

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ARDEN STANLEY PIERSON, JR.,

Plaintiff-Appellant,

v

ALDEN STATE BANK,

Defendant-Appellee.

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UNPUBLISHED

May 19, 2009

No. 285525

Kalkaska Circuit Court

LC No. 07-009547-CH

Before: Whitbeck, P.J., and Davis and Gleicher, JJ.

PER CURIAM.

In this action challenging a mortgage foreclosure, plaintiff Arden Stanley Pierson, Jr., appeals as of right from a circuit court order granting defendant Alden State Bank's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

Pierson commenced this case by filing a pro per complaint alleging that the Alden State Bank had wrongfully foreclosed "on Property known as Rapid River Meadows in Kalkaska County." Pierson maintained that the bank had violated MCL 600.3240 by failing to afford him the applicable redemption period in the statute. Specifically, Pierson averred that because his property "is over 3 acres . . . the Redemption Period should have been 1 year," as contemplated by § 3240(12).<sup>1</sup>

In early 2008, Alden State Bank filed a motion for summary disposition, asserting that it extended to Pierson the proper six-month redemption period in § 3240(7). The bank submitted that § 3240(7) governed the redemption period because the foreclosed parcel, a residential condominium development, was a "multifamily residential property in excess of 4 units." The bank alternatively argued that laches barred Pierson's challenge to the foreclosure given that he neglected to "assert his challenge to the acceleration, foreclosure sale and sheriff's deed until after the six month redemption period expired." The bank attached an affidavit of its vice-president, Theodore Peterson, in which he stated, "At no time since the November 2006 foreclosure sale of Rapid River Meadows have I received a tender of redemption funds from

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<sup>1</sup> A short while later, Pierson filed an amended complaint adding various claims not raised in this appeal.

Arden Stanley Pierson, Jr. or any firm financing commitment from him relating to the property.” Citing MCR 2.114(F) and MCL 600.2591, the bank also requested the imposition of sanctions on Pierson on the basis that the instant claims lacked legal merit and qualified as frivolous, and to compensate the bank for Pierson’s “ongoing vendetta against the Bank.”

Pierson responded that MCL 600.3240(7) did not apply to the foreclosed parcel, reasoning, “None of the condominium units at issue are ‘multifamily.’ Each condominium is one separate unit on one separate piece of real estate for the use of one separate family.” (Emphasis in original). Pierson conceded that he never offered the Bank a “firm financing commitment” to cover the property redemption costs, but suggested that the bank had impeded his efforts to obtain financing, and attached several potential lender letters in support of his contention. Pierson insisted that “[h]ad he known that an additional six months were available, and had the Bank cooperated with his efforts, he could probably have redeemed the property,” and that therefore, the court should grant summary disposition in his favor.

At a motion hearing, the circuit court explained as follows that it would grant summary disposition to the bank:

The bank foreclosed on these 22 units of . . . this condominium development on November 16, of 2006. If the six-month redemption period . . . applied . . . the date by which Plaintiff would have had to have redeemed was May 16 of '07. He files this complaint July 29 of '07. If the one-year period had applied, then he could have redeemed by November 16, of '07. I don't even think I have to make a decision as to which redemption period applies. They both passed. Exhibit E from the bank's vice-president . . . is unrebutted. No firm financing commitment was received by the bank or payment.

Now the statute that applies to redemption, MCL 600.3240 does not contemplate a mortgagee's mere promise to pay or commitment to pay but rather the actual act of payment. . . . There was never any payment made. There was never a firm commitment to redeem.

. . . Again, I want to reiterate, [bank vice-president Peterson] states, at no time did Plaintiff ever tender even a firm financing commitment, let alone actual payment to the bank within the applicable redemption period.

Now, there's an issue as to whether the bank interfered with Plaintiff's attempts to redeem. Plaintiff in this case asserts that had Defendant bank not deliberately interfered with the refinancing attempts by a managing partner of a group called Regent Global Funds, the deal could have gone forward, and the redemption would have taken place within the six-month redemption period; however, none of these are firm commitments. And nothing in any of the correspondence—granted, counsel, I understand your argument and Plaintiff does have the burden of coming forward with admissible evidence to defeat grant of summary disposition, but even giving Plaintiff the benefit of the doubt, I see nothing in here in any of these letters that would do little more than support a presumption that the bank interfered in any event here. I just don't see anything here. Certainly these letters are not admissible evidence, but again, giving

Plaintiff the benefit of the doubt, he didn't have a firm financing commitment or make actual payment within the one-year period, so I'm inclined to grant summary disposition under (C)(10).

The circuit court subsequently entered an order granting the bank summary disposition "for the reasons stated on the record with prejudice and without costs to either party."

Pierson now contests the circuit court's summary disposition ruling, claiming that the court overlooked his evidence concerning the bank's interference with his redemption financing efforts. We review de novo a circuit court's summary disposition ruling. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). "Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh, supra* at 621.

When a motion under subrule (C)(10) is made and supported as provided in this rule, and adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, judgment, if appropriate, shall be entered against him or her. [MCR 2.116(G)(4).]

