994). Doc. 15, Brief at 4. The Court held in BFP that the price paid for property at a regularly conducted, noncollusive real estate mortgage foreclosure sale is the value of the property as a matter of law for purposes of 11 U.S.C. § 548(a). 114 S.Ct. at 1765. FSA notes that Hemmingsen has not alleged any irregularity in the foreclosure sale. Brief at 4. He could not have challenged the Bank's purchase of the property as a fraudulent transfer. FSA argues that the amount it credited against its lien, a sum considerably greater than the sale purchase price, was *a fortiori* equivalent to the value of the property.

The court concludes that the motion for summary judgment should be granted for two reasons. First, by redeeming, FSA did not effect a "transfer of an interest of the debtor in property" for purposes of § 548(a). Second, by application of BFP, a creditor's redemption in compliance with state law should not be avoided as a fraudulent transfer under 11 U.S.C. § 548(a).

A "transfer" means--

every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of

or parting with property or with an interest in property, including retention of title as a security interest and the foreclosure of the debtor's equity of redemption.

11 U.S.C. § 101(54). Although the definition of "transfer" is a matter of federal law, the definition refers to interests in property which are determined under state law. Barnhill v. Johnson, 503 U.S. 393, 112 S.Ct. 1386, 1389 (1992).

During Hemmingsen's six-month redemption period, the Bank held a lien on the property. Sayre v. Vander Voort, 200 Iowa 990, 205 N.W. 760, 762 (1925). Hemmingsen's right of possession continued for the term of the redemption period. Iowa Code § 628.3; Starits v. Avery, 204 Iowa 401, 213 N.W. 769, 771 (1927).

After Hemmingsen's redemption period expired sometime in May 1996, the Bank held equitable title to the property. A sale purchaser's interest ripens into the right to receive the deed solely by the passage of time. In re Smith, 9 F.Supp. 277, 278 (S.D. Iowa 1934), aff'd, 78 F.2d 533 (8th Cir. 1935). The Bank held the right to receive the deed, subject to FSA's right to acquire it.

Hemmingsen did not acquire any additional right in the property by virtue of FSA's longer redemption period. Hemmingsen did not have a right to redeem from FSA. Statutory redemption after foreclosure does not exist under federal law. United States v. Victory Highway Village, Inc., 662 F.2d 488, 498 (8th Cir. 1981). The purpose of 28 U.S.C. § 2410 is to waive sovereign immunity in proceedings to foreclose a mortgage on property against which the government also holds a lien. United States v. Brosnan, 363 U.S. 237, 80 S.Ct. 1108, 1114 (1960). Section 2410 does not treat a debtor's rights. Except as otherwise provided there, state law governs the procedure and substantive law of foreclosure and redemption. See 28 U.S.C. § 2410(c) ("A judgment or decree in such action or suit shall have the same effect respecting the discharge of the property from the mortgage or other lien held by the United States as may be provided with respect to such matters by the local law of the place where the court is situated."); United States v. Brosnan, 80 S.Ct. at 1111, 1114 (state law governed divestiture of federal tax lien except to extent Congress entered the field; § 2410 not intended to exclude state procedures).

By exercising its statutory right of redemption, FSA acquired the Bank's interest in the property. The procedure involved two steps: the purchase of the certificate for \$21,000 and the credit of \$71,000 against its lien. The court understands Hemmingsen's claim as a challenge to the \$71,000 amount FSA credited against its lien pursuant to Iowa Code § 628.19, rather than the \$21,000 amount required to purchase the certificate. The latter amount is fixed by statute. 28 U.S.C. § 2410(d); Iowa Code § 628.11. The former involves some discretion by the creditor. A redeeming creditor filing an affidavit under § 628.19 "must state the utmost amount the lienholder is willing to credit the debtor with."

