COURT OF APPEALS
DECISION
DATED AND FILED

August 20, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP2789 **Cir. Ct. No. 2013SC8000**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

DONALD J. KNOTT,

PLAINTIFF-APPELLANT,

V.

WISCONSIN HOUSING AND ECONOMIC DEVELOPMENT AUTHORITY,

DEFENDANT-RESPONDENT.

APPEAL from a judgment of the circuit court for Dane County: MICHAEL R. FITZPATRICK, Judge. *Affirmed*.

¶1 LUNDSTEN, J.[1] Donald Knott, a residential tenant, appeals the circuit court's judgment dismissing his claim against the Wisconsin Housing and

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a). All references to the Wisconsin Statutes are to the 2013-14 version.

Economic Development Authority (WHEDA) for Knott's security deposit. WHEDA purchased the underlying property at a foreclosure sale. Knott now concedes that a state statute extinguished his right to recover his security deposit. Knott argues, however, that a federal law, the Protecting Tenants at Foreclosure Act, preempts the state statute and allows him to hold WHEDA liable for his security deposit. I reject Knott's argument and, therefore, affirm.

Background

¶2 The facts are undisputed. Knott rented the property from a succession of landlords beginning in 1998. Knott paid $650 as a security deposit.

¶3 In August 2012, in a separate action, WHEDA filed for foreclosure against the property owner, Knott's then-landlord. Knott was initially named as a party and served with a copy of the foreclosure complaint, although he later sought and obtained an order dismissing him from the action. The court entered a judgment of foreclosure in October 2012. WHEDA purchased the property as the highest bidder at auction. In May 2013, the court confirmed the sale to WHEDA.

¶4 Knott vacated the property at the end of May 2013. Knott's security deposit was not returned to him.

¶5 In October 2013, Knott commenced the instant small claims action against WHEDA, alleging that WHEDA was liable for his security deposit. Knott relied on state law and on the federal Protecting Tenants at Foreclosure Act.

¶6 As part of a factual stipulation, Knott agreed that WHEDA never "held" his security deposit. Based on this stipulated fact, the circuit court concluded that WHEDA was not liable for Knott's security deposit. The circuit court relied on a state administrative code provision that refers to the return of a

security deposit "held" by the landlord. *See* WIS. ADMIN. CODE § ATCP 134.06(2) (Feb. 2015). The circuit court did not reach Knott's federal law argument.

Discussion

¶7 For the reasons explained below, I affirm the circuit court, but based on a different rationale. In broad strokes, I accept a state law concession that Knott now makes, and I reject Knott's federal preemption argument.

¶8 As I understand Knott's briefing, his argument on appeal is this:

- Wisconsin law generally provides that, upon the transfer of ownership of residential rental property, a tenant has the right to hold the new owner liable for the tenant's security deposit regardless whether the new owner "held" the security deposit.

- In the more specific situation of transfer by a foreclosure sale, WIS. STAT. § 708.02 governs and extinguishes the tenant's rights under any pre-existing lease, including the right to a security deposit; *however*, the federal Protecting Tenants at Foreclosure Act preempts § 708.02 and extends those rights.[2]

- Therefore, Knott is entitled to hold WHEDA liable for his security deposit under the Wisconsin law that more generally governs transfer of ownership and security deposits.

¶9 I assume, without deciding, that Knott is correct in conceding that, because of the foreclosure sale, WIS. STAT. § 708.02 extinguished his right to recover his security deposit. Although it is not apparent to me that this statute has the effect that Knott says it does, Knott's concession is clear. To quote one of

[2] Knott does not assert that he entered into a new lease with WHEDA or that he paid rent to WHEDA.

Knott's more concise statements on the topic in his briefing, he states: "Without the [federal Act] the tenant's rights under a lease and under [state] statute and [administrative] code would cease upon the foreclosure sale, pursuant to § 708.02 WI Stats."[3]

¶10 As to Knott's preemption argument, I reject it for the reasons explained below. And, because I reject that argument, I need not address whether Knott or the circuit court is correct about Wisconsin law as it applies more generally to transfers of ownership and security deposits. *See* ***Barrows v. American Family Ins. Co.***, 2014 WI App 11, ¶9, 352 Wis. 2d 436, 842 N.W.2d 508 (WI App 2013) ("An appellate court need not address every issue raised by the parties when one issue is dispositive."). I do agree with the circuit court's bottom line: Knott fails to show that he is entitled to hold WHEDA liable for his security deposit. *See* ***Milton v. Washburn County***, 2011 WI App 48, ¶8 n.5, 332 Wis. 2d 319, 797 N.W.2d 924 ("[I]f a circuit court reaches the right result for the wrong reason, [the court of appeals] will nevertheless affirm.").

¶11 The preemptive effect of a federal act is a question of law. *See* ***M&I Marshall & Ilsley Bank v. Guaranty Fin., MHC***, 2011 WI App 82, ¶21, 334 Wis. 2d 173, 800 N.W.2d 476. Courts start with the presumption that Congress did not mean to supplant state law. ***Id.***, ¶22. To prevail, Knott must overcome this presumption. "The burden of establishing pre-emption rests with the party seeking

[3] WISCONSIN STAT. § 708.02 provides:

> **Foreclosure; effect in lease.** If property subject to lien created by mortgage or land contract is leased after the lien has attached, the lease is subject to termination at the time the interest of the lienor is terminated.

the benefit of pre-emption." ***Aurora Med. Grp. v. DWD***, 2000 WI 70, ¶15, 236 Wis. 2d 1, 612 N.W.2d 646.

