

STATE OF MICHIGAN
COURT OF APPEALS

GEORGE R. PAIGE,

Plaintiff-Appellant,

v

EVERHOME MORTGAGE COMPANY and
FEDERAL NATIONAL MORTGAGE
ASSOCIATION,

Defendants-Appellees.

UNPUBLISHED

August 23, 2012

No. 304300

Wayne Circuit Court

LC No. 10-012694-CH

Before: SAAD, P.J., and SAWYER and CAVANAGH, JJ.

PER CURIAM.

Plaintiff, George Paige, appeals the trial court's grant of summary disposition to defendants, EverHome Mortgage Company and the Federal National Mortgage Association (Fannie Mae). For the reasons set forth below, we affirm.

I. FACTS AND PROCEEDINGS

On January 22, 2002, Paige borrowed \$147,500 to purchase a home at 5920 West Outer Drive in Detroit. Quicken Loans was the original lender and, to secure the note, Paige entered into a mortgage agreement with Mortgage Electronic Registration Systems, Inc. (MERS). Evidence established that, as of February 1, 2007, EverHome became the servicing agent of the note and mortgage. Paige stopped making his monthly mortgage payments on November 1, 2009. On January 5, 2010, EverHome sent Paige a letter to inform him of the default. EverHome advised Paige that he must pay the amount owed within 30 days to cure the default. The letter also stated that Paige could consult with a housing counselor and could request a meeting to work out a modification. Paige did not take action to cure the default.

On February 22, 2010, EverHome's counsel, Trott & Trott, PC, sent Paige a notice of acceleration that also informed him that the firm would be handling the foreclosure. The letter reiterated that Paige could reinstate the mortgage if he paid all amounts owing and could also dispute the amounts owed by contacting Trott & Trott. Paige offered no argument or evidence that he made any effort to avoid foreclosure. On February 24, 2010, all interest in the mortgage was assigned to EverHome, and the assignment was recorded with the Wayne County Register of Deeds on March 16, 2010.

Notice of foreclosure was posted on the Outer Drive property on March 25, 2010, and the notice was published in the Detroit Legal News for four weeks beginning on March 24, 2010. A sheriff's sale took place on April 21, 2010. EverHome bought the property and recorded the deed on April 29, 2010. The next day, EverHome granted a quit claim deed for the property to Fannie Mae. After the sheriff's sale, Paige had six months to redeem the property pursuant to MCL 600.3240, but he did not do so.

After the redemption period expired, Paige filed this lawsuit against EverHome and Fannie Mae alleging that they failed to provide proper notice under the mortgage and pursuant to MCL 600.3205a, they otherwise violated statutory requirements for foreclosure by advertisement, EverHome improperly commenced foreclosure proceedings before it was the record holder of the mortgage, EverHome refused to agree to a short sale of the property or a payment of the arrearage after the sheriff's sale, and EverHome violated MCL 445.903 of the Michigan Consumer Protection Act. Paige also sought to quiet title in the property and alleged that defendants are liable for slander of title.

EverHome and Fannie Mae moved for summary disposition pursuant to MCR 2.116(C)(7), (8) and (10). Defendants argued that EverHome fulfilled all statutory requirements to foreclose by advertisement, it did not breach any part of the mortgage contract, it cannot be held liable under the Michigan Consumer Protection Act, and no evidence can establish slander of title. In response, Paige argued that he is entitled to summary disposition pursuant to MCR 2.116(I)(2) on his claims regarding inadequate notice and violations of the foreclosure by advertisement statute. He also argued that title should be quieted in his name because the sheriff's sale was void on the basis of those violations. Paige argued that, on his remaining claims, there are genuine issues of material fact for a jury to decide. In reply, defendants raised the additional argument that Paige's allegations about the foreclosure process and notice defects should be dismissed as untimely because he did not raise them until after the redemption period expired. The trial court ruled in favor of defendants and opined that Paige could not prevail on his claims because the sheriff's sale extinguished his rights and he did not redeem the property. Paige filed a motion for reconsideration, but the trial court denied the motion.

II. ANALYSIS

Paige contends that the trial court erred by granting summary disposition to defendants. "We review de novo the circuit court's decision to grant or deny a motion for summary disposition." *Botsford Continuing Care Corp v Intelistaf Healthcare, Inc*, 292 Mich App 51, 60-61; 807 NW2d 354 (2011). The trial court did not specify which court rule it applied in granting summary disposition to defendants. However, it appears that the court relied on either MCR 2.116(C)(8), which states that summary disposition is properly granted if "[t]he opposing party has failed to state a claim on which relief can be granted" or MCR 2.116(C)(10), which provides that summary disposition is proper if, "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law."

As this Court succinctly explained in *Ruby & Associates, PC v Shore Financial Services*, 276 Mich App 110, 117-118; 741 NW2d 72 (2007), vacated in part on other grounds, 480 Mich 1107 (2008):

Mortgages containing a power-of-sale clause may be foreclosed upon and sold at a sheriff's sale, in the event of a default under the mortgage. See MCL 600.3201 to 600.3224. Upon such a sale, the purchaser, including potentially the mortgagee, acquires a sheriff's deed. See MCL 600.3228 and 600.3232. Mortgagors enjoy a statutory right of redemption in the event a mortgage is foreclosed upon and property is sold. See MCL 600.3240. The legal operation and effect of the sheriff's deed ultimately depends on the mortgagor's exercise of this right of redemption. "A purchaser's deed is void if the mortgagor ... redeems" the premises by tendering amounts owing within the applicable statutory window. MCL 600.3240(1). If not redeemed within this time frame, the deed becomes "operative," vesting in the grantee "all the right, title, and interest which the mortgagor had at the time of the execution of the mortgage" MCL 600.3236.