FSA acquired its interest in the property by purchasing the certificate from the Bank for \$21,000. See 28 U.S.C. § 2410(d) (when the United States redeems, "the amount to be paid for such property" is "the actual amount paid by the purchaser at such sale" and interest); Iowa Code § 628.11 (the terms of redemption by a creditor shall be the amount paid or bid by the certificate holder including costs plus interest).

The Iowa Supreme Court has stated that the giving of the deed after the debtor's redemption period has expired does not take a property interest away from the debtor or give the sale purchaser an additional interest, Conner v. Long, 63 Iowa 295, 19 N.W. 221, 223 (1884), and that the deed is only evidence of the passing of title. Smith, 9 F.Supp. at 278; cf. Iowa Code § 626.97 (sale and certificate are canceled if the holder takes no action to obtain deed within eight years of issuance). Even assuming Hemmingsen lost a property interest when the deed was given, FSA acquired the right to the deed when it deposited the

\$21,000 with the clerk of court. It acquired no further property interest by the credit of \$71,000.

It was not necessary for FSA to credit anything against its lien in order to acquire the property. The amount credited was of no concern to the Bank. If others had had the right to redeem from FSA, the amount of credit would have been added to the price of redemption. Guaranty Life Ins. Co. of Davenport v. Schmidt, 229 Iowa 794, 294 N.W. 893, 894 (1940). If a redeeming creditor does not file an affidavit stating how much it will credit against its lien, it takes the property in satisfaction of its debt. Iowa Code § 628.17; Meredith, Dickey & Co. v. Peterson, 108 Iowa 551, 79 N.W. 351, 352 (1899). Because FSA filed the required affidavit, its entire claim was not extinguished. The credit reduced Hemmingsen's debt dollar for dollar. The credit of \$71,000 did not effect a transfer of Hemmingsen's property.

Moreover, even assuming there was a transfer of property of the debtor to FSA, the court concludes that Hemmingsen is unable to show that FSA gave less than reasonably equivalent value for purposes of 11 U.S.C. § 548(a). This result is required by the decision in BFP v. Resolution Trust Corp., 511 U.S. 531, 114 S.Ct. 1757 (1994).

In BFP, the debtor challenged the foreclosure sale of real estate as a fraudulent conveyance. The issue under § 548(a) was whether the value received by the debtor, that is, the amount of debt satisfied by the sale price, was "reasonably equivalent" to the value of the property. 114 S.Ct. at 1760. The Court could compare these two values only after finding what the property was worth. The question then became what standard by which to establish the property's value. The Court rejected "fair market value" as the benchmark because the market conditions for a fair market transaction do not exist in the foreclosure sale context. Id. at 1761. The Court also refused to adopt a "reasonable forced-sale price" standard. The restrictions imposed by state foreclosure law, which affect the extent to which a sale price approximates fair market value, vary from state to state. In light of the basic rule of real estate foreclosure law that a sale may not be set aside for mere inadequacy of price, the Court reasoned that it would be inappropriate to adopt a reasonable foreclosure price standard as a matter of federal fraudulent transfer law. Id. at 1763-64. The Court believed it should not presume to interfere with the "essential state interest" in ensuring the security of real estate titles without more explicit direction from Congress than the language used in § 548(a). Id. at 1764-65. The Court held that, in a regularly conducted, noncollusive foreclosure sale, the value of the property is the price actually received at the sale. Id. at 1765.

The court agrees with FSA's position that the rule of BFP should be applied to a creditor's redemption from a foreclosure sale purchaser. First, statutory redemption may be viewed as part of the foreclosure sale process. Iowa's redemption scheme is incorporated by reference in the law governing foreclosure of real estate mortgages. After the judgment and decree of foreclosure are entered, "special execution shall issue accordingly, and the sale under the special execution is subject to redemption ... unless the plaintiff has elected foreclosure without redemption...." Iowa Code § 654.5.

