

STATE OF MICHIGAN
COURT OF APPEALS

IMMOBOLIARE, INC.,

Plaintiff,

and

5900 ASSOCIATES, L.L.C.,

Plaintiff-Appellant,¹

v

CITY OF DETROIT, MICHIGAN
DEPARTMENT OF TREASURY and
MICHIGAN DEPARTMENT OF NATURAL
RESOURCES,

Defendants-Appellees.

UNPUBLISHED

May 29, 2003

No. 237743

Wayne Circuit Court

LC No. 97-712344-CH

Before: Murray, P.J., and Neff and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order denying its motion for leave to amend the complaint in this matter. We affirm but on different grounds than that of the trial court.

On appeal, plaintiff argues that the trial court erred in denying its motion to amend the complaint in this matter. We disagree. "This Court reviews grants and denials of motions for leave to amend pleadings for an abuse of discretion." *Hakari v Ski Brule, Inc*, 230 Mich App 352, 355; 584 NW2d 345 (1998).

This is the second time this case has been before this Court. In the original appeal, defendants appealed from the trial court's order granting summary disposition in favor of Immoboliare, Inc (Immoboliare). Defendants contended that the Department of Treasury provided Immoboliare sufficient notice to satisfy due process and the notice requirement of MCL 211.131e(1). This Court agreed with defendants, and reversed and remanded for entry of

¹ Because Immoboliare, Inc. is not a party to this appeal, the term "plaintiff" refers only to plaintiff-appellant 5900 Associates, L.L.C.

summary disposition in favor of defendants. *Immoboliare, Inc v City of Detroit*, unpublished opinion per curiam of the Court of Appeals, issued April 7, 2000 (Docket No. 209966). After this Court's decision, plaintiff filed a motion for leave to amend the complaint in this matter, as an assignee of Immoboliare. Plaintiff asserted that it obtained a right of redemption with respect to the property because the notices were sent in a "piecemeal" manner, and that the notices sent to Immoboliare and Conwood Properties Limited Partnership (Conwood)² were invalid pursuant to MCL 211.131e. Plaintiff further asserted that because the notices were invalid, it should be afforded the right of redemption. The trial court denied leave to file an amended complaint, concluding that the proposed amended complaint would be futile because the claim alleged in the proposed amended complaint was barred by MCL 211.131e³. However, the trial court did stay paragraphs two and three of its May 14, 2001 order, which quieted title to the city and allowed the order to be filed with the Wayne County Register of Deeds.

"If a court grants summary disposition pursuant to MCR 2.116(C)(8), (9), or (10), the court must give the parties an opportunity to amend their pleadings pursuant to MCR 2.118, unless the amendment would be futile." *Weymers v Khera*, 454 Mich 639, 658; 563 NW2d 647 (1997), citing MCR 2.116(I)(5). The *Weymers* Court further stated, with regard to motions to amend:

A motion to amend ordinarily should be granted, and should be denied only for the following particularized reasons:

"[1] undue delay, [2] bad faith or dilatory motive on the part of the movant, [3] repeated failure to cure deficiencies by amendments previously allowed, [4] undue prejudice to the opposing party by virtue of allowance of the amendment, [and 5] futility"

If a trial court denies a motion to amend, it should specifically state on the record the reasons for its decision. [*Id.* at 658-659 (citations omitted).]

In order to determine whether the trial court abused its discretion in denying plaintiff's motion for leave to amend the complaint, the appropriate inquiry is whether the proposed amendment would have been futile. Plaintiff contends that it is entitled to file an amended complaint in this matter based on this Court's determination that the state may not extinguish redemption rights through "piecemeal" notices. *Detroit v Adamo*, 234 Mich App 235, 240; 593 NW2d 646 (1999) (*Adamo I*), rev'd 466 Mich 890 (2002).

Property may be sold to the state three years after the failure to pay delinquent taxes. *Smith v Cliffs on the Bay Condominium Ass'n*, 463 Mich 420, 428 n 5; 617 NW2d 536 (2000); see also *Ross v Department of Treasury*, 255 Mich App 51, 55; ___ NW2d ___ (2003). Once property is sold to the state, there is a one-year redemption period. *Id.*, citing MCL 211.74(1).

² Plaintiff also claimed to be the assignee of Conwood's rights in the property.

³ We note that because MCL 211.131e was amended on July 23, 1999, we will refer to the statute in effect prior to July 23, 1999, as former MCL 211.131e, and to the statute that is presently in effect as the amended MCL 211.131e.

“After this one-year redemption period expires, ‘absolute title’ vests in the state of Michigan.” *Id.* (citations omitted); see also MCL 211.67. “Thereafter, another redemption period arises until the first Tuesday in November.” *Id.* at 56, citing MCL 211.131c(1). During this period, the Department of Natural Resources must either attempt to personally serve the person occupying the land with the redemption notice or post the notice on the premises. *Smith, supra; Ross, supra.* Under both former MCL 211.131e and amended MCL 211.131e, once these redemption periods expire, the Department of Treasury must hold a hearing to provide owners of a recorded property interest the opportunity to show cause why the tax sale and deed to the state should be canceled. *Id.*

The statute in effect at the time the notices were given to Conwood and Immobiliare was former MCL 211.131e. Former MCL 211.131e provides, in relevant part:

(1) The redemption period on property deeded to the state under section 67a shall be extended until the owners of a recorded property interest in the property have been notified of a hearing before the department of treasury. Proof of the notice of the hearing shall be recorded with the register of deeds in the county in which the property is located.

(2) The hearing shall be held to allow the owners to show cause why the tax sale and the deed to the state should be canceled for any reason specified in section 98. The hearing shall be held after the expiration of the redemption periods provided in section 131c.