" 'The Michigan Supreme Court has held that it would require a strong case of fraud or irregularity, or some peculiar exigency, to warrant setting a foreclosure sale aside.' " *Sweet Air Inv, Inc v Kenney*, 275 Mich App 492, 497; 739 NW2d 656 (2007), quoting *United States v Garno*, 974 F Supp 628 (ED Mich, 1997) (further citations omitted).

The fundamental barrier to Paige's allegations of errors in the notice provided by EverHome and his allegations that the sheriff's sale was invalid is that he lacks standing to bring those claims. Simply stated, Paige made no effort to redeem the property and took no action to challenge or stop the foreclosure and sheriff's sale until after the redemption period expired.¹ Thus, title vested in EverHome and Paige's rights were extinguished. MCL 600.3236; 600.3240(1). In other words, when the redemption period ended, Paige lost all interest in the property. *Piotrowski v State Land Office Bd*, 302 Mich 179, 187; 4 NW2d 514 (1942). Because Paige lacks "a legal or equitable right, title or interest in the subject matter of the controversy," he has no standing to bring his claims. *MOSES, Inc v Southeast Michigan Council of Gov'ts*, 270 Mich App 401, 414; 716 NW2d 278 (2006). For the same reason—Paige's failure to pursue any remedies prior to or during the redemption period—he cannot show that any alleged notice irregularities in any way caused him prejudice.

Further, substantively, the record clearly shows that Paige's claims lack merit. MCL 600.3201 provides that "[e]very mortgage of real estate, which contains a power of sale, upon

¹ Though Paige claims that, after the sheriff's sale, he tried to offer money to EverHome and suggested they conduct a short sale of the property, this is not a redemption under Michigan law. "In order to redeem the property from the mortgage foreclosure sale by advertisement under the plain meaning of MCL 600.3240, plaintiff must pay the bid price plus interest, and any amount for taxes and insurance that the purchaser has properly filed with the register of deeds." *Senters v Ottawa Sav Bank, FSB*, 443 Mich 45, 50; 503 NW2d 639 (1993). No evidence suggests plaintiff tendered or attempted to tender such payment. Further, defendants' point is well taken that the statute of frauds would prevent Paige from suing to enforce an alleged oral agreement to take less than the redemption amount. MCL 566.132(2).

default being made in any condition of such mortgage, may be foreclosed by advertisement, in the cases and in the manner specified in this chapter.” Pursuant to MCL 600.3204(1), a party may foreclose a mortgage by advertisement if:

(a) A default in a condition of the mortgage has occurred, by which the power to sell became operative.

(b) An action or proceeding has not been instituted, at law, to recover the debt secured by the mortgage or any part of the mortgage; or, if an action or proceeding has been instituted, the action or proceeding has been discontinued; or an execution on a judgment rendered in an action or proceeding has been returned unsatisfied, in whole or in part.

(c) The mortgage containing the power of sale has been properly recorded.

(d) The party foreclosing the mortgage is either the owner of the indebtedness or of an interest in the indebtedness secured by the mortgage or the servicing agent of the mortgage.

Notwithstanding Paige’s unsupported arguments to the contrary, defendants presented evidence that the mortgage contains an unambiguous “power or sale” provision and that EverHome was the “servicing agent of the mortgage.” While Paige complains that EverHome started the foreclosure process before it received the assignment of the mortgage, un rebutted evidence shows that all interest in the mortgage was assigned to EverHome long before the “date of sale” as set forth in MCL 600.3204(3). Further, despite Paige’s complaint that EverHome did not hold the underlying note, as the owner of “legal title to a security lien whose existence is wholly contingent on the satisfaction of the indebtedness . . .” EverHome was clearly authorized to foreclose by advertisement under MCL 600.3204(1)(d). *Residential Funding Co, LLC v Saurman*, 490 Mich 909; 805 NW2d 183 (2011). Moreover, the notice sent to Paige complied with MCL 600.3205a and, were we to find the notice was flawed in any minor particularity, this would not be grounds to set aside the foreclosure sale. *Sweet Air*, 275 Mich App at 497.

Paige’s claim under MCL 445.903 of the Michigan Consumer Protection Act (MCPA) also fails. “By its express language . . . the MCPA exempts from itself ‘transaction[s] or conduct specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of this state or the United States.’” *Newton v Bank West*, 262 Mich App 434, 437-438; 686 NW2d 491 (2004), quoting MCL 445.904(1)(a). The transaction at issue here was a residential mortgage loan. The mortgage brokers, lenders, and servicers licensing act, MCL 445.1651 *et seq.*, authorizes and licenses mortgage lenders to engage in mortgage lending and servicing in this state, subject to the administration of the commissioner of the office of consumer and industry services. Because the general transaction between Paige and EverHome is explicitly sanctioned under a law administered by a regulatory board or officer acting under statutory authority of this state, it is exempt from the MCPA. See *Liss v Lewiston-Richards, Inc*, 478 Mich 203, 206; 732 NW2d 514 (2007). Therefore, the trial court correctly dismissed this, along with Paige’s other claims.

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Mark J. Cavanagh