¶12 Knott argues that there is preemption because the federal Act and WIS. STAT. § 708.02 conflict. *See* ***M&I Marshall & Ilsley Bank***, 334 Wis. 2d 173, ¶23 (one circumstance in which there is preemption is when the "operation of state and federal law actually conflict"). However, as we shall see, Knott does not show a conflict in any way that matters here.

¶13 The Protecting Tenants at Foreclosure Act provides, in relevant part:

> In the case of any foreclosure on a federally-related mortgage loan or on any dwelling or residential real property after the date of enactment of this title, any immediate successor in interest in such property pursuant to the foreclosure shall assume such interest subject to—
>
> (1) the provision, by such successor in interest of a notice to vacate to any bona fide tenant at least 90 days before the effective date of such notice; and
>
> (2) the rights of any bona fide tenant, as of the date of such notice of foreclosure—
>
> > (A) under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90 day notice under paragraph (1) ….

Protecting Tenants at Foreclosure Act, PUB. L. NO. 111-22, § 702(a), 123 Stat. 1632, 1660-61 (2009).[4]

[4] I put aside any questions WHEDA raises regarding whether the federal Act applies to Knott. I assume without deciding that the Act applies. For example, I do not address WHEDA's (continued)

¶14 Thus, on its face, the federal Act provides Knott with two rights: (1) the right to "a notice to vacate … at least 90 days before the effective date of such notice"; and (2) the right "to occupy" the premises for a given period of time, here the end of the term of his lease.[5] Notably, the federal Act makes no mention of a right to a security deposit and, thus, obviously, does not say that liability for a security deposit transfers from the prior landlord to the new owner that purchased the property at a foreclosure sale. Because the federal Act does not address security deposits, I fail to see any conflict that matters here.

¶15 If Knott's argument is that the possibility of a conflict with respect to other topics is enough to demonstrate preemption here, Knott fails to develop and support such an argument. But, in any event, that does not seem to be Knott's argument. Rather, as I understand it, Knott argues that there is always a conflict between WIS. STAT. § 708.02 and the federal Act because the federal Act must be interpreted as extending *all* of a landlord's and tenant's mutual obligations under a prior lease and transferring *all* of the landlord's obligations to the foreclosure sale purchaser. According to Knott, this interpretation is the only one that makes any sense; otherwise, there would be no ground rules to govern the extended period of occupancy that the federal Act expressly grants to the tenant.

¶16 The flaw in Knott's argument is that a tenant's ability to occupy a property does not depend on the return of a security deposit. It is at least as reasonable to think that, in passing the federal Act, Congress left it to the states to

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argument that, because the federal Act expired at the end of 2014, Knott's claim based on the Act is moot.

[5] Knott explains that, at the time of the foreclosure, he had a month-to-month lease.

regulate security deposits, along with any other issue that does not interfere with a tenant's rights to notice and to occupancy under the Act. *See* Aleatra P. Williams, *Real Estate Market Meltdown, Foreclosures and Tenants' Rights*, 43 IND. L. REV. 1185, 1195 (2010) (suggesting that the federal Act left several issues unaddressed, including the issue of security deposits); Tony S. Guo, Note, *Tenants at Foreclosure: Mitigating Harm to Innocent Victims of the Foreclosure Crisis*, 4 DEPAUL J. FOR SOC. JUST. 215, 236 (2011) (pointing out that the Florida legislature identified several issues that the federal Act did not address, including security deposits).

¶17 In support of his broad interpretation of the federal Act, Knott points to a federal Office of the Comptroller of the Currency Handbook that references the federal Act and security deposits. But the Handbook language Knott cites is at best ambiguous as it might apply here. The Handbook references Act requirements, "additional requirements" that states may impose, and "[a]dditional potential requirements," including "returning any security deposit." The Handbook fails to make clear whether the reference to the additional "potential" requirement of returning a security deposit is a reference to a federal Act requirement. Moreover, Knott fails to explain why I should consider the Handbook to be authoritative.

¶18 Finally, I address Knott's assertion that courts must liberally construe the federal Act in favor of tenants. Knott argues that the Act is remedial and has a broad goal: to "help tenants caught up in foreclosures." Knott apparently argues that a liberal construction, consistent with this goal, requires courts to adopt his broad interpretation of the Act. However, for support, Knott points to a portion of the Congressional record that, if anything, contradicts his argument. This portion of the Congressional record, like the Act's language,

suggests that Congress intended the more limited intervention of ensuring tenant rights to notice and to occupancy.[6]

¶19 In sum, Knott does not overcome the presumption against federal preemption.

Conclusion

¶20 For the reasons stated above, I affirm the circuit court's judgment dismissing Knott's claim against WHEDA.

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[6] The portion of the Congressional record that Knott supplies in his appendix contains the following statements by senators:

> [Senator DODD:] I was pleased to work with Senator KERRY to include the Protecting Tenants at Foreclosure Act of 2009 in the recently enacted Helping Families Save their Homes Act. This new law protects tenants facing evictions due to foreclosure by ensuring they can remain in their homes for the length of the lease or, at the least, receive sufficient notice and time to relocate ….
>
> ....
>
> Under the new law, all bona fide tenants who began renting prior to transfer of title by foreclosure of their rental property must be given at least 90 days' notice before being required to vacate the property. In addition, these bona fide tenants are allowed to remain in place for the remainder of any leases entered into prior to the transfer of title by foreclosure….
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> ….
>
> [Senator KERRY:] … As the chairman [Senator Dodd] stated, the law was intended to provide all bona fide tenants, who began renting prior to transfer of title by foreclosure of their rental property, be given at least 90 days' notice before being required to vacate the property. In addition, these bona fide tenants are allowed to remain in place for the remainder of any leases entered into prior to the transfer of title by foreclosure.

By the Court.—Judgment affirmed.

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