(3) After expiration of the redemption periods provided in section 131c, on the first Tuesday in November after title to the property vests in this state, property may be redeemed up to 30 days following the date of hearing provided by this section by payment of the amounts set forth in subsection (4) and in section 131c(1), plus an additional penalty of 50% of the tax on which foreclosure was made. The additional penalty shall be credited to the delinquent property tax administration fund. A redemption under this section shall reinstate title as provided in section 131c(4). [Footnotes omitted.]

Thus, the purpose of MCL 211.131e is to extend the redemption period and to provide record property owners with a final opportunity to redeem the property within thirty days following the show cause hearing. *Smith, supra* at 428-429 n 5.

In *Detroit v Adamo*, 466 Mich 890; 647 NW2d 479 (2002) (*Adamo II*), the Michigan Supreme Court reversed this Court’s decision in *Adamo I*. Specifically, the Supreme Court held that the former MCL 211.131e did not require that simultaneous notice be sent to all owners of a recorded property interest. *Id.* The Michigan Supreme Court further indicated that, based on its holding that the former MCL 211.131e did not require simultaneous notice, it was unnecessary for the Court to consider the retroactivity of the amended MCL 211.131e. *Id.*

In the instant case, plaintiff merely asserts that it should be permitted to amend its complaint based on this Court’s ruling in *Adamo I*, arguing that “piecemeal” notices do not operate to extinguish the redemption right of owners of a significant property interest. However,

based on the Michigan Supreme Court's determination in *Adamo II*, it is evident that such notice may operate to extinguish the redemption rights of an owner with a significant property interest.

As previously determined by this Court, the November 18, 1996 § 131e notice was properly sent to Immobiliare. *Immobiliare, Inc v City of Detroit*, unpublished opinion per curiam of the Court of Appeals, issued April 7, 2000 (Docket No. 209966). Because the § 131e notice was proper and because the period of time during which Immobiliare could claim a right of redemption under § 131e had expired, plaintiff acquired nothing as the assignee of Immobiliare. Plaintiff further contends that, because it was the assignee of Conwood, it also obtained a right of redemption from Conwood. Plaintiff admits that the March 1996 § 131e notice was sent to Conwood; thus, it is apparent that plaintiff did not obtain a right of redemption from Conwood. Based on this Court's prior determination that the notice sent to Immobiliare was effective and plaintiff's admission on appeal that Conwood received a § 131e notice in March 1996, we conclude that no right of redemption was transferred to plaintiff and its proposed amendment would be futile. Further, based on the Michigan Supreme Court's determination in *Adamo II* that it was unnecessary to address the retroactivity of amended MCL 211.131e, we also find it unnecessary to address the retroactivity of the amended MCL 211.131e.

We acknowledge, however, that the trial court's decision, that the proposed amendments to the complaint would be futile, was based on the conclusion that amended MCL 211.131e should be applied retroactively to allow the state to provide "piecemeal" notification to owners of a recorded property interest as opposed to requiring simultaneous notification. The trial court held that amended MCL 211.131e⁴ applied retroactively to the notices provided to Conwood and

⁴ Amended MCL 211.131e provides, in relevant part:

(1) For all property the title to which vested in this state under this section after October 25, 1976, the redemption period on property deeded to the state under section 67a shall be extended until the owners of a recorded property interest in the property have been notified of a hearing before the department of treasury. Proof of the notice of the hearing shall be recorded with the register of deeds in the county in which the property is located.

(2) For all property the title to which vested in this state under this section after October 25, 1976, 1 hearing shall be held to allow each owner of a recorded property interest the opportunity to show cause why the tax sale and the deed to the state should be canceled for any reason specified in section 98. The hearing shall be held after the expiration of the redemption periods provided in section 131c. The department of treasury may hold combined or separate show cause hearings for different owners of a recorded property interest.

(3) For all property the title to which vested to this state under this section after October 25, 1976, after expiration of the redemption periods provided in section 131c, on the first Tuesday in November after title to the property vests in this state, an owner of a recorded property interest may redeem the property up to 30 days following the date of hearing for that owner of a recorded property interest provided by this section by payment of the amounts set forth in subsection

(continued...)

Immoboliare, and that the notifications were valid, although the notices were “piecemeal.” Regardless of the fact that the trial court relied on the retroactive application of amended MCL 211.131e, “[w]hen this Court concludes that a trial court has reached the correct result, this Court will affirm even if it does so under alternative reasoning.” *Lavey v Mills*, 248 Mich App 244, 250; 639 NW2d 261 (2001), quoting *Messenger v Ingham Co Prosecutor*, 232 Mich App 633, 643; 591 NW2d 393 (1998). Accordingly, we affirm the trial court’s order denying plaintiff’s motion for leave to amend the complaint, as the trial court reached the correct result, albeit for the wrong reason.⁵

Affirmed.

/s/ Christopher M. Murray

/s/ Janet T. Neff

/s/ Michael J. Talbot

(...continued)

(4) and in section 131c(1), plus an additional penalty of 50% of the tax on which foreclosure was made. The additional penalty shall be credited to the delinquent property tax administration fund. A redemption under this section shall reinstate title as provided in section 131(4).

* * *

(5) For all property the title to which vested in this state under this section after October 25, 1976, *the owner of a recorded property interest who has been properly served with a notice of the hearing under this section and who fails to redeem the property as provided under this section shall not assert any of the following:*

(a) That notice was insufficient or inadequate on the grounds that some other owner of a property interest was not also served.

(b) That the redemption period provided under this section was extended in any way on the grounds that some other owner of a property interest was not also served. [Emphasis added.]

⁵ In light of our conclusion, we also dissolve the stay provision of the trial court’s May 14, 2001 order.