

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

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JAMES HARDWICK and MARGARET  
HARDWICK,

UNPUBLISHED  
July 23, 2013

Plaintiffs-Appellants,

v

No. 310191  
St. Clair Circuit Court  
LC No. 10-002469-CH

HSBC BANK USA, N.A., as Trustee for the  
REGISTERED HOLDERS OF NOMURA HOME  
EQUITY LOAN, INC., ASSET-BACKED  
CERTIFICATES SERIES 2006-HE3, OCWEN  
LOAN SERVICING, L.L.C., and RANDALL S.  
MILLER & ASSOCIATES, P.C.,

Defendants-Appellees.

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Before: BORRELLO, P.J., and JANSEN and M. J. KELLY, JJ.

PER CURIAM.

In this foreclosure-by-advertisement case, plaintiffs appeal by right the circuit court's order granting summary disposition in favor of defendants. We affirm.

In 2006, plaintiffs purchased residential property in St. Clair County for \$599,000. Plaintiff Margaret Hardwick obtained a home loan in the amount of \$539,100 from People's Choice Home Loan, Inc. (People's Choice). To secure this loan, plaintiffs granted a mortgage on the property in favor of Mortgage Electronic Registration Systems (MERS), the nominee of People's Choice. MERS thereafter assigned the mortgage to defendant HSBC Bank USA (HSBC), as trustee for the Registered Holders of Nomura Home Equity Loan, Inc., Asset-Backed Certificates Series 2006-HE3. After being assigned to HSBC, the mortgage was serviced by defendant Ocwen Loan Servicing.

It appears that plaintiffs stopped making regular payments on their mortgage loan in late 2008. In January 2009, plaintiff Margaret Hardwick filed for bankruptcy under Chapter 7. She received a discharge from bankruptcy on April 21, 2009. Plaintiff James Hardwick then filed for bankruptcy under Chapter 7, and received a discharge from bankruptcy on August 4, 2009.

Defendant Randall S. Miller & Associates, P.C. (Miller) was retained to handle plaintiffs' mortgage modification and to institute foreclosure-by-advertisement proceedings with respect to the subject property. After corresponding with plaintiffs in accordance with MCL 600.3205b

and reviewing various documents submitted by plaintiffs, Miller determined that plaintiffs were ineligible for a loan modification under the relevant statutory framework. See former MCL 600.3205c(1)(b)(i)-(iv). Specifically, even after applying all four of the statutory criteria, Miller determined that plaintiffs' housing-related indebtedness could not be reduced to 38 percent of plaintiffs' gross income as required by the statute.

The foreclosure-by-advertisement proceedings went forward. On April 8, 2010, HSBC purchased the subject property at sheriff's sale. Plaintiffs had until October 8, 2010, to redeem, but did not do so. Instead, plaintiffs filed this action in the circuit court one week before the redemption period expired.

Defendants moved for summary disposition, and their motion was granted on September 16, 2011. The circuit court ruled that plaintiffs had lost all interest in the subject property when the redemption period expired on October 8, 2010, and that they consequently lacked standing to challenge the foreclosure. See MCL 600.3236. The circuit court also ruled that Miller's correspondence with plaintiffs was sufficient to satisfy MCL 600.3205b, and that the statute contained "no requirement for an in-person meeting." Lastly, the court ruled that it was beyond genuine factual dispute that plaintiffs did not qualify for a mortgage-loan modification under MCL 600.3205c(1)(b)(i)-(iv). See MCR 2.116(C)(10). In response to plaintiffs' contention that defendants should have used different or alternative figures in evaluating whether they were entitled to relief under MCL 600.3205c(1)(b), the circuit court determined that the statute did "not allow [p]laintiffs to change the figures used in the calculation in an attempt to try [to] be eligible for a modification."

We review *de novo* the circuit court's decision to grant or deny a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

The circuit court correctly determined that plaintiffs lacked standing to bring this action. Plaintiffs lost all interest in the subject property when the redemption period expired on October 8, 2010. See MCL 600.3236; *Piotrowski v State Land Office Bd*, 302 Mich 179, 187-188; 4 NW2d 514 (1942). Moreover, it does not matter that plaintiffs actually filed this action one week before the redemption period ended. The filing of this action was insufficient to toll the redemption period. "The law in Michigan does not allow an equitable extension of the period to redeem from a statutory foreclosure sale in connection with a mortgage foreclosed by advertisement and posting of notice in the absence of a clear showing of fraud, or irregularity." *Schulthies v Barron*, 16 Mich App 246, 247-248; 167 NW2d 784 (1969). Once the redemption period expired, all plaintiffs' rights in the subject property were extinguished.

Furthermore, the Michigan Legislature has repealed the mortgage-modification statutes relied on by plaintiffs in this case, effective June 30, 2013. MCL 600.3205e. Thus, even if plaintiffs had possessed standing to pursue this action, the issues presented in this case are now moot because neither the circuit court nor this Court can fashion the relief that plaintiffs seek on appeal. See *Conlin v Scio Twp*, 262 Mich App 379, 384-385; 686 NW2d 16 (2004); *In re Contempt of Dudzinski*, 257 Mich App 96, 112; 667 NW2d 68 (2003).

Affirmed. Defendants, having prevailed on appeal, may tax their costs pursuant to MCR 7.219.

/s/ Stephen L. Borrello

/s/ Kathleen Jansen

/s/ Michael J. Kelly