

STATE OF MICHIGAN
COURT OF APPEALS

NADIRA ZETOUNA,

Plaintiff-Appellee,

v

CITY OF PONTIAC,

Defendant-Appellant.

UNPUBLISHED

April 22, 2021

No. 353780

Oakland Circuit Court

LC No. 2019-173446-CH

Before: GLEICHER, P.J., and BORRELLO and SWARTZLE, JJ.

PER CURIAM.

In this action to quiet title, defendant appeals as of right the trial court’s order granting summary disposition under MCR 2.116(I)(2) in favor of plaintiff. For the reasons set forth in this opinion, we affirm.

I BACKGROUND

This appeal arises from a dispute over ownership of a vacant lot in Pontiac, Michigan. Prior to August of 2004, defendant owned this vacant lot in fee simple. In 2004, defendant conveyed possession of the lot by quit claim deed to Andrew Pettress & Company, retaining for itself a “conditional right of reverter.” If Andrew Pettress & Company failed to obtain “certificates of occupancy” to build houses on the lot before June 1, 2004, defendant could exercise this right and thus take back possession of the lot. On April 15, 2004, defendant issued a new quit claim deed to Andrew Pettress & Company, amending the date by which Andrew Pettress & Company must obtain the certificates of occupancy to July 7, 2005. The final draft of the quit claim deed stated as follows:

This conveyance is subject to a conditional right of reverter which is hereby reserved by the Grantor as follows: Should the Grantee fail to obtain the issuance of either temporary or permanent certificate(s) of occupancy for all of the residential dwelling(s) to be constructed on the real property pursuant to the Grantee’s Site Plan as approved by the City of Pontiac Planning Commission on or before July 7, 2005, Grantor shall have the right to exercise this right of reverter at any time prior to issuance of temporary or permanent certificate(s) of occupancy

for the subject premises. If the foregoing condition subsequent is not complied with in a timely fashion, unless due to the acts or omissions of the Grantor or its agents or employees, this right of reverter may be exercised by Grantor by delivering to Grantee and any mortgagee of the Grantee, personally or by certified mail return receipt requested, written notice of the exercise of this right of reverter and recording of an affidavit of non fulfillment of the foregoing condition with the Oakland County Register of Deeds. The foregoing notwithstanding. Grantor's right of reverter shall automatically expire upon the first to occur of (i) the issuance of either temporary or permanent certificate(s) of occupancy for all of the residential dwelling(s) to be constructed on the subject premises pursuant to the Grantor's Site Plan as approved by the City of Pontiac Planning Commission on or before July 7, 2005, which shall be confirmed by the recording of an affidavit of fulfillment with a copy of the temporary or permanent certificate(s) of occupancy attached as an exhibit with the Oakland County Register of Deeds, or (ii) a sale in foreclosure or delivery of a deed in lieu of foreclosure of any mortgage to which the right of reverter may be subordinated by Grantor; provided, if the property is redeemed from any such foreclosure sale and this right of reverter would not otherwise have been extinguished, this right of reverter shall be revived.

After taking possession of the lot, Andrew Pettress & Company neglected to pay property taxes, causing the Oakland Circuit Court entering a judgment of foreclosure against Andrew Pettress & Company