COURT OF APPEALS DECISION DATED AND FILED

January 14, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP1781

Cir. Ct. Nos. 2012SC1851
2012SC1852

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT II

SAXON HOMESTEAD CREAMERY, LLC,

PLAINTIFF-RESPONDENT,

V.

GREENSTONE FARM CREDIT SERVICES, ACA,

DEFENDANT-APPELLANT.

--

SAXON HOMESTEAD FARM, LLC,

PLAINTIFF-RESPONDENT,

V.

GREENSTONE FARM CREDIT SERVICES, ACA,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Manitowoc County: JEROME L. FOX, Judge. *Reversed and cause remanded with directions*.

¶1 GUNDRUM, J.[1] GreenStone Farm Credit Services, ACA (GreenStone) appeals from a grant of summary judgment to Saxon Homestead Creamery, LLC (Creamery) and Saxon Homestead Farm, LLC (Farm) and a denial of summary judgment to GreenStone. For the following reasons, we reverse the circuit court's grant of summary judgment to Creamery and Farm and remand for entry of summary judgment in favor of GreenStone.

Background

¶2 GreenStone is a credit association that operates as a cooperative of its borrowers, of which Creamery and Farm were borrowers. GreenStone's board of directors is authorized to annually determine whether and how it should make patronage distributions. On November 23, 2010, GreenStone's board of directors adopted a Patronage Distribution Obligating Resolution (Resolution) providing for patronage distributions for 2011. The Resolution provided in relevant part, however, that a

> [p]atron shall not be eligible for patronage with respect to any loan … that was in nonaccrual status at either the end of the fiscal year or the date the loan was paid in full, unless such borrower was current as to both principal and interest at that time.

¶3 Creamery and Farm had various loans from GreenStone which were due in full by the maturity date of April 1, 2011. They failed to pay off some of

---

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

the loans by that date, and GreenStone notified them that the loans had matured on April 1 and the balance was due in full. The parties continued communicating regarding the outstanding loans, and Creamery and Farm made interest payments, as well as default interest payments, on the loans as requested by GreenStone. On June 29, 2011, GreenStone classified the loans into nonaccrual status pursuant to 12 C.F.R. § 621.6(a)(3) (2010).

¶4 On September 6, 2011, Creamery and Farm each signed a separate forbearance proposal, both of which GreenStone also signed. Each proposal required Creamery and Farm to make monthly interest payments, as well as default interest payments, with full payment of all principal and remaining interest due no later than March 1, 2012 (Forbearance Proposal)[2]; conditions both Creamery and Farm satisfied. Creamery's and Farm's loans were paid in full on December 30, 2011, and January 12, 2012, respectively.

¶5 Creamery and Farm each had at least one other loan through GreenStone which had not matured and upon which they were not in default and continued to make required principal and interest payments. Because Creamery's and Farm's loans that had been due on April 1, 2011, were placed into nonaccrual status, these other loans were also placed into nonaccrual status, pursuant to 12 C.F.R. § 621.7 (eff. Dec. 31, 2010). GreenStone provided Creamery and Farm with 2011 patronage payments on these other loans, but did not provide them with 2011 patronage payments on the loans which had matured on April 1, 2011.

[2] For purposes of this opinion we refer to the two proposals in the singular.

¶6 Creamery and Farm each filed separate small claims complaints against GreenStone based upon GreenStone's failure to pay them patronage on the loans which had been due on April 1, 2011. These matters were consolidated. GreenStone moved for summary judgment. Creamery and Farm responded and also requested summary judgment in their favor. The circuit court granted summary judgment to Creamery and Farm and denied GreenStone's motion. GreenStone appeals.

Discussion

¶7 On appeal, GreenStone argues that the circuit court erred in granting Creamery and Farm's motion for summary judgment and denying its motion because there is no genuine issue of material fact "to dispute that [GreenStone] properly denied certain patronage distributions to Creamery and Farm for calendar year 2011."[3] We agree.

¶8 We review de novo a grant of summary judgment, applying the same methodology as the circuit court. ***Paskiewicz v. American Family Mut. Ins. Co.***, 2013 WI App 92, ¶4, 349 Wis. 2d 515, 834 N.W.2d 866. Summary judgment is proper when the relevant facts are undisputed and only a question of law remains. ***Id.***

¶9 For purposes of this decision, we assume the Resolution is a contract, as Creamery and Farm would like us to do, and we interpret it as such.

---

[3] GreenStone also raises other issues on appeal. Because the issue we decide is dispositive, we need not and do not address the remainder of GreenStone's arguments on appeal. *See* ***Sweet v. Berge***, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (this court need not address other issues when one is dispositive).

See ***Attoe v. Madison Prof'l Policemen's Ass'n***, 79 Wis. 2d 199, 208, 255 N.W.2d 489 (1977) (a resolution constitutes as much a part of the contract between the organization and the members as does the by-laws); ***Schoenburg v. Klapperich***, 239 Wis. 144, 150, 300 N.W. 237 (1941) (law of corporations applies to cooperatives to the extent not inconsistent with statutes); ***O'Leary v. Board of Dirs., Howard Young Med. Ctr., Inc.***, 89 Wis. 2d 156, 169, 278 N.W.2d 217 (Ct. App. 1979) ("bylaws and articles of incorporation of a corporation form a binding contract between the members and the corporation"). Our goal in interpreting contracts "is to determine and give effect to the parties' intention," ***Solowicz v. Forward Geneva Nat'l, LLC***, 2010 WI 20, ¶34, 323 Wis. 2d 556, 780 N.W.2d 111 (citation omitted), and our interpretation of a contract is de novo, ***Estate of Kriefall v. Sizzler USA Franchise, Inc.***, 2012 WI 70, ¶14, 342 Wis. 2d 29, 816 N.W.2d 853. Where, as here, we must also interpret and apply federal regulations related to the parties' contract, we do so independently of the circuit court. *See* ***id.***; ***Franklin v. Housing Auth.***, 155 Wis. 2d 419, 426, 455 N.W.2d 668 (Ct. App. 1990).

