

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

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BAC HOME LOANS SERVICING, L.P., f/k/a  
COUNTRYWIDE HOME LOANS SERVICING,  
L.P.,

UNPUBLISHED  
May 23, 2013

Plaintiff/Counterdefendant-  
Appellee,

v

No. 309048  
Oakland Circuit Court  
LC No. 2011-118609-CH

ROMAN LUNDIN,

Defendant/Counterplaintiff/Third-  
Party Plaintiff-Appellant,

and

MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC.,

Third-Party Defendant-Appellee,

and

TROTT & TROTT, P.C.,

Third-Party Defendant.

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Before: DONOFRIO, P.J., and MARKEY and OWENS, JJ.

PER CURIAM.

Defendant, Roman Lundin, appeals as of right the trial court's order granting summary disposition in favor of plaintiff, BAC Home Loans Servicing, L.P. (BAC), and third-party defendant, Mortgage Electronic Registration Systems, Inc. (MERS), in this foreclosure action. Because Lundin lacked standing to challenge the foreclosure sale since he failed to redeem the property within the six-month redemption period set forth in MCL 600.3240(8), we affirm.

**I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

On August 16, 2007, Lundin executed a promissory note in favor of Countrywide Bank, FSB (Countrywide) in exchange for a loan in the amount of \$700,000 to purchase real property

located in West Bloomfield. In conjunction with the loan and as security for the note, Lundin executed a mortgage in favor of MERS, “acting solely as a nominee for [Countrywide] and [Countrywide’s] successors and assigns[.]” The mortgage was recorded on August 21, 2007.

It is undisputed that Lundin defaulted on the loan. As a result, MERS commenced foreclosure by advertisement proceedings and was the highest bidder on the property at the January 5, 2010, sheriff’s sale. On January 6, 2010, MERS quitclaimed the property to BAC, and the deed was recorded on January 26, 2010. The redemption period expired on July 5, 2010, without Lundin having redeemed the property. On August 20, 2010, MERS assigned the mortgage to BAC.

On or about February 17, 2011, BAC filed a complaint in the 48<sup>th</sup> District Court seeking to evict Lundin from the property. Thereafter, Lundin filed a countercomplaint against BAC challenging the validity of the foreclosure and alleging “slander of title/quiet title.” Lundin also filed a third-party complaint against MERS and its attorneys, Trott & Trott, P.C.,<sup>1</sup> challenging the validity of the foreclosure and alleging conspiracy and fraud. The parties stipulated to the removal of Lundin’s countercomplaint and third-party complaint to the Oakland Circuit Court. The district court retained jurisdiction over BAC’s eviction action against Lundin.

BAC and MERS moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), arguing, relevant to this appeal, that Lundin lacked standing to challenge the foreclosure sale because he failed to redeem the property before the redemption period expired. BAC and MERS also argued that, despite Lundin’s lack of standing, MERS was authorized to foreclose by advertisement pursuant to *Residential Funding Co, LLC v Saurman*, 490 Mich 909; 805 NW2d 183 (2011). The trial court agreed with BAC and MERS and opined that Lundin lost standing to challenge the foreclosure proceeding when the redemption period expired on July 5, 2010. Thus, the court determined that Lundin lacked standing to assert his countercomplaint and third-party complaint against BAC and MERS, respectively, in March 2011 because, by that time, all rights that Lundin had in the property had been extinguished. The court also opined that, pursuant to *Saurman*, no fraud or irregularity occurred in the foreclosure process itself which might justify an equitable extension of the redemption period. The Court further held that, contrary to Lundin’s argument and in accordance with *Saurman*, MERS was not required to be the noteholder or to have owned the indebtedness in order to foreclose a mortgage by advertisement.<sup>2</sup>

## II. STANDARD OF REVIEW

Although BAC and MERS moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), it appears that the trial court granted summary disposition in their favor on the issue of

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<sup>1</sup> The parties subsequently stipulated to the dismissal of Trott & Trott, P.C. from the action.

<sup>2</sup> The trial court also granted summary disposition for BAC and MERS on Lundin’s “slander of title/quiet title,” conspiracy, and fraud claims, but Lundin does not challenge the trial court’s rulings with respect to those claims on appeal.

standing under subrule (C)(8) because the court did not rely on documentary evidence outside the pleadings. “MCR 2.116(C)(8) tests the legal sufficiency of the claim on the pleadings alone to determine whether the plaintiff has stated a claim on which relief may be granted.” *Spiek v Dep’t of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). Summary disposition is appropriate if no factual development could justify the claim for relief. *Id.* Although BAC and MERS argue that Lundin waived any argument regarding standing because he failed to dispute BAC and MERS’S argument that he lacked standing in the trial court, Lundin’s failure to address the issue below resulted in forfeiture rather than waiver of the issue. See *In re Receivership of 11910 South Francis Rd*, 492 Mich 208, 228 n 44; 821 NW2d 503 (2012) (“Waiver” refers to the intentional relinquishment of a known right, while “forfeiture” refers to the failure to timely assert a right.). Thus, Lundin’s argument that he had standing to assert his claims is merely unpreserved rather than waived. Our review of an unpreserved issue “is limited to determining whether a plain error occurred that affected substantial rights.” *Rivette v Rose-Molina*, 278 Mich App 327, 328; 750 NW2d 603 (2008).

### III. LEGAL ANALYSIS

BAC and MERS correctly argue that Lundin lacked standing to challenge the foreclosure sale because he failed to redeem the property within the six-month redemption period set forth in MCL 600.3240(8).<sup>3</sup> With respect to a deed issued following foreclosure by advertisement, MCL 600.3236 provides, in relevant part:

Unless the premises described in such deed shall be redeemed within the time limited for such redemption as hereinafter provided, such deed shall thereupon become operative, and shall vest in the grantee therein named, his heirs or assigns, all the right, title, and interest which the mortgagor had at the time of

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<sup>3</sup> Lundin erroneously argues that he had five years after the sheriff’s sale to challenge the validity of the sale pursuant to MCL 600.5801(1). That section provides:

No person may bring or maintain any action for the recovery or possession of any lands or make any entry upon any lands unless, after the claim or right to make the entry first accrued to himself or to someone through whom he claims, he commences the action or makes the entry within the periods of time prescribed by this section.

(1) When the defendant claims title to the land in question by or through some deed made upon the sale of the premises by an executor, administrator, guardian, or testamentary trustee; or by a sheriff or other proper ministerial officer under the order, judgment, process, or decree of a court or legal tribunal of competent jurisdiction within this state, or by a sheriff upon a mortgage foreclosure sale the period of limitation is 5 years.

In this case, Lundin does not claim title to the property by virtue of the deed issued pursuant to the sheriff’s sale. Thus, MCL 600.5801(1) is inapplicable.

the execution of the mortgage, or at any time thereafter, except as to any parcel or parcels which may have been redeemed and canceled, as hereinafter provided; and the record thereof shall thereafter, for all purposes be deemed a valid record of said deed without being re-recorded . . . .

Thus, once the redemption period expired, Lundin's rights in and to the property were extinguished. See *Piotrowski v State Land Office Bd*, 302 Mich 179, 187; 4 NW2d 514 (1942). In order to have standing, a person must have "some real interest in the cause of action, or a legal or equitable right, title, or interest in the subject matter of the controversy." *MOSES, Inc v Southeast Michigan Council Of Gov'ts*, 270 Mich App 401, 414; 716 NW2d 278 (2006) (quotation marks and citations omitted). Because Lundin had no interest in the subject matter of the controversy, he lacked standing to assert his claims challenging the foreclosure sale.<sup>4</sup> Accordingly, the trial court properly granted summary disposition for BAC and MERS.

Given our conclusion that Lundin lacked standing to challenge the foreclosure sale, we need not address his argument that MERS lacked standing to foreclose because the note was not endorsed to MERS or in blank. In any event, our Supreme Court determined in *Saurman*, 490 Mich at 909-910, that MERS is not required to have an ownership interest in the note in order to foreclose. Rather, it is sufficient that MERS has an ownership interest in the indebtedness secured by the mortgage. *Id.*

Affirmed. BAC and MERS, being the prevailing parties, may tax costs pursuant to MCR 7.219.

/s/ Pat M. Donofrio  
/s/ Jane E. Markey  
/s/ Donald S. Owens

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<sup>4</sup> Although an equitable extension of the redemption period may exist upon a clear showing of fraud or irregularity, *Schulthies v Barron*, 16 Mich App 246, 247-248; 167 NW2d 784 (1969), Lundin does not challenge the trial court's determination that no such fraud or irregularity occurred in this case.