

STATE OF MICHIGAN
COURT OF APPEALS

LAURA PUZZUOLI,

Plaintiff-Appellee,

v

DEBORAH HAYDEN-SNIDER a/k/a DEBORAH
MARIE SNIDER or DEBBIE SNIDER,

Defendant-Appellant.

UNPUBLISHED
October 23, 2014

No. 317013
Ogemaw Circuit Court
LC No. 10-657786-CK

Before: MURPHY, C.J., and SAWYER and M.J. KELLY, JJ.

PER CURIAM.

In this real property dispute, defendant challenges the circuit court's order confirming the foreclosure sale of real property owned by defendant. Defendant primarily challenges the court's 2010 ruling on the parties' competing motions for summary disposition. We affirm.

Defendant signed a "Mortgage Note" in 2003 with plaintiff's predecessor-in-interest, Ideal Homes, Inc., that purportedly collateralized the property by imposing a mortgage on the property as security for a loan. Plaintiff eventually obtained her interest in the property through a corporate assignment. Defendant filed for bankruptcy in 2004 under Chapter 7 of the Bankruptcy Code, 11 USC 701 *et seq.* During those proceedings, defendant represented in her property schedules and statement of intention that the property at issue was indeed subject to a mortgage; the loan was a secured loan. In the statement of intention, defendant indicated, "Debtor will retain collateral and continue to make regular payments." The bankruptcy documents reflected that the property was valued at \$45,000, that the amount of the claim was \$33,000, and that defendant sought a \$12,000 homestead exemption. In the trustee's report, he indicated that there was "no property available for distribution from the estate over and above that exempted by law." The bankruptcy court entered a discharge of debtor absent the liquidation of any property. In the bankruptcy documents submitted to the circuit court, there was nothing which indicated that the bankruptcy court found the loan to be unsecured, found plaintiff to be an unsecured creditor, or found that there was no mortgage on the property.

The following month, defendant stopped making the mortgage payments because she believed that the mortgage note was fully extinguished due to the bankruptcy discharge. She contended that defectively secured loans, allegedly like the mortgage note, are unsecured debts that are discharged at the completion of a Chapter 7 bankruptcy. Because defendant steadfastly

refused to pay, plaintiff sued to foreclose on the property in 2010. After hearing the parties' competing motions, the circuit court granted summary disposition in favor of plaintiff, denied defendant's motion, and entered a judgment of foreclosure of the property in December 2010. Although the court opined that the mortgage note was sufficient under Michigan law to create a lien on the property, it principally precluded defendant from challenging the validity of the mortgage based on estoppel principles. The circuit court observed:

[T]he only thing I see is there is a schedule saying . . . fee simple [as to the property]. There is a statement saying that Ideal Homes is the creditor. It says that there is a mortgage. So she acknowledges – she acknowledges that there is a mortgage. So how can she now claim that there isn't one? She claimed it . . . for purposes of the bankruptcy. She can't now disclaim it. She is estopped from asserting that.

...

[I]f you make an assertion for purposes of avoiding payment or to secure bankruptcy, you can't later claim . . . to the contrary, for purposes of avoiding that debt. . . . [Bankruptcy] doesn't discharge [a] secured creditor . . . [.]

...

It's a mortgage because there is a writing that has the necessary terms, and there is an assertion by her to the bankruptcy court that there was a mortgage. It exists.

On appeal, defendant argues that the circuit court erred in finding that a valid mortgage existed, given that the mortgage note did not comply with the requirements of MCL 565.154.¹ Defendant, however, does not present any argument challenging the circuit court's estoppel analysis, which formed a basis for the court's ruling. When an appellant fails to dispute or challenge a legal basis given by a circuit court that, standing alone, fully supports the court's resolution of a claim, we need not even consider granting the appellant's requested relief. *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 381; 689 NW2d 145 (2004). Accordingly, defendant's appeal fails. Moreover, the circuit court properly employed estoppel principles in this case.

“Judicial estoppel is an equitable doctrine, which generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase.” *Spohn v Van Dyke Pub Sch*, 296 Mich App 470, 479; 822 NW2d 239 (2012). The doctrine is utilized to prevent abuse of the judicial process through cynical

¹ MCL 565.154 provides, in part, that “[a] mortgage of lands that is worded in substance as follows: ‘A.B. mortgages and warrants to C.D., (here describe the premises) to secure the repayment of’ (here describe the indebtedness or obligations the mortgage secures) and is signed by the grantor, is a valid and enforceable mortgage[.]”

gamesmanship. *Id.* at 480. This Court has adopted the Sixth Circuit’s position on judicial estoppel when an underlying bankruptcy is involved. *Id.* at 480-481. To establish judicial estoppel, a court must find that (1) a party assumed a position that was contrary to the one that he or she asserted under oath in the bankruptcy proceedings, (2) the bankruptcy court adopted the party’s contrary position, and (3) the party’s position did not result from mistake or inadvertence. *Id.*

Once again, defendant’s property schedules, as well as her statement of intention, relative to the bankruptcy proceeding indicated that the property was subject to a mortgage held by plaintiff. Defendant successfully maintained that position throughout the bankruptcy proceedings until she received a discharge of debt from the court in July 2010. Although counsel representing the trustee sent plaintiff a letter threatening litigation, claiming that the mortgage note did not constitute a valid mortgage under MCL 565.154, there is nothing to indicate that the trustee ever followed up on the matter. Defendant presented no evidence that the bankruptcy court found plaintiff to be an unsecured creditor or that it ended up treating the property as if it were not subject to a mortgage. In *Johnson v Home State Bank*, 501 US 78, 82-83; 111 S Ct 2150; 115 L Ed 2d 66 (1991), the United States Supreme Court observed the following regarding real property subject to a mortgage and the impact of a Chapter 7 bankruptcy filing:

To put this question in context, we must first say more about the nature of the mortgage interest that survives a Chapter 7 liquidation. A mortgage is an interest in real property that secures a creditor's right to repayment. But unless the debtor and creditor have provided otherwise, the creditor ordinarily is not limited to foreclosure on the mortgaged property should the debtor default on his obligation; rather, the creditor may in addition sue to establish the debtor's *in personam* liability for any deficiency on the debt and may enforce any judgment against the debtor's assets generally. A defaulting debtor can protect himself from personal liability by obtaining a discharge in a Chapter 7 liquidation. However, such a discharge extinguishes *only* “the personal liability of the debtor.” . . . [T]he Code provides that a creditor's right to foreclose on the mortgage survives or passes through the bankruptcy. [Citations omitted; emphasis in original.]

Accordingly, while defendant’s personal liability may have been discharged, the mortgage, which defendant herself represented to the bankruptcy court existed and was enforceable, survived or passed through the Chapter 7 bankruptcy and was subject to foreclosure. The elements of judicial estoppel were established.²

Given our ruling, there is no need to address defendant’s argument concerning the possibility of an equitable mortgage. Finally, with respect to defendant’s contentions that the circuit court erred in granting summary disposition in favor of plaintiff given the absence of supporting documentation and the presence of genuine issues of fact on other matters, we reject

² It would also appear that the elements of collateral estoppel were satisfied. *Monat v State Farm Ins Co*, 469 Mich 679, 682-684; 677 NW2d 843 (2004); *RDM Holdings, Ltd v Continental Plastics Co*, 281 Mich App 678, 692; 762 NW2d 529 (2008).

the arguments as meritless. The record contained sufficient documentary evidence submitted by plaintiff to support the ruling as a matter of law, and the only issue framed by the parties concerned the question whether the mortgage was valid and survived bankruptcy, i.e., was plaintiff a secured creditor; no other issues were presented to the court.

Affirmed. Having fully prevailed on appeal, plaintiff is awarded taxable costs under MCR 7.219, if any were incurred.

/s/ William B. Murphy

/s/ David H. Sawyer

/s/ Michael J. Kelly