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Statutory Redemption—Redemption of Property by the Debtor or Debtor's Assignee During the Exclusive Statutory Period Extinguishes a Junior Lienor's Right of Redemption, But Such Redemption Does Not Allow the Debtor or Debtor's Assignee to Take the Property Free and Clear of Other Leins

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CASE NOTES

STATUTORY REDEMPTION—REDEMPTION OF PROPERTY BY THE DEBTOR OR DEBTOR'S ASSIGNEE DURING THE EXCLUSIVE STATUTORY PERIOD EXTINGUISHES A JUNIOR LIENOR'S RIGHT OF REDEMPTION, BUT SUCH REDEMPTION DOES NOT ALLOW THE DEBTOR OR DEBTOR'S ASSIGNEE TO TAKE THE PROPERTY FREE AND CLEAR OF OTHER LIENS. *Farmers Production Credit Association v. McFarland.*—(Iowa 1985).

Daniel and Linda McFarland owned real estate subject to two mortgages, both of which were in default.¹ On June 9, 1983, Farmers Production Credit Association (PCA), the junior mortgage holder, filed suit to foreclose its mortgage.² On September 19, 1983, American Federal Savings (AFS), the senior mortgage holder, "filed a separate foreclosure action against the McFarlands naming PCA as a junior lienholder and party defendant."³ In the latter action a decree of foreclosure was entered on November 11, 1983, in favor of AFS.⁴

The foreclosure decree provided for a reduced period of redemption of six months⁵ and recognized the validity of the junior lien held by PCA.⁶

1. *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d 654, 655 (Iowa 1985).

2. *Id.* On August 30, 1979, Daniel and Linda McFarland executed a mortgage in favor of PCA to further secure \$40,000 of a \$179,015 promissory note executed two days prior. Brief for Appellant, app. at 1-2, *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d 654 (Iowa 1985). The PCA mortgage was subject to a prior mortgage dated October 1, 1970, in favor of Cedar Falls Savings and Loan Association, now known as American Federal Savings and Loan Association. *Id.* at 2.

3. *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d at 655.

4. *Id.*

5. Iowa's redemption process is set forth in chapter 628 of the Iowa Code. The debtor is given a privilege to redeem the property within one year of the day of the foreclosure sale, and for the first six months this right of redemption is exclusive. IOWA CODE § 628.3 (1985). If the debtor fails to redeem, the junior lienors may, at any time within nine months of the sale, redeem the property. IOWA CODE § 628.5 (1985). As in the present case, the mortgagor and mortgagee may agree in the mortgage instrument to reduce the period of redemption to six months provided the mortgagee waives any rights to a deficiency judgment against the mortgagor arising from the foreclosure action. IOWA CODE § 628.26 (1985). Under this section, the debtor is granted exclusive redemption rights during the first three months following the sale, and the junior lienors are given redemption rights thereafter up to four months after the date of the sale. *Id.*

6. *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d at 655.

During the first three months of this period, the McFarlands had an exclusive right to redeem.⁷ The property was subsequently sold to AFS at a sheriff's sale held on January 10, 1984.⁸

During the three month exclusive redemption period, the McFarlands conveyed their redemption rights⁹ to Daniel's mother, Dorothy McFarland, who redeemed the property within the exclusive period.¹⁰ During the subsequent creditory redemption period, PCA attempted to redeem the property from Mrs. McFarland; and thereafter entered a petition for foreclosure.¹¹ Mrs. McFarland intervened in PCA's foreclosure action claiming that her redemption had extinguished PCA's lien on the property.¹² The district court concluded that a creditor is entitled to redeem from the grantee of a mortgagor's interest in property,¹³ and thus granted PCA a sheriff's deed to the property.¹⁴ The McFarland family appealed, and the Iowa Supreme Court *held* affirmed in part, reversed in part and remanded.¹⁵ Redemption of property by the debtor or debtor's assignee during the exclusive statutory period extinguishes a junior creditor's right of redemption, but such redemption does not allow the debtor or debtor's assignee to take the property free and clear of junior liens. *Farmers Production Credit Association v. McFarland*, 374 N.W.2d 654 (Iowa 1985).

