

STATE OF MICHIGAN
COURT OF APPEALS

STEVEN FREUND,

Plaintiff-Appellant,

v

TROTT & TROTT, P.C., DEUTSCHE BANK
NATIONAL TRUST CO., and MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC.,

Defendants-Appellees.

UNPUBLISHED
October 25, 2011

No. 299011
Gladwin Circuit Court
LC No. 10-005050-CZ

Before: SHAPIRO, P.J., and WILDER and MURRAY, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court's orders granting defendants' motions for summary disposition in this foreclosure sale challenge. We dismiss as moot plaintiff's challenge to the foreclosure, and affirm the dismissal of plaintiff's challenge to the underlying mortgage.

I. BACKGROUND

This controversy stems from a foreclosure sale on a defaulted mortgage. Plaintiff and his wife at the time, Anna Freund,¹ originally executed this mortgage on July 7, 2005, against real property in Gladwin, Michigan for an \$110,000 loan. The mortgage, which designated defendant Mortgage Electronic Registration Systems, Inc. (MERS), as the nominee for the lender, Southstar Funding, L.L.C., secured a promissory note for the amount of the loan and was recorded on July 21, 2005. It is undisputed that only plaintiff's wife signed the promissory note.

In early 2008, when payments were not made as prescribed by the note, MERS retained defendant Trott & Trott, P.C., to initiate statutory foreclosure proceedings in accordance with MCL 600.3201 *et seq.*, and the mortgage provisions. Per the relevant requirements, notice of the

¹ Plaintiff and his former wife, who is not a party to this action, obtained a divorce sometime prior to the start of this suit.

foreclosure sale was published in the local newspaper for four consecutive weeks² and posted on the front door of the residence on the mortgaged premises. Although originally set for February 22, 2008, the sale date was adjourned weekly by sheriff's notices until August 22, 2008, when MERS purchased the property for \$43,200. The date of purchase was also the same date plaintiff's statutory right to redemption expired. Less than a week later, MERS conveyed the property to defendant Deutsche Bank National Trust Co. by quit claim deed. Deutsche Bank recorded its deed on September 22, 2008.

When plaintiff's daughter continued to live at the residence on the mortgaged premises through April 2009 and plaintiff subsequently moved to the residence with Lori Lynn Chitren, Deutsche Bank initiated eviction proceedings and was granted a judgment of possession on October 21, 2009.³ After plaintiff unsuccessfully appealed this judgment in circuit court, plaintiff commenced the instant suit on February 8, 2010. In his complaint, plaintiff requested the mortgage declared void because Southstar was not properly licensed and because its closing agent used "deceptive practices." Additionally, plaintiff requested "the foreclosure sale and all actions since" declared void because he did not receive actual, personal notice of the foreclosure and because the promissory note was not recorded. Defendants answered and subsequently filed their motions for summary disposition.

Both Deutsche Bank and MERS argued in separate motions that summary disposition was appropriate since the applicable statutes did not require actual notice of foreclosure, and in any event, laches barred plaintiff's claims. Additionally, Deutsche Bank and MERS noted that the court could not invalidate the mortgage since (1) plaintiff could no longer challenge the underlying equities in this action, (2) Deutsche Bank was a bona fide purchaser, and (3) the alleged improprieties failed as a matter of law. In its motion, Trott & Trott argued that plaintiff had failed to state a claim upon which relief could be granted since Trott & Trott owed no duty to plaintiff as an adverse party. Trott & Trott also sought fees and costs for defending a frivolous suit.

Two hearings were held on these motions. At the first, the court granted summary disposition to both Deutsche Bank and Trott & Trott. Concerning Deutsche Bank's motion, the court ruled that summary disposition was appropriate for the reasons provided in the bank's brief, and additionally elaborated that the law did not require personal service of the notice of foreclosure and that the doctrine of laches was applicable since plaintiff waited 18 months after the foreclosure sale to file his action. Without further explanation, the court also granted Trott & Trott's motion. Orders were entered reflecting these rulings and dismissing plaintiff's claims against these defendants on May 19, 2010.⁴

² The relevant dates of publication were: January 23, 2008; January 30, 2008; February 6, 2008; and February 13, 2008.

³ Plaintiff claimed ignorance of the foreclosure because he was incarcerated in Isabella County.

⁴ Neither the court's ruling on the record nor its order granting Trott & Trott's motion addressed the request for sanctions.

At the second hearing, plaintiff raised for the first time that the foreclosure was deficient since MERS had twice failed to post notices of adjournment as required by law. The trial court rejected this argument, reasoning that the foreclosure statute was substantially followed, and ruled again that personal service was not required and that laches applied. The court elaborated:

It's pretty clear here that money was lent on this property; you [plaintiff] signed the mortgage allowing that security interest to attach to the property even though you're not responsible for the note or repayment of it.

* * *

I don't know how you expect to keep the property if you haven't repaid the money. And . . . that's clearly what's gone on.

The court entered an order granting MERS's motion for summary disposition and dismissing plaintiff's claims against it on June 21, 2010. This appeal followed.

II. ANALYSIS

On appeal, plaintiff claims that defects concerning the mortgage, promissory note, and the statutorily required notice rendered summary disposition inappropriate. However, we need not address the validity of the foreclosure proceedings because the issue is now moot. According to the supplemental pleadings filed after oral argument before this Court, an Affidavit Expunging Sheriff's Deed on Mortgage Sale Filed Pursuant To MCLA 565.451a was filed with the county Register of Deeds on May 17, 2011. In that document MERS asserts that it "will not rely on said foreclosure sale and will treat such sale as having not been held and void ab initio." Thus, the July 21, 2005, mortgage would remain in full force in effect as reflected by the Register of Deeds. Because this is the relief ultimately sought by plaintiff, we could offer no further relief to plaintiff, and the issue regarding the validity of the foreclosure proceeding is moot. *Jackson v Thompson-McCully Co, LLC*, 239 Mich App 482, 493; 608 NW2d 531 (2000). Accordingly, we vacate that portion of the trial court's order granting defendants' motion for summary disposition as to the validity of the foreclosure proceedings.

We also reject plaintiff's challenges to the underlying mortgage, which he makes in addition to his allegations that the foreclosure sale was improper. We see no basis upon which to declare the mortgage's failure to specify the payment terms a material defect where the mortgage expressly indicates that the promissory note governs the payment terms. Additionally, whether Southstar was licensed is irrelevant to the validity of the mortgage given that MCL 445.1680 expressly indicates that the failure to comply with the licensing provisions of the Consumer Mortgage Protection Act, MCL 445.1631 *et seq.*, cannot alone affect the validity of a mortgage.⁵

⁵ Plaintiff's challenge to the constitutionality of MCL 445.1631 is utterly devoid of citation to any legal authority, and we therefore deem that issue abandoned. *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998).

Affirmed in part, vacated in part, and remanded for entry of an order consistent with this opinion.

No costs, neither side having prevailed in full. MCR 7.219(A).

/s/ Douglas B. Shapiro

/s/ Kurtis T. Wilder

/s/ Christopher M. Murray