As the circuit court observed, MCL 600.3240(1) provides, in relevant part, that a mortgagor of a foreclosed property may "redeem[] the entire premises sold by paying the amount required under subsection (2), within the applicable time limit prescribed in subsections (7) to (12) . . . ." The Legislature in § 3240(2) defined the requisite payment amount as encompassing, in pertinent portion, "the sum that was bid for the entire premises sold, with interest from the date of the sale at the interest rate provided for by the mortgage, together with the amount of the sheriff's fee paid by the purchaser . . . ." <sup>2</sup> We need not specifically determine which subsection of § 3240 prescribes the redemption period applicable to Pierson's foreclosed condominium development because the evidence of record does not give rise to a genuine issue of fact whether Pierson ever proffered the bank the redemption amount plainly and unambiguously set forth in §§ 3240(1) and (2). <sup>3</sup>

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<sup>2</sup> The November 16, 2006 "Sheriff's Deed on Mortgage Sale" of Pierson's property reflects that it sold for a high bid of \$330,000.

<sup>3</sup> We consider de novo the interpretation and application of statutes as questions of law. *Gilliam v Hi-Temp Products, Inc*, 260 Mich App 98, 108; 677 NW2d 856 (2003).

When interpreting a statute, our primary obligation is to ascertain and effectuate the intent of the Legislature. To do so, we begin with the language of  
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The evidence regarding redemption supplied by the bank came in the form of the affidavit by Peterson, the bank employee with “oversight authority over this case and the attendant foreclosure,” who reported that at no point after “the November 16, 2006 sale of Rapid River Meadows have I received a tender of redemption funds from . . . Pierson . . . or any firm financing commitment from him relating to the property.” Pierson did supply the court with letters from several financing companies purporting to have interest in lending him money, but none of the financing company letters contains a definite or firm agreement to supply Pierson with funds. Pierson acknowledges in his brief on appeal that after seeking financing during the “represented . . . ‘six month redemption period,’” “he was unable to do so during that period, so he gave up.” In summary, Pierson failed to satisfy his responsibility to establish a factual dispute with respect to whether he ever paid the statutory redemption amount, either during the six-month period contemplated in § 3240(7) or within the one-year limit contained in § 3204(12).

Pierson posits that the documents he presented in opposition to the summary disposition motion at least gave rise to a material question of fact concerning his entitlement to some form of equitable relief from the foreclosure sale on the basis that the bank compromised his finance ascertainment efforts. The only document potentially lending credence to Pierson’s argument is the August 20, 2007 letter from Regent Global Funds Managing Partner Michael Facchini, which recounted as follows:

Dating back to April and May of this year, Regent Global Funds was considering the refinance and/or Note acquisition for the aforementioned property [the “6 lots at 9232 W. Limits Road, Mancelona, MI]. Our intent was to help satisfy the issues with Alden State Bank and bring you current on the Promissory Note. We had been in communication with Alden State Bank, as you had been as well, and tried to find a way to resolve the issue but didn’t receive a final determination from the bank as to if and how they would allow us to resolve the matter. We contacted Alden State Bank on several occasions, discussed the scenario, and waited to hear back with an answer or some sort of direction from them. Regent Global Funds had completed most of the underwriting review of the file but we were unable to execute the transaction due to the lack of necessary documents and direction. We wanted full title, a copy of the deed, and further instructions and options for resolution. RGF had the funds available for this transaction, and had we received what was required and completed our due diligence, it is reasonable to assume that we would have more than likely moved forward with this transaction. We never received a conclusion and thus we discontinued our efforts.

Notwithstanding that the RGF letter offers little insight into the causes of tardiness by the bank and primarily speculates that RGF could have given Pierson some funds, as the circuit court

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the statute, ascertaining the intent that may reasonably be inferred from its language. When the language of a statute is unambiguous, the Legislature’s intent is clear and judicial construction is neither necessary nor permitted. [*Lash v Traverse City*, 479 Mich 180, 187; 735 NW2d 628 (2007).]

astutely observed the letter does not qualify as admissible evidence sufficient to create a genuine factual dispute. MCR 2.114(G)(4), (6).

Because Pierson failed fulfill his burden to establish relevant issues of fact regarding his payment of the redemption amount or any misconduct by the bank, and because the record undisputedly reflects that Pierson's nonpayment of funds extended beyond the expiration of any applicable redemption period in MCL 600.3240, we conclude that the circuit court correctly granted the bank summary disposition of Pierson's foreclosure challenge under subrule (C)(10).<sup>4</sup>

Affirmed.

/s/ William C. Whitbeck

/s/ Alton T. Davis

/s/ Elizabeth L. Gleicher

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<sup>4</sup> We decline the bank's invitation to sanction Pierson for pursuing a vexatious appeal, pursuant to MCR 7.216(C)(1)(a). The bank suggests that Pierson could not have had "any reasonable basis for belief that there was a meritorious issue to be determined on appeal" in light of the circuit court's dismissal of his entirely unsupported positions. However, Pierson did introduce some documentation in support of his positions. Although the documents did not ultimately support Pierson's theories, we are not prepared to characterize his efforts to maintain his real property ownership as plainly and entirely devoid of any potential legal merit, or that Pierson pursued this appeal "for purposes of hindrance or delay." MCR 7.216(C)(1)(a).