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DISTRICT II

April 17, 2019

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You are hereby notified that the Court has entered the following opinion and order:

2018AP1236

The Estate of Barbara A. Lynch v. Ditech Financial, LLC
(L.C. #2016PR151)

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

The Estate of Barbara A. Lynch appeals from the circuit court's decision to grant Ditech Financial, LLC, relief from an order pursuant to WIS. STAT. § 806.07(1)(h) (2017-18).¹ Based upon our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

¹ All references to the Wisconsin Statutes are to the 2017-18 version.

In 2017, the Estate demanded formal probate proceedings for the limited issue of disposing any claim related to certain real estate that had belonged to the deceased. Following a hearing, the circuit court entered an order granting the Estate sole and unencumbered ownership of the identified property. The order also recognized Ditech as the only other party with a potential interest in the property and barred the company from pursuing a claim against the Estate or related to the property due to its failure to appear or otherwise respond. Ditech later moved to vacate the order pursuant to WIS. STAT. § 806.07(1)(h), arguing that it held a mortgage interest secured by the property that could not be extinguished through the probate proceedings.² Following multiple hearings,³ the circuit court granted the requested relief.

On appeal, the Estate argues that the circuit court’s decision to vacate was premised on an incorrect legal basis. We review decisions to grant relief under WIS. STAT. § 806.07(1)(h) for erroneous exercises of discretion. *Miller v. Hanover Ins. Co.*, 2010 WI 75, ¶29, 326 Wis. 2d 640, 785 N.W.2d 493. “A circuit court does not erroneously exercise its discretion if its decision is based on the facts of record and on the application of a correct legal standard.” *Id.* (citation omitted).

A court has broad discretionary authority to vacate an order under WIS. STAT. § 806.07(1). Relevant here, § 806.07(1)(h) sets forth a catchall provision that allows for an order to be vacated for “[a]ny other reasons justifying relief.” *See also Miller*, 326 Wis. 2d 640, ¶33 (noting that paragraph (1)(h) “invokes the pure equity power of the court” and should be

² Ditech’s motion appears to have arisen after the Estate proffered the underlying order as part of its defense in Ditech’s independent mortgage foreclosure action.

³ The Estate has not included the hearing transcripts in the record on appeal.

“liberally construed to provide relief ... whenever appropriate to accomplish justice”). Relief under this provision is proper where “extraordinary circumstances” exist such that “the sanctity of the final judgment is outweighed by the incessant command of the court’s conscience that justice be done in light of *all* the facts.” *Miller*, 326 Wis. 2d 640, ¶35 (citation omitted).

The circuit court granted Ditech relief after determining that the underlying order was “in violation of” WIS. STAT. § 859.43(1). Section 859.43(1) states that “[n]othing in this chapter [“Probate—Claims”] shall affect or prevent any action or proceeding to enforce any mortgage, pledge, lien or other security agreement against property of the estate.” *See also Kornitz v. Commonwealth Land Title Ins. Co.*, 81 Wis. 2d 322, 331, 260 N.W.2d 680 (1978) (explaining that, consistent with well-established common law, the statute ensures “a secured creditor need not file a claim on an estate if he is content to rely on his security”). Finding that Ditech held a statutorily protected security interest that could be enforced in an independent action, the circuit court concluded that relief from the order was justified due to its legal invalidity. The Estate has not offered a compelling argument against the application of § 859.43(1) under these circumstances. Accordingly, we will not disturb the circuit court’s discretionary decision to grant relief.⁴

Upon the foregoing reasons,

IT IS ORDERED that the order of the circuit court is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

⁴ Ditech seeks an order requiring the Estate to pay the costs incurred in defending this appeal. WIS. STAT. RULE 809.25(3). We decline to find this appeal without any basis in law and deny the motion. *Ryan v. Estate of Sheppard*, 2010 WI App 105, ¶17, 328 Wis. 2d 533, 789 N.W.2d 616.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals