

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

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ROGER S. YOUNG and AMBER YOUNG,  
  
Plaintiff-Appellants,

UNPUBLISHED  
September 25, 2012

v

QUICKEN LOANS, INC.,  
  
Defendant,

No. 304683  
Macomb Circuit Court  
LC No. 2010-005267-CH

and

MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS as nominee for JP MORGAN CHASE  
BANK, N.A. and MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS as nominee for  
BANK OF AMERICA, N.A.,

Defendant-Appellees.

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Before: MURPHY, C.J., and MARKEY and WHITBECK, JJ.

PER CURIAM.

**I. OVERVIEW**

This case arises out of a dispute between plaintiffs Roger and Amber Young and defendant Mortgage Electronic Registration Systems (Mortgage Systems), acting as nominee for JP Morgan Chase Bank, N.A. (Chase), and Bank of America, N.A. (Bank of America). The Youngs filed a complaint against Mortgage Systems and Quicken Loans, Inc. (Quicken) seeking an injunction to prevent any foreclosure proceedings on their mortgaged property, and asking the trial court to order “the owner of the indebtedness” to produce the promissory notes associated with the mortgages. The Youngs also alleged that they had not received notice when Quicken had assigned or transferred the promissory notes associated with the mortgages. Mortgage Systems, acting in its capacity as nominee for Chase and Bank of America, filed motions for summary disposition. Chase and Bank of America argued that the Youngs had failed to state a claim on which the trial court could grant relief because an injunction is a form of relief, not a cause of action. The Youngs responded that they were entitled to a declaratory judgment telling them who to pay. After hearing the motions for summary disposition, the trial court concluded

that the Youngs were not entitled to declaratory relief and granted defendants' motions under MCR 2.116(C)(10). We affirm.

## II. FACTS

In January 2007, the Youngs obtained two loans from Quicken. On January 4, 2007, the Youngs obtained a first loan for \$108,000. On January 7, 2007, the Youngs obtained a second loan for \$37,000. Each loan had an associated promissory note, and as security for each loan, the Youngs granted Quicken mortgages on their real property. Mortgage Systems was the mortgagee for each mortgage. Mortgage Systems is a separate corporation that acts solely as a nominee for Quicken and its assigns.

On January 16, 2007, and January 31, 2007, Quicken sent the Youngs written notices. The notices indicated that Quicken was transferring the servicing rights for the second loan to Countrywide Home Loans, Inc. (Countrywide). The notices stated that "payment due on 03/01/07 and all future payments should be mailed to Countrywide[.]" The notices also stated that Quicken's transfer of servicing rights did not affect the loan's terms or conditions. Quicken transferred the promissory note to Countrywide. In 2009, Countrywide changed its name to BAC Home Loans (BAC). Bank of America received the note as the result of a merger. Bank of America currently owns the note for the second loan; however, BAC remained the proper recipient of the Youngs' loan payments.

On January 19, 2007, and January 31, 2007, Quicken sent the Youngs similar written notices that it was transferring the servicing rights for the first loan to Chase. The Chase notices contained the same statements as the Countrywide notices. Quicken then transferred the note's servicing rights to Chase.

The Youngs made payments to BAC and Chase on both mortgages from February 15, 2007, to December 1, 2010. In December 2010, the Youngs stopped making payments and filed their complaint in this action.

In their complaint, the Youngs alleged that they had not been notified of the assignment or transfer of the promissory notes. The Youngs also indicated that they "became unsure of the proper party to receive said payments." The Youngs requested that the trial court enjoin any foreclosure proceedings, and order Quicken and Mortgage Systems to produce the promissory notes to demonstrate their entitlement to the payments. The Youngs also asked the trial court to order mortgage modification negotiations under MCL 600.3205a. The complaint contained a single count, titled "Count 1 For Injunctive Relief."

In January 2011, Quicken moved for summary disposition under MCR 2.116(C)(8). Quicken argued that the Youngs had failed to state "any type of claim" because an injunction is a type of relief, and that the Youngs' potential claims were not ripe for adjudication because they were contingent on hypothetical future events. The trial court granted summary disposition in favor of Quicken.

In March 2011, Chase moved for summary disposition under MCR 2.116(C)(8) and (C)(10). Bank of America filed a similar motion. Both argued that the Youngs had not alleged any claim that would entitle them to injunctive relief. Chase also argued that because the

Youngs had been aware that Chase was their mortgage servicer and because they had sent payments to Chase for almost four years, any claim that the Youngs had become confused was without a factual basis. Chase further argued that the Youngs had not established any injury because no one had instituted foreclosure proceedings.

Answering the motions, the Youngs clarified that their underlying claim was for declaratory judgment and that the controversy was “the legal status of the entity entitled to receive payments under the promissory note[s].” The Youngs argued that Chase and Bank of America were not holders in due course of the notes because the notes were not negotiable instruments. The Youngs also argued that Mortgage Systems did not hold any notes. The Youngs further argued that defendants had not complied with the noting provisions in the federal Real Estate Settlement Procedures Act, 12 USC 2601 *et seq.*

At the hearing on the motion, Chase and Bank of America argued that the Youngs had also failed to state a claim or declaratory judgment because there was no controversy about who the Youngs were supposed to pay, and that the statute of limitations barred any claim for violating the federal statute.

In its written opinion, the trial court recognized that the Youngs’ complaint alleged a claim for declaratory judgment. The trial court concluded that the Youngs’ claim for declaratory judgment failed. The trial court reasoned that the Youngs’ claim lacked an actual controversy because they had not pleaded or proven any facts to show that they had a reason to believe that Chase and Bank of America were no longer entitled to the mortgage payments. The trial court further reasoned that the Youngs’ claims were hypothetical because no one had initiated foreclosure proceedings. The trial court opined that the Youngs’ complaint “appear[ed] to be nothing more than a preemptive play to postpone or prevent foreclosure of the mortgages.” Because the parties had relied on facts outside the pleadings, the trial court granted Chase’s and Bank of America’s motions under MCR 2.116(C)(10).

### III. DECLARATORY JUDGMENT

#### A. STANDARD OF REVIEW

Generally, this Court reviews de novo the trial court’s grant or denial of a motion for summary disposition.<sup>1</sup> This Court reviews de novo the trial court’s grant or denial of a motion for summary disposition in a declaratory judgment action, applying the standards of the court rule that the trial court granted summary disposition under.<sup>2</sup> Whether a party has alleged an actual controversy is a question of law that this Court reviews de novo.<sup>3</sup>

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<sup>1</sup> *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

<sup>2</sup> *Farm Bureau Ins Co v Abalos*, 277 Mich App 41, 43; 742 NW2d 624 (2007).

<sup>3</sup> *Kircher v City of Ypsilanti*, 269 Mich App 224, 226-227; 712 NW2d 738 (2005).

Summary disposition is appropriate under MCR 2.116(C)(10) when there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.<sup>4</sup> The moving party must specifically identify the alleged undisputed factual issues and support his or her position with documentary evidence.<sup>5</sup> The nonmoving party then has the burden to produce admissible evidence to establish disputed facts.<sup>6</sup> The possibility that a party may be able to support a claim by producing evidence at trial is not sufficient for the trial court to deny summary disposition under MCR 2.116(C)(10).<sup>7</sup>

## B. LEGAL STANDARDS

A trial court may grant a declaratory judgment to establish the rights and legal relations of an interested party if there is an actual controversy.<sup>8</sup> However, the trial court may not grant a declaratory judgment without an actual controversy, because the lack of a justiciable issue will deprive the trial court of subject matter jurisdiction.<sup>9</sup> An actual controversy exists when “a declaratory judgment is necessary to direct a plaintiff’s future conduct in order to preserve his or her legal rights.”<sup>10</sup> To show an actual controversy, a plaintiff must plead and prove facts that show that adverse interests exist.<sup>11</sup> The trial court cannot rule on hypothetical questions, but a plaintiff may seek a declaratory judgment before suffering an actual injury.<sup>12</sup>

## C. APPLYING THE STANDARDS

The Youngs failed to plead or prove any facts to show that there was an actual controversy about who was entitled to payment on the notes. In their motions for summary disposition, Chase and Bank of America provided documentary evidence of the assignment of the servicing rights, and established that Quicken had sent the Youngs notices of where Quicken was transferring the servicing rights and who the Youngs were supposed to pay. Further, the parties did not dispute that the Youngs made payments on the notes to BAC and Chase from February 15, 2007, to December 1, 2010. Thus, Chase and Bank of America provided documentary evidence that they were the properly payable parties and that the Youngs had no

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<sup>4</sup> *Maiden*, 461 Mich at 120.

<sup>5</sup> MCR 2.116(G)(3)(b) and (4); *Maiden*, 461 Mich at 120.

<sup>6</sup> *Wheeler v Shelby Twp*, 265 Mich App 657, 663; 697 NW2d 180 (2005).

<sup>7</sup> *Maiden*, 461 Mich at 121.

<sup>8</sup> MCR 2.605(A)(1).

<sup>9</sup> MCR 2.605(A)(1); *Allstate Ins Co v Hayes*, 442 Mich 56, 66; 499 NW2d 743 (1993).

<sup>10</sup> *AFSCME Council 25 v State Employees’ Retirement Sys*, 294 Mich App 1, 7; \_\_\_ NW2d \_\_\_ (2011).

<sup>11</sup> *Citizens for Common Sense in Gov’t v Attorney General*, 243 Mich App 43, 55; 620 NW2d 546 (2000).

<sup>12</sup> *AFSCME Council 25*, 294 Mich App at 7.

basis for their confusion. Without some sort of adverse interest, Chase and Bank of America are entitled to judgment as a matter of law on the Youngs' declaratory judgment claims.

As the nonmoving party, the Youngs had the burden to provide documentary evidence that some adverse interest existed. The Youngs did not provide evidence to contest that Chase or Bank of America held the mortgage notes or servicing rights, or that there was an actual issue concerning who was entitled to payment. The Youngs' promise to support these claims at trial was not sufficient. The trial court appropriately granted summary disposition because there was no issue of material fact concerning who the Youngs were supposed to pay.

The trial court also correctly concluded that the Youngs had established only hypothetical injuries. The Youngs argue on appeal that they are entitled to a declaratory judgment that Mortgage Systems is not entitled to foreclose on their mortgages because Mortgage Systems does not hold the promissory notes. The Youngs did not provide any evidence to support their concerns that Mortgage Systems, rather than a proper holder, might attempt to foreclose on the mortgages. Until Mortgage Systems attempts to foreclose on the Youngs' mortgages—rather than a party that does hold one of the promissory notes, such as Bank of America—we agree that this injury is only hypothetical and thus does not create an actual controversy.

The trial court properly granted summary disposition under MCR 2.116(C)(10) on the Youngs' claim because the Youngs had failed to show any issues of material fact regarding whether an actual controversy existed, and Mortgage Systems was entitled to judgment as a matter of law.<sup>13</sup>

#### IV. THE REAL ESTATE SETTLEMENT PROCEDURES ACT

##### A. STANDARD OF REVIEW

This Court reviews de novo the trial court's grant or denial of a motion for summary disposition.<sup>14</sup> Summary disposition is appropriate under MCR 2.116(C)(10) when there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.<sup>15</sup>

We note that resolution of this issue requires us to apply a federal statute. This Court may review an issue of federal law regarding a federal statute, and interpret federal statutory provisions and regulations.<sup>16</sup>

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<sup>13</sup> Given our resolution of this issue, we need not determine whether the Youngs would have been entitled to injunctive relief as a result of their declaratory judgment claim.

<sup>14</sup> *Maiden*, 461 Mich at 118.

<sup>15</sup> *Maiden*, 461 Mich at 109.

<sup>16</sup> *Woodman v Miesel Sysco Food Services Co*, 254 Mich App 159, 165; 657 NW2d 122 (2002).

## B. LEGAL STANDARDS

The federal Real Estate Settlement Procedures Act provides that “[e]ach servicer of any federally related mortgage loan shall notify the borrower in writing of any assignment, sale, or transfer of the servicing of the loan to any other person.”<sup>17</sup> A “servicer” is “the person responsible for servicing of a loan,”<sup>18</sup> and the term “servicing” means “receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan[.]”<sup>19</sup>

## C. APPLYING THE STANDARDS

In their complaint, the Youngs also alleged that Quicken had not notified them that their promissory notes had been assigned or transferred. To the extent that the Youngs argue that Mortgage Systems itself did not inform them that their servicing rights had been transferred, Mortgage Systems was not required to do so. The Youngs did not provide any evidence that Mortgage Systems was ever responsible for servicing their loan. By its definitions, this section only applies to servicers. Thus, Mortgage Systems was not required to provide the Youngs with any notice of transfer of the servicing rights.

Further, Chase and Bank of America produced documentary evidence of the written notices that Quicken had sent to the Youngs when Quicken transferred the notes’ servicing rights. These notices clearly indicated that Quicken was transferring the servicing rights of the Youngs’ loans to Chase and Bank of America respectively. The Youngs admitted that they had received these notices, and the parties did not dispute that the Youngs had then had made payments to the respective banks for nearly four years. The Youngs provided no evidence of further transfers. The Youngs also did not identify any disputed issues of material fact. Based on these facts, Chase and Bank of America were entitled to judgment as a matter of law.

The trial court properly granted summary disposition under MCR 2.116(C)(10) on the Youngs’ notice allegations because the Youngs had failed to show any issues of material fact concerning whether Mortgage Systems was a servicer under the statute, or whether Quicken had failed to provide the Youngs with notice when it had transferred their servicing rights to Chase and Bank of America. Thus, Mortgage Systems was entitled to judgment as a matter of law on this claim.

We affirm.

/s/ William B. Murphy  
/s/ Jane E. Markey  
/s/ William C. Whitbeck

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<sup>17</sup> 12 USC 2605(b)(1).

<sup>18</sup> 12 USC 2605(i)(2).

<sup>19</sup> 12 USC 2605(i)(3).