

STATE OF MICHIGAN
COURT OF APPEALS

WELLS FARGO BANK NA,

Plaintiff-Appellant,

v

GRAND VALLEY CO-OP CREDIT UNION,

Defendant-Appellee,

and

THOMAS HANER and GEORGIANA HANER,

Defendants.

UNPUBLISHED
January 19, 2012

No. 301348
Mason Circuit Court
LC No. 10-000034-CH

Before: BECKERING, P.J., and OWENS and SHAPIRO, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendant Grand Valley Co-op Credit Union's motion for summary disposition in this quiet title action. We affirm.

On January 19, 2004, Thomas and Georgiana Haner obtained a home equity line of a credit from defendant secured by a future advance mortgage on their home. The future advance mortgage was properly recorded on January 27, 2004 and contained the following release provision:

When Borrower (1) has paid all sums secured by this Mortgage and (2) had requested that the revolving line of credit be canceled, Lender shall discharge this Mortgage. Lender shall prepare and file a discharge of this Mortgage without charge to Borrower, and shall pay the fee for recording the discharge.

In May 2004, the Haners entered into a purchase agreement to sell their home to Daniel Stevens. The Haners sought and received a payoff letter from defendant, stating the outstanding balance on their home equity credit line. In July 2004, the sale to Stevens was completed. Stevens financed his purchase by obtaining a mortgage, which by various assignments, came to be held by plaintiff. Of the sale proceeds, \$25,192.98 was disbursed to defendant, rendering the Haners' home equity credit line balance zero. There is no question that defendant received this payment. Less than one month after the sale, the Haners began to make withdrawals and payments on the credit line, until they defaulted on the line in 2009. Defendant initiated

foreclosure proceedings on the subject property and purchased it at a sheriff's sale. Plaintiff's mortgage was extinguished. Plaintiff then filed a quiet title action seeking to protect their interest in the home. Defendant sought and was granted summary disposition.

Plaintiff first argues that the trial court erred in finding that there was no genuine issue of material fact as to whether the conditions of the future advance mortgage were satisfied as to require defendant to close the line of credit and discharge the future advance mortgage pursuant to MCL 565.41. Summary disposition is proper under MCR 2.116(C)(10) when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds could differ. *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008). The nonmoving party, who bears the burden of showing a genuine issue of material fact exists for trial, *AFSCME v Detroit*, 267 Mich App, 257, 261; 704 NW2d 712 (2005), "may not rest upon the mere allegations or denials of his or her pleading, but must . . . set forth specific facts showing that there is a genuine issue for trial," MCR 2.116(G)(4). On review, we will consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. MCR 2.116(G)(5); *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). However, "documentary evidence offered in support of or in opposition to a [(C)(10)] motion . . . shall only be considered to the extent that the content or substance would be admissible as evidence." MCR 2.116(G)(6).

MCL 565.41(1) provides that "after a mortgage has been paid or otherwise satisfied, the mortgagee or the personal representative, successor, or assign of the mortgagee shall prepare a discharge of the mortgage." In interpreting MCL 565.41(1), this Court held that a "future advance mortgage is not 'paid or otherwise satisfied' unless the debt is paid off and future advances are terminated." *Deutsche Bank Trust Co Americas v Spot Realty, Inc*, 269 Mich App 607, 614; 714 NW2d 409 (2006).

Plaintiff's only evidence that the Haners "requested that the revolving line of credit be canceled" is the handwritten statement on the payoff letter. As defendant points out, however, there is no evidence of record which would make this hearsay admissible. See MRE 801, 802. For example, there is no evidence establishing who made the handwritten notation or that the signatures are what they purport to be. Plaintiff argued at the motion hearing that the document was admissible under MRE 803(6) as a business record. Plaintiff noted that the document "has the fax number coming right from the bank" and that "[t]his is something that would typically be done at any closing where you receive a payoff statement . . . to determine the balance of a prior obligation so that it can be paid off." Although true, these assertions do not address whether the handwritten note, appended to the business record after it was prepared and delivered, is admissible. Moreover, as plaintiff acknowledged at the motion hearing, "we don't have anything that would . . . really put this in the hands of" defendant. Defendant, however, has the averment of its Chief Operations and Business Development Officer that "at no time did the Credit Union receive a directive, in writing or otherwise, from Thomas or Georgina Haner, nor information from any other source, to close the home equity line of credit."

Thus, there exists no genuine issue of material fact as to whether the conditions of the future advance mortgage were satisfied requiring defendant to discharge the Haners' line of credit.

Under Michigan law it is clear that the "recordation of a mortgage constitutes constructive notice to all subsequent lienholders regarding both the existence of the mortgage and the amount of indebtedness that is secured." *Ameriquist Mortgage Co v Alton*, 273 Mich App 84, 93; 731 NW2d 99 (2007), citing *McMurty v Smith*, 320 Mich 304, 306-307, 30 NW2d 880 (1948). As defendant's future advance mortgage was properly recorded, plaintiff's predecessors had constructive notice "that they take subject to any lien the mortgagor may have on the property." *Id.* at 94.

Contrary to plaintiff's assertion, this is not an irrelevant matter because the mortgage was not required to be discharged. It would have been a simple matter for plaintiff, prior to taking an assignment of the mortgage, to check the public records. Plaintiff has no claim to the property superior to that of defendant. Accordingly, the trial court's grant of summary disposition in favor of defendant was proper.

Affirmed.

/s/ Jane M. Beckering
/s/ Donald S. Owens
/s/ Douglas B. Shapiro