

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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SHEILA FRANKLYN, Legal Guardian for  
VIVIAN ARMSTRONG, a Legally Incapacitated  
Person, and KEVIN FRANKLYN,

UNPUBLISHED  
May 25, 2006

Plaintiffs-Appellees,

v

No. 259505  
Wayne Circuit Court  
LC No. 03-329727-CH

BANK OF NEW YORK, TROTT & TROTT,  
P.C., COUNTRY WIDE CORPORATION,  
WAYNE COUNTY SHERIFF DEPARTMENT,  
CITY OF DETROIT, and DEPARTMENT OF  
DETROIT BUILDING & SAFETY  
ENGINEERING,

Defendants,

and

COUNTY OF WAYNE,

Defendant-Appellant.

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Before: Cavanagh, P.J., and Fort Hood and Servitto, JJ.

PER CURIAM.

In this action arising out of the foreclosure and sale of property located in Wayne County, defendant<sup>1</sup> county appeals as of right an order denying its motion for summary disposition based on governmental immunity, Governmental Tort Liability Act (GTLA), MCL 691.1401 *et seq.* We reverse and remand for entry of an order granting defendant summary disposition, pursuant to MCR 2.116(C)(7).

Plaintiff Vivian Armstrong was the record owner of the property in issue. During the course of her ownership, she failed to make payments on a mortgage on the property. Pursuant

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<sup>1</sup> The singular defendant refers to defendant county only.

to the Revised Judicature Act (RJA), MCL 600.3201 *et seq.*, and the power of sale clause contained in the mortgage, foreclosure proceedings were instituted and a sheriff's sale conducted. Plaintiffs alleged that, in connection with this sale, defendant county made various fraudulent, innocent, and negligent misrepresentations. This litigation ensued, and defendant county sought, and was denied, summary disposition based upon statutory governmental immunity.

Defendant alleges that the circuit court improperly denied it summary disposition pursuant to MCR 2.116(C)(7). We agree. We review rulings on motions for summary disposition *de novo*. *In re Capuzzi Estate*, 470 Mich 399, 402; 684 NW2d 677 (2004). In reviewing motions pursuant to MCR 2.116(C)(7), we consider “the affidavits, depositions, admissions, and other documentary evidence filed by the parties, and determine whether they indicate that . . . [a party is] in fact entitled to immunity.” *Poppen v Tovey*, 256 Mich App 351, 354; 664 NW2d 269 (2003). If there is no reasonable dispute regarding the facts, either as to their nature or their legal effect, the question of immunity becomes a question of law. *Id.* at 354. We accept the allegations in the complaint as true, unless otherwise contradicted. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). Statutory interpretation presents a question of law reviewed *de novo*. *Ayar v Foodland Distributors*, 472 Mich 713, 715; 698 NW2d 875 (2005). Our primary goal in interpreting a statute is to ascertain and give effect to legislative intent. *Casco Twp v Secretary of State*, 472 Mich 566, 571; 701 NW2d 102 (2005).

The GTLA provides that “a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function.” MCL 691.1407(1). A “governmental agency” is defined as “the state or a political subdivision,” MCL 691.1401(d), and a “Political Subdivision” includes counties, MCL 691.1401(b). “Governmental function” is defined as

an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law. Governmental function includes an activity, as directed or assigned by his or her public employer for the purpose of public safety, performed on public or private property by a sworn law enforcement officer within the scope of the law enforcement officer's authority. [MCL 691.1401(f).]

“This definition is to be broadly applied. . . . A determination of whether an activity was a governmental function must focus on the general activity and not the specific conduct involved at the time of the tort.” *Herman v Detroit*, 261 Mich App 141, 144; 680 NW2d 71 (2004) (citations omitted).

The RJA provides that “[e]very mortgage of real estate, which contains a power of sale, upon default being made in any condition of such mortgage, may be foreclosed by advertisement, in the cases and in the manner specified in this chapter.” MCL 600.3201. It further provides as follows:

The sale shall be at public sale, between the hour of 9 o'clock in the forenoon and 4 o'clock in the afternoon, at the place of holding the circuit court within the county in which the premises to be sold, or some part of them, are

situated, and shall be made by the person appointed for that purpose in the mortgage, or by the sheriff, undersheriff, or a deputy sheriff of the county, to the highest bidder. [MCL 600.3216 (emphasis added).]

By virtue of the plain language of MCL 691.1401(f), defendant was entitled to summary disposition pursuant to MCR 2.116(C)(7). *Ayar, supra* at 716. According to plaintiffs' complaint, defendant county presided over the sheriff's sale at issue. Defendant was statutorily authorized and obligated to do so. MCL 600.3216. This express statutory authorization renders the sale a government function. MCL 691.1401(f). Defendant accordingly enjoys statutory tort immunity in its discharge of this function. MCL 691.1407(1). See also *HRSS, Inc v Wayne Co Treasurer*, 279 F Supp 2d 846, 851 (ED Mich, 2003) (concluding that the defendant county enjoyed immunity from tort liability by virtue of its role in a foreclosure sale).<sup>2</sup> Because of our resolution of this issue, we need not address defendant's remaining issue on appeal.

Reversed and remanded for entry of an order granting defendant summary disposition, pursuant to MCR 2.117(C)(7). We do not retain jurisdiction.

/s/ Mark J. Cavanagh  
/s/ Karen M. Fort Hood  
/s/ Deborah A. Servitto

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<sup>2</sup> Plaintiffs raised three claims that implicated this defendant, fraudulent and innocent misrepresentation and negligence. However, in the lower court, plaintiffs did not address the propriety of proceeding under each legal theory. Following review of the allegations, plaintiffs essentially alleged that defendant county negligently performed its statutory obligations involving the sale of the property. We are not bound by a plaintiff's choice of labels for the cause of action because to do so is to exalt form over substance. *Johnston v Livonia*, 177 Mich App 200, 208; 441 NW2d 41 (1989). Accordingly, dismissal of the entire complaint against this defendant is proper.