Hemmingsen argues that BFP is not applicable to this case because of differences between the procedures in a sheriff's sale and the redemption process. To the extent that they are distinct, the court believes the rationale of BFP should be extended to apply to a creditor's redemption as well as to a purchase at foreclosure sale. The Court held in BFP that "reasonably equivalent value" could not be compared to fair market value because the market conditions necessary for a fair market transaction do not exist in a foreclosure sale. 114 S.Ct. at 1761. The same is true of redemption. The redemption procedure is controlled by the many strictures found in Chapter 628 of the Iowa Code. For example, the entities that may redeem and the time in which they may redeem are strictly limited. See Iowa Code §§ 628.3, 628.5,

628.26.

The reasoning of BFP also requires the court to reject a standard requiring the amount credited against the lien to approximate fair market value if the law of redemption would not require it. The court may not apply § 548(a) to set aside, as a matter of federal fraudulent transfer law, what would be adequate under state redemption law, a body of law that involves the same essential state interest in security of titles as foreclosure law. See BFP, 114 S.Ct. at 1764-65. The court is not aware of any basis under Iowa law to invalidate a redemption for an inadequate credit against the lien. Crediting against the lien under Iowa Code § 628.19 is not required in order to effect a redemption. See Meredith, Dickey & Co. v. Peterson, 108 Iowa 551, 79 N.W. 351, 352 (1899) (redeeming creditor that does not file affidavit of amount credited will take the property in satisfaction of its debt). A creditor has either complied with the statute in order to effect a redemption or it has not. The purpose of Iowa's competitive redemption scheme is to obtain the full value of the property for the benefit of creditors and the debtor. Lysinger v. Hayer, 87 Iowa 335, 54 N.W. 145, 146 (1893). If the debtor or other creditors believe the redeeming creditor has paid a low price, they may themselves redeem. Id.; see also Iowa Code

§ 628.21 (entity wishing to redeem may challenge another's right to redeem or the effectiveness of the other's redemption).

The debtor ordinarily has the last opportunity to redeem. See Iowa Code §§ 628.3, 628.15, 628.26. In this case, Hemmingsen had only six months from the date of sale to redeem, whereas FSA had one year. Hemmingsen did not have the right to redeem from FSA. See above at 5-6. It is conceivable that FSA could credit only a nominal amount against its lien, thus increasing the debtor's deficiency. The Iowa legislature has not seen fit to provide a debtor any special protection in this situation. The debtor with a federal mortgage could prevent the situation by redeeming first, cutting off the government's right to redeem. See Cooley v. Fredinburg, 114 Or.App. 532, 836 P.2d 162 (1992) (government's interest was foreclosed under Oregon law; 28 U.S.C. § 2410 did not permit government to redeem after mortgagor had redeemed).

FSA redeemed the property in compliance with 28 U.S.C. § 2410 and Chapter 628 of the Iowa Code. Iowa redemption law does not provide Hemmingsen with a basis to challenge the amount FSA paid or credited against its lien. Applying the reasoning of BFP, Hemmingsen cannot prove that FSA gave less than "reasonably equivalent value" for any interest in the debtor's property it received by virtue of its redemption.

IT IS ORDERED that the motion for summary judgment filed by the United States is granted. The complaint is dismissed.

SO ORDERED THIS DAY OF MARCH 1998.

William L. Edmonds  
Chief Bankruptcy Judge

I certify that on I mailed a copy of this order and a judgment by U.S. mail to Don Molstad, U.S. Attorney, Carol Dunbar, Jeffrey Poulson, and U.S. Trustee.

1. At the hearing, the Assistant U.S. Attorney was uncertain how FSA adjusted Hemmingsen's account because of the redemption. Iowa's redemption statute provides that a creditor redeems by paying the

amount of the certificate, plus costs and interest. Iowa Code § 628.11. In order that its claim not be extinguished, the creditor must state by affidavit the amount it will credit on its lien. Iowa Code §§ 628.17-628.19. Section 628.13 makes clear that the amount paid for the certificate and the amount credited on the lien are distinct amounts; a debtor must pay both in order to redeem from a redeeming creditor.