¶10 Because the Resolution provides that a patron is not eligible for a patronage payment with respect to any loan that is "in nonaccrual status at either the end of the fiscal year or the date the loan was paid in full, unless such borrower was current as to both principal and interest at that time," we must first decide whether the Creamery and Farm loans at issue were in nonaccrual status at either the time the loan was paid in full or on December 31, 2011. Our decision on this issue is straightforward.

¶11 It is undisputed that the loans were "classified into nonaccrual status" on June 29, 2011. Creamery and Farm essentially contend that the Forbearance Proposal had the effect of reinstating the loans to accrual status,

arguing that as of September 6, 2011, the date they signed the proposal, the loans no longer met the criteria set forth in 12 C.F.R. § 621.6(a)(3). The Code of Federal Regulations, however, sets forth specific criteria that must be met before an institution, such as GreenStone, may reinstate a loan to accrual status after it has been placed into nonaccrual status. *See* 12 C.F.R. § 621.9 (2010). Section 621.9 provides that a loan may be reinstated into accrual status if:

> (a) All contractual principal and interest due on the loan is paid and the loan is current;
>
> (b) Prior chargeoffs are recovered, except for troubled debt restructures;
>
> (c) No reasonable doubt remains regarding the willingness and ability of the borrower to perform in accordance with the contractual terms of the loan agreement; *and*
>
> (d) Reinstatement is supported by a period of sustained performance in accordance with the contractual terms of the note and/or loan agreement. Sustained performance will generally be demonstrated by 6 consecutive monthly payments, 4 consecutive quarterly payments, 3 consecutive semi-annual payments, or 2 consecutive annual payments.

(Emphasis added.) Creamery and Farm do not even attempt to argue that all four of these requirements were met and there is no evidence suggesting GreenStone ever reinstated Creamery or Farm to accrual status prior to the "end of the fiscal year or the date the loan[s] [were] paid in full." Thus, the loans remained in nonaccrual status when they were paid off and/or at the end of 2011.

¶12 Having determined that the loans were in nonaccrual status at the relevant time, Creamery and Farm would then only be entitled to the patronage payments pursuant to the Resolution if they were "current as to both principal and interest [on the loans] at that time." Creamery and Farm contend the Forbearance Proposal had the effect of making them current as to principal and interest even

though they were in default due to failing to pay the loans in full by the April 1, 2011 due date, as required by the loan agreements. We conclude that, for purposes of the Resolution, Creamery and Farm were not current as to principal and interest.

¶13 We read the language of the Resolution as addressing loans pursuant to actual loan agreements, such as the original loans for Creamery and Farm, rather than addressing forbearance proposals that may or may not be agreed to following a borrower's default on a loan. "Forbearance" means: "1. The act of tolerating or abstaining. 2. The act of refraining from enforcing a right, obligation, or debt." BLACK'S LAW DICTIONARY 760 (10th ed. 2014). Creamery and Farm remained in default on the loans at issue, as evidenced by the fact they paid default interest after April 1, 2011, and indeed were required to continue doing so pursuant to the Forbearance Proposal.

¶14 The context in which the term "current … at that time" is used in the Resolution supports our interpretation that the Resolution language refers to actual loan agreements. As noted, paragraph 2 of the Resolution informs us that patrons such as Creamery and Farm "shall not be eligible for patronage with respect to any loan … that was in nonaccrual status at either the end of the fiscal year or the date the loan was paid in full, unless such borrower was current as to both principal and interest at that time." The reference in the Resolution to "any loan … that was in nonaccrual status" strikes us as relating to loans as described in actual loan agreements without contemplation of possible proposals to forbear enforcing remedies in the event of a default, like the proposal in this case. We conclude that, likewise, the term "current" in "current … at that time" also relates to an actual loan agreement, and is essentially asking if the borrower is current as to principal and interest with regard to the terms of that loan agreement. *See* ***Wausau Joint***

Venture v. Redevelopment Auth., 118 Wis. 2d 50, 58, 347 N.W.2d 604 (Ct. App. 1984) ("Contract terms being construed should be considered in context."). There is nothing in the Resolution which in any way suggests that this intended use of the term "current" might be altered by a proposal, following default on the loan, to forbear for some period of time from enforcing remedy options with regard to that default. Rather, once Creamery and Farm defaulted on the loans, they were no longer "current as to principal and interest payments" insofar as the Resolution and their "right" to patronage payments are concerned. Accordingly, under the Resolution, Creamery and Farm were not entitled to patronage for these loans.

¶15 Because as a matter of law GreenStone properly denied payment of patronage to Creamery and Farm for the subject loans, we reverse the circuit court's grant of summary judgment in favor of Creamery and Farm. We remand for entry of summary judgment in favor of GreenStone and dismissal of Creamery's and Farm's complaints.

By the Court.—Judgment reversed and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.