The court's decision in *McFarland* significantly constricts the rights previously afforded mortgagors and their assignees under Iowa's redemption laws.¹⁶ Redemption by the debtor or his assignee during the exclusive period will no longer afford him any advantage over junior creditors.¹⁷ In fact, such redemption will disadvantage these parties by assuring that the junior creditor's lien will remain viable against the property.¹⁸ Additionally, application

7. See *supra* note 5 and accompanying text.

8. *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d at 655.

9. "The rights of a debtor in relation to redemption are transferable, and the assignee has the like power to redeem." IOWA CODE § 628.5 (1985).

10. *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d at 655.

11. *Id.*

12. *Id.*

13. Brief for Appellant, app. at 19-20, *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d 654 (Iowa 1985). Although the district court did not cite case authority for its conclusions of law, the court probably based this conclusion on *Tirrill v. Miller*, 206 Iowa 426, 218 N.W. 303 (1928), discussed *infra* notes 27-33 and accompanying text.

14. *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d at 655.

15. *Id.* at 659.

16. *Id.* at 659 (Carter, J., dissenting).

17. *Id.* (Carter, J., dissenting).

18. *Id.* (Carter, J., dissenting). The majority's rule does not work as significant a hardship against the redeeming debtor as it does against the redeeming assignee. If the debtor redeems within the exclusive period, and if the junior lienor had in the meantime obtained judgment against the debtor on the debtor's note, the junior lienor would have a lien on the property under its judgment against the debtor "by virtue of the statute which makes a judgment a lien against the debtor's real property." *Id.* at 659 (Uhlenhopp, J., dissenting) (emphasis original) (citing IOWA CODE § 624.3 (1985)). The "judgment lien automatically attaches to afteracquired

of the majority's ruling to an assignee who redeems within the exclusive period will gratuitously promote the junior lienor to senior status, his lien being newly secured up to the full value of the property.¹⁹ As Justice Carter noted in his dissent, "[i]t is particularly unfortunate that this occurs at a time when, because of prevailing economic conditions, mortgagors are particularly in need of such protection."²⁰

The *McFarland* court considered two issues involving the interpretation of Iowa's redemption statute. The court first considered whether a junior lienor was permitted under the statutory scheme to redeem the property from the debtor's assignee who redeemed within the exclusive period provided for the debtor.²¹ The court's determination of this issue required it to resolve a second: whether a debtor's assignee who redeems within the exclusive period takes the property free and clear of junior liens on the property.²² Three justices dissented from the majority's resolution of the second issue.²³ The trial court granted PCA, as a junior lienor, the right to redeem the property from Dorothy McFarland, the debtor's assignee.²⁴ Apparently following the supreme court's decision in *Tirrill v. Miller*,²⁵ the trial court determined that Iowa law permits the junior lienor to redeem from a debtor's assignee who had previously redeemed within the exclusive period.²⁶

In *Tirrill*, the debtor deeded his property, which had been sold at a foreclosure sale, to his wife, who then redeemed the property within the ex-

real estate of the debtor." *Id.* (citing IOWA CODE § 624.23(1)). A judgment against the debtor, however, will not automatically attach to the property in the assignee's hands. *Id.* at 659 (Uhlenhopp, J., dissenting). Thus, by allowing the junior creditor's lien to remain viable against the property in the assignee's hands, the majority's rule ultimately results in the property of one person (the assignee) being subject to the debts of another (the debtor). *Id.* (Uhlenhopp, J., dissenting).

19. Appellants' Petition for Rehearing and Argument at 8, *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d 654 (Iowa 1985). A simplified example of this effect is as follows:

Assume the mortgaged property has a \$100,000 first mortgage, a \$75,000 second mortgage, and a current market value of \$100,000. Assume further that the property sells for \$100,000 at the sheriff's sale. Under the majority's rule, if the debtor's assignee redeems within the exclusive debtor period, the assignee will take the property subject to the payment of the junior lien. Thus, the junior lienor, whose security interest was worthless based on the value of the property, will suddenly have his lien fully secured upon redemption within the exclusive period.

20. *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d at 659 (Carter, J., dissenting).

21. *Id.* at 655.

22. *Id.* at 656.

23. Justices Carter, Wolle and Uhlenhopp dissented. *Id.* at 659.

24. *Id.* at 655.

25. 206 Iowa 426, 218 N.W. 303 (1928). Although the trial court did not specifically cite case law for this proposition in its ruling, its decision is consistent with the holding in *Tirrill* that a junior lienor may redeem from the debtor's assignee. See Brief for Appellant at 19-20, *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d 654 (Iowa 1985).

26. *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d at 655.

clusive period.²⁷ The Illinois Oldsmobile Company, as a junior lienor, challenged the propriety of the transfer to the wife and subsequently attempted to redeem the property from her.²⁸ On appeal, the *Tirrill* court considered two issues: (1) whether the wife was entitled to redeem the property under the statute; and (2) whether her redemption was, in fact, a redemption on behalf of her husband so that the junior lienor's judgment against him attached to the premises upon her redemption.²⁹

The *Tirrill* court found that the redemption statute clearly granted the wife, as her husband's assignee, the right to redeem the premises.³⁰ The court also concluded that the record failed to show that the wife's redemption was, in fact, on behalf of her husband so that his debts would attach to the land.³¹ The *Tirrill* court, however, in *obiter dicta*, and without citing any case law as precedent, proceeded to make the assertion that, while the wife held the fee title to the premises free and clear of the debts of her husband, she held title subject to the Illinois Oldsmobile Company's right of redemption.³² Thus, the *Tirrill* court held that the junior lienor has a right to redeem the property from the debtor's assignee.³³

The *McFarland* court found unpersuasive any language in *Tirrill* which intimated that a junior lienor could redeem from the debtor's assignee who had redeemed a property during an exclusive statutory period.³⁴ The court discounted the *Tirrill* court's dicta, observing that in *Tirrill* the debtor's and assignee's exclusive right to redeem was not at issue before that court.³⁵ Instead, the plain language of Iowa's redemption statute persuaded the *McFarland* court to reverse the trial court's decision.³⁶

27. *Tirrill v. Miller*, 206 Iowa 426, 427, 218 N.W. 303, 303 (1928).

28. *Id.*

29. *Id.* at 427-28, 218 N.W. at 304.

30. *Id.* at 428, 218 N.W. at 304. "[W]hen the title holder George, after the foreclosure decree, transferred his title in the premises to Harriett, she had the right to redeem the premises from the foreclosure sale . . ." *Id.* at 429, 218 N.W. at 304.

31. *Id.* at 431, 218 N.W. at 305. The appellants in *Tirrill* contended that "the conveyance of the title by George to his wife Harriett by quitclaim deed, reciting a consideration of \$1 and other valuable consideration, was in pursuance of a fraudulent conspiracy to hinder, delay, and defraud the creditors of George . . ." *Id.* at 430, 218 N.W. at 305. The court found no sufficient facts to support a finding of fraud or conspiracy. *Id.* at 431, 218 N.W. at 305.

32. *Id.* at 429, 218 N.W. at 304. The court stated:

Appellant's rights as a judgment lien holder were not prejudiced by [the assignee's redemption]. It had a right of redemption, and the grantee took the property subject to all the rights of the appellant therein. This right was not affected by the transfer to Harriett, or by the redemption by her.

Id.

33. *Id.*

34. *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d at 656.

35. *Id.* The court further noted that the *Tirrill* decision had puzzled commentators analyzing Iowa's redemption statute. *Id.* (The court's reference is to Blum, *Iowa Statutory Redemption After Mortgage Foreclosure*, 35 IOWA L. REV. 72, 73 n. 17 (1949)).

36. *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d at 656.

The *McFarland* court noted that Iowa Code section 628.3 "gives the debtor the exclusive right to redeem during the appropriate six or three month period."³⁷ The court interpreted the use of the term "exclusive" to vest the right of redemption in the debtor only and to shut out all creditors.³⁸ The court then ruled that under Iowa Code section 628.25, the debtor's right of redemption is transferable, and the assignee is granted a "like power to redeem."³⁹ The *McFarland* court determined that a like power to redeem gave the assignee the "same quantity and quality of rights as the debtor, which would include the 'exclusive' right to redeem . . ."⁴⁰ Accordingly, redemption by the mortgagor or his assignee during the exclusive period was found to prevent further redemption by junior lienors.⁴¹ The three dissenting justices concurred with the majority's resolution of this first issue.⁴²

The *McFarland* majority did not rest on its reversal of the trial court's order which allowed PCA's redemption. In exercising its de novo review in equity,⁴³ the court proceeded to determine the respective rights of the assignee and junior lienor when the assignee redeems within the exclusive period.⁴⁴ The court split in its resolution of this second issue.

The *McFarland* majority began its consideration of this second issue by briefly summarizing the existing Iowa law regarding the rights of a junior lienor in a foreclosure action.⁴⁵ The court cited *Paulsen v. Jensen*⁴⁶ for the proposition that a judgment creditor who fails to redeem within the statutory period loses his lien on the property.⁴⁷ Additionally, the court, citing *Anderson v. Renshaw*,⁴⁸ found that under Iowa law a junior mortgagee who

37. *Id.* See also *supra* note 5.

38. *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d at 656. The court looked to *Black's Law Dictionary* in defining an "exclusive right" as "one which only the grantee thereof can exercise, and from which all others are prohibited or shut out." *Id.* (quoting BLACK'S LAW DICTIONARY 507 (5th ed. 1979)).

39. *Id.*

40. *Id.* Again quoting *Black's Law Dictionary*, the court defined "like" as "[e]qual in quantity, quality, or degree or exactly corresponding." *Id.* (quoting BLACK'S LAW DICTIONARY 834 (5th ed. 1979)).

41. *Id.*

42. See *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d at 659 (Uhlenhopp, J., dissenting).

43. "In equity our review is de novo and our responsibility is to decide as the trial court should have." *Id.* at 656 (citing *Farmers Sav. Bank v. Gerhart*, 372 N.W.2d 238, 242 (Iowa 1985)).

44. *Id.* at 656-57. It is of note that neither party in this action briefed or argued the issue regarding the timing of the extinguishment of the junior liens. Appellants' Petition for Rehearing and Argument at 1, *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d 654 (Iowa 1985).

45. *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d at 657.

46. 209 Iowa 453, 228 N.W. 357 (1929).

47. *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d at 657 (citing *Paulsen v. Jensen*, 209 Iowa at 458, 228 N.W. at 359)).

48. 229 Iowa 93, 294 N.W. 274 (1940).

is a party to the foreclosure action and fails to redeem has his lien on the property extinguished.⁴⁹ A judgment lien, lost by the failure of a junior judgment lienor to redeem, was held to attach again to the property upon redemption by the debtor, but a junior mortgage lien would not re-attach.⁵⁰ The extinguishment of the junior mortgage lien, however, does not destroy the debt, and thus "the mortgagee can later obtain a judgment against the debtor."⁵¹

The *McFarland* court observed that Iowa common law has distinguished between redemption by a mortgagor and redemption by an assignee with respect to the rights of a junior lienor who has failed to redeem.⁵² The court cited four Iowa cases which indicate that "while a judgment creditor's lien is re-established when the mortgagor redeems, neither the judgment creditor nor junior mortgagee's rights attach to property redeemed by the assignee."⁵³ The court used the following excerpt from *Cooper v. Maurer*⁵⁴ to explain the foregoing distinction:

If, when the process of redemption is complete, the property is again vested in the debtor either by his having been the last to redeem or by conveyance from the holder of a sheriff's deed, then the unsatisfied creditor may reach it, for the simple reason that all the debtor's property is liable for the payment of his debts unless specifically exempted by statute. If, however, when the last redemption has been made, the property is in a third person, it cannot be so subjected for the equally simple reason that the property of one man cannot be subjected to the payment of the debts of another.⁵⁵

Although the preceding language from *Cooper* would seem to suggest that Mrs. *McFarland* should take the property free from the debts of her son, the *McFarland* majority determined that the foregoing rules do not apply when the assignee redeems within the exclusive period.⁵⁶ The court held

49. *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d at 657 (citing *Anderson v. Renshaw*, 229 Iowa at 98-99, 294 N.W. at 277-78)).

50. *Id.* (citing *Anderson v. Renshaw*, 229 Iowa at 99, 294 N.W. at 278 (1940)). This result occurs "because a judgment lien automatically attaches to after acquired real estate of the debtor." *Id.* (citing *Anderson v. Renshaw*, 229 Iowa at 99, 294 N.W. at 278 (1940)); see also IOWA CODE § 624.23(1) (1985).

51. *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d at 657.

52. *Id.*

53. *Id.* (citing *Cadd v. Snell*, 219 Iowa 728, 733-35, 259 N.W. 590, 592-93 (1935); *Paulsen v. Jensen*, 209 Iowa at 458, 228 N.W. at 359 (1929); *Cooper v. Maurer*, 122 Iowa 321, 326-27, 98 N.W. 124, 125-26 (1904); *Moody v. Funk*, 82 Iowa 1, 4, 47 N.W. 1008, 1009 (1891)).

54. 122 Iowa 321, 98 N.W. 124 (1904).

55. *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d at 657 (citing *Cooper v. Maurer*, 122 Iowa at 327, 98 N.W. at 126).

56. *Id.* The court determined that the preceding cases only addressed the issue of whether liens that had been extinguished became "re-established when the assignee redeemed." *Id.* Since PCA's lien was still viable against the property at the time of Dorothy *McFarland's* redemption, the court considered these cases inapplicable to the present situation. *Id.*

that a junior creditor's lien remains viable after the foreclosure decree and sheriff's sale and is not disturbed upon redemption by the assignee within the exclusive period.⁵⁷ The court, however, did not point to any statute or case which specifically supported this assertion.⁵⁸ In fact, as the dissent noted, the supreme court in *Tirrill v. Miller*⁵⁹ came to the opposite conclusion.⁶⁰

In *Tirrill*, the court, again in *obiter dicta*, intimated that an assignee who redeems within the exclusive period takes the property free and clear of the debts of the mortgagor when the creditors were parties to the foreclosure action.⁶¹ The *McFarland* majority again discounted this language because the issue of the exclusive right of redemption was neither raised nor addressed by the *Tirrill* court.⁶² The majority further distinguished the cases by noting that the *Tirrill* lienor was given an opportunity to protect his interest by redeeming from the assignee, a privilege not afforded to the PCA in the present action.⁶³ Accordingly, despite the language in *Tirrill* to the contrary, the majority concluded that a junior creditor's lien is not extinguished when a mortgagor or his assignee redeems within the exclusive period.⁶⁴

The majority acknowledged the existence of an alternate theory, advanced by the dissent, known as the cut-off theory of foreclosure.⁶⁵ Under this theory the junior creditor's liens are extinguished either by the entry of the foreclosure decree or the completion of the sheriff's sale.⁶⁶ After the sale the creditors possess only a statutory right of redemption which is cut-off when the debtor or the debtor's assignee redeems within the exclusive period.⁶⁷ The court, however, rejected this theory as being inconsistent with Iowa's statutory foreclosure scheme and contrary to Iowa case law.⁶⁸

The *McFarland* majority noted four code sections which it found supportive of the proposition that liens remain in effect after the entry of a foreclosure decree and the sheriff's sale.⁶⁹ First, the court cited Iowa Code section 654.8, which entitles a junior lienor, subsequent to foreclosure but prior to the sheriff's sale, to assignment of the interest of the mortgagee, as

57. *Id.* In the majority's opinion, PCA's lien was not extinguished since no creditor redemption period had existed. *Id.*

58. *See generally id.* at 657-59.

59. 206 Iowa 426, 218 N.W. 303 (1928).

60. *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d at 661 (Carter, J., dissenting).

61. *Tirrill v. Miller*, 206 Iowa at 429, 218 N.W. at 304.

62. *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d at 658.

63. *Id.* at 658; *see supra* note 32.

64. *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d at 658.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

evidence that junior liens survive the entry of a foreclosure decree.⁷⁰ The court then cited three other statutes which allow distribution of surplus sale proceeds to the mortgagor if there are no other liens on the property,⁷¹ as evidence that junior liens must survive the foreclosure sale.⁷²

The *McFarland* majority noted language in *Anderson* and *Paulsen* which stated that junior creditors' liens were lost by their failure to redeem before the expiration of the creditor period.⁷³ The court also set forth language from three other Iowa cases which asserted that junior lienors could protect themselves by either bidding at the sheriff's sale or redeeming from such sale within the prescribed period.⁷⁴ In interpreting these cases, the court apparently found that this language granted the junior lienor an absolute right to an opportunity to redeem before losing the security of its lien.⁷⁵ Thus, the court held that, in light of Iowa's statutory scheme and case law, junior creditor's liens are not extinguished until the creditor has been given an opportunity to protect his interest through redemption.⁷⁶

The dissent in *McFarland* criticized the majority for "completely ignoring the mechanics of foreclosure by judicial sale."⁷⁷ An essential feature of foreclosure by sale is that the other lienors on the property be joined in the action in order that their liens may be extinguished so that clear title may pass to the purchaser.⁷⁸ According to the dissenters, under this system the junior lienor has no justifiable expectation that his lien will survive the sale.⁷⁹ Rather, the dissent argued that the junior lienor could only expect a statutory right of redemption conditioned on the failure of the mortgagor to

70. *Id.*

71. *Id.* For this proposition the court cited Iowa Code section 654.7 (1985)(disposal of overplus "if there is no other lien on the property"); IOWA CODE § 654.9 (1985)(provision for the payment of "any other lien on the property sold"); and IOWA CODE § 626.82 (1985)(overplus paid to the debtor "unless there are liens upon the property").

72. *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d at 658.

73. *Id.* (citing *Anderson v. Renshaw*, 229 Iowa at 99, 294 N.W. at 278; *Paulsen v. Jensen*, 209 Iowa at 458, 228 N.W. at 359).

74. *Id.* (citing *Stiles v. Bailey*, 205 Iowa 1385, 1388, 219 N.W. 537, 539-40 (1928); *Witham v. Blood*, 124 Iowa 695, 700, 100 N.W. 558, 560 (1904); *Cooper v. Maurer*, 122 Iowa at 326, 98 N.W. at 126).

75. *See id.* The majority appeared concerned by the notion that the McFarlands could divest PCA's lien merely by assigning their redemption rights to Daniel's mother. *See id.* at 657 ("The titleholders could not divest PCA's lien on the property merely by assigning their redemption rights to Daniel's mother"). This concern, however, does not require the result reached by the majority. If the transfer of redemption rights had been made solely to defeat PCA's interests, the PCA could have challenged the assignment to Daniel's mother on the ground of fraud. *See Tirrill v. Miller*, 206 Iowa at 430, 218 N.W. at 305 (creditor challenged assignment of redemption rights to debtor's wife on the grounds of fraud).

76. *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d at 658-59.

77. *Id.* at 661 (Carter, J., dissenting).

78. *Id.* (Carter, J., dissenting) (citing 5 G. THOMPSON, REAL PROPERTY § 4838 (1924); Comment, 27 IOWA L. REV. 482, 485 (1942)).

79. *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d at 660 (Carter, J., dissenting).

redeem.⁸⁰

The dissent conceded that its view of foreclosure forces the junior lienor to bid at the sale at his peril in order to fully protect his interest.⁸¹ The dissent, however, viewed this pressure on the lienor as desirable, and in support quoted a commentator who wrote: "The pressure applied to junior lienors is desirable and the hardship on them is by no means shocking.

We cannot make of the land a miraculous pitcher, and the attempt to do so will merely discourage redemption, encourage underbidding and defeat the purpose of the statute."⁸² According to the dissenters, the legislative grant of exclusive redemption rights to the debtor and only conditional rights to the junior lienors evidenced the legislature's intention to pressure the creditor to bid at the sale.⁸³ The dissenters argued that if the legislature had intended to protect the junior lienor in the manner proposed by the majority, the legislature would logically have granted the lienor exclusive redemption rights, thereby allowing him to protect his interest by redemption if the value of the property warranted, but extinguishing his lien in those cases where it did not.⁸⁴ The fact that the legislature did not grant the junior lienor such protection convinced the dissenters that the legislature did not intend to allow junior lienors an opportunity to redeem before losing their liens on the property.⁸⁵

The dissent conceded that other courts have sought to establish the liens of junior creditors against the property held by redeeming mortgagors.⁸⁶ None of these courts, however, have held that the liens were not extinguished upon sale.⁸⁷ Rather, these courts have allowed the junior liens to be "revived" upon redemption by the mortgagor.⁸⁸ As the dissent noted, the majority could not cite any authority for its proposition that liens survive the judicial sale of the property.⁸⁹

The dissent further criticized the majority for "misinterpret[ing] the language in some of our decisions as establishing the time of extinguishment of junior liens as the expiration of the redemption period for creditors."⁹⁰ The dissent disagreed with the majority's interpretation of the *Anderson*

80. See *id.* (Carter, J., dissenting).

81. See *id.* at 661-62 (Carter, J., dissenting).

82. *Id.* at 662 (Carter, J., dissenting) (quoting Durfee & Doddridge, *Redemption from Foreclosure Sale — The Uniform Mortgage Act*, 23 MICH. L. REV. 825, 853 (1925)).

83. See *id.* at 662 (Carter, J., dissenting).

84. *Id.* (Carter, J., dissenting).

85. See *id.* (Carter, J., dissenting).

86. *Id.* at 661 (Carter, J., dissenting).

87. *Id.* (Carter, J., dissenting) (citing Durfee & Doddridge, *Redemption from Foreclosure Sale — The Uniform Mortgage Act*, 23 MICH. L. REV. 825, 850 (1925)).

88. *Id.* (Carter, J., dissenting).

89. *Id.* (Carter, J., dissenting).

90. *Id.* (Carter, J., dissenting).

and *Paulsen* decisions.⁹¹ These cases, when read together with *Cooper v. Maurer*⁹² and *Cadd v. Snell*,⁹³ and in light of the traditional mechanics of foreclosure by sale, suggested to the dissenters that, at the latest, junior liens are extinguished at the conclusion of the statutory redemption process.⁹⁴ In the present case, the redemption process terminated upon redemption by the mortgagor's assignee.⁹⁵ Thus, the dissent believed that, at the latest, PCA's lien was extinguished upon Dorothy McFarland's redemption, and did not remain viable against the property in her hands.⁹⁶

Additionally, the dissent argued that the timing of the mortgagor's or assignee's redemption should not be of significance in determining the status of junior liens.⁹⁷ Application of the majority's rule would require that an assignee who redeems within the first debtor period take the property subject to the junior liens, but an assignee who redeems after the expiration of the creditor period would take the property free and clear of the debt of the mortgagor.⁹⁸ The dissent noted that in over one hundred years of case law, and through four critical examinations of the statute, not one case or commentator had suggested that the timing of redemption makes any difference in determining the status of junior liens.⁹⁹ The dissent quoted one commentator, who wrote:

The [preferred] scheme is designed to put pressure on the foreclosing mortgagee at the time of the sale to bid what he thinks the property is worth, up to the amount of his debt; and it puts pressure on a junior lienor during the period of his right to redeem to bid more than the price paid by the senior mortgagee. Iowa at the present time comes closest to this suggested solution. *Under its statute the . . . assignee on redemption clearly takes free of all liens against the mortgagor.*¹⁰⁰

The dissent further criticized the majority for its overbroad protection of junior creditors which ignored the realities of junior lien status.¹⁰¹ A re-

91. *See id.* (Carter, J., dissenting).

92. 122 Iowa 321, 98 N.W. 124 (1904).

93. 219 Iowa 728, 259 N.W. 590 (1935).

94. *See Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d at 660-61 (Carter, J., dissenting).

95. *Id.* at 661 (Carter, J., dissenting).

96. *See id.* (Carter, J., dissenting).

97. *See id.* at 661 (Carter, J., dissenting).

98. *See id.* (Carter, J., dissenting). Since the majority believed that the liens were only extinguished after the expiration of the creditor redemption period, the liens would still be viable against the assignee who redeems prior to the expiration of this period. *See id.* at 659. If, however, the assignee waited until after the expiration of the creditor redemption period, the junior liens would be extinguished and the assignee would take the property free and clear of these debts. *See id.* at 657.

99. *Id.* at 661 (Carter, J., dissenting).

100. *Id.* at 661-62 (Carter, J., dissenting) (citing G. OSBORNE, MORTGAGES § 309, at 642 (2d ed. 1970)) (emphasis added).

101. *Id.* at 662 (Carter, J., dissenting).

cent survey of two Iowa counties has indicated that more than ninety percent of all junior lienors fail to make redemption.¹⁰²

The majority's broad grant of protection to those junior lienors whose security interests are illusory and worthless based upon the value of the property and who would not have redeemed even if afforded an opportunity to do so disturbed the dissenters.¹⁰³ The dissent apparently recognized the inequity of a rule which would allow those junior creditors whose liens were worthless based on the value of the property, to have their debts suddenly valuably secured upon redemption by the assignee within the debtor's exclusive period.¹⁰⁴

Overall, the dissent's approach appears more sound. By allowing the junior creditor's liens to continue until the expiration of the creditor redemption period, the majority has virtually assured that no well-informed debtor or assignee will ever again take advantage of the exclusive redemption privilege granted them by the statute.¹⁰⁵ Furthermore, the majority's rule will, in circumstances similar to those presented in this case, result in the property of one person being subject to the payment of the debt of another — a result repugnant to Iowa's policy, recognized by the majority, that "the property of one man cannot be subjected to the payment of the debts of another."¹⁰⁶ Lastly, as the dissent recognized, the majority failed to articulate any authority or policy supporting its assertion that junior liens must remain in force against the property until the end of the creditor redemption period.¹⁰⁷

The better rule, as set forth by the dissent, would extinguish the junior liens at the time of the sheriff's sale or, at the latest, at the end of the redemption process. This rule would be compatible with the traditional concepts of foreclosure by sale, and would not transform the present exclusive debtor redemption period into "a trap for the unwary debtor who will often be acting without the advice of counsel."¹⁰⁸ This rule would also avoid the inequitable result of allowing a windfall of security to a junior creditor whose lien before the sale was worthless based on the value of the property.¹⁰⁹

102. *Id.* (Carter, J., dissenting). See Bauer, *Statutory Redemption Reconsidered: The Operation of Iowa's Redemption Statute in Two Counties Between 1881 and 1980*, 70 IOWA L. REV. 343, 370, 377 (1985).

103. *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d at 662 (Carter, J., dissenting). See *supra* note 19.

104. See *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d at 662 (Carter, J., dissenting).

105. *Id.* (Carter, J., dissenting).

106. *Farmers Prod. Credit Ass'n v. McFarland*, 374 N.W.2d at 657 (citing *Cooper v. Maurer*, 122 Iowa at 327, 98 N.W. at 126).

107. *Id.* at 661 (Carter, J., dissenting).

108. *Id.* at 662 (Carter, J., dissenting).

109. See *supra* note 16.

The Iowa Supreme Court in *McFarland* has effectively removed any incentive for the debtor or his assignee to take advantage of his privilege of exclusive redemption. The legislature must now act to restore the lost vitality of this privilege. The legislature should settle once and for all this dispute over the timing of the extinguishment of junior liens in a foreclosure action. This action should be taken at once to assure that those debtors struggling in our present economic condition, and their assignees, will be afforded the full measure of protection intended for them by the present statute.

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