

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM ROSS and NANCY ROSS,

Plaintiffs-Appellants,

V

CHARTER ONE MORTGAGE and LEON
LONDON, d/b/a ALTANTA & SOUTHERN
INVESTMENT CO,

Defendants-Appellees.

UNPUBLISHED

April 26, 2005

No. 251194

Wayne Circuit Court

LC No. 02-238486-CH

Before: Kelly, P.J., and Sawyer and Wilder, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the order granting defendants summary disposition without prejudice regarding plaintiffs' right to file a contract claim for monetary damages against defendant Charter One. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs argue that the lower court erred when it found insufficient circumstances to justify setting aside the foreclosure sale. The Supreme Court has held repeatedly that statutory foreclosures have a long history in this state and should not be set aside without "good reason." See, e.g., *Cramer v Metropolitan Savings and Loan Ass'n*, 401 Mich 252, 261; 258 NW2d 20 (1977). However, a court may set aside a foreclosure sale if it resulted from fraud, accident, or mistake. *Freeman v Wozniak*, 241 Mich App 633, 637-638; 617 NW2d 46 (2000), quoting *Senters v Ottawa Savings Bank*, 443 Mich 45, 55; 503 NW2d 639 (1993). An irregularity or unusual circumstance might also justify setting aside the sale. *Calaveras Timber Co v Michigan Trust Co*, 278 Mich 445, 450; 270 NW 743 (1936); *Mitchell v Dahlberg*, 215 Mich App 718, 724; 547 NW2d 74 (1996).

In their complaint, plaintiffs claimed that defendant mortgagee's alleged failure to comply with a *contractual* notice requirement constituted fraud or mistake. However, plaintiffs did not allege the elements of fraud, specifically reliance on a material representation the defendant knew or should have known was false. See *Mitchell, supra* at 723. The alleged failure also did not constitute a sufficient mistake. A mistake sufficient to justify setting aside the sale must relate to the sale itself; otherwise, the exception would swallow the rule.

On appeal, plaintiffs suggest the failure to send notice created an irregularity or unusual circumstance. However, defendant inarguably complied with statutory notice requirements. See MCL 600.3208. There was nothing irregular that could have let defendant purchaser know there was a problem; he had no reason to check the mortgage, discover the notice requirement, and determine that there was a disagreement regarding whether it was sent. In the case plaintiffs cite, *Hodge v Ulmer*, unpublished opinion per curiam of the Court of Appeals, issued October 31, 1997 (Docket No. 194439), the purchaser caused the cloud on the title that this Court deemed a sufficient irregularity. In the present case, plaintiffs do not claim defendant purchaser had any involvement before the sale. The courts generally protect good faith purchasers who have no notice of a problem. See *Oakland Hills Development Corp v Lueders Drainage District*, 212 Mich App 284, 296-297; 537 NW2d 258 (1995).

Plaintiffs did not allege circumstances sufficient to justify the use of equity to set aside the foreclosure sale. Plaintiffs sought no other remedy. Therefore, the lower court did not err when it granted defendants summary disposition.

Defendant mortgagee also argues on appeal that the lower court erred when it granted the summary disposition without prejudice. However, defendant did not file a cross-appeal and seeks an outcome more favorable than the lower court's decision. Therefore, this issue is not properly before us, and we need not address its substantive merits. *In re Herbach Estate*, 230 Mich App 276, 284; 583 NW2d 541 (1998).

Affirmed.

/s/ Kirsten Frank Kelly
/s/ David H. Sawyer
/s/ Kurtis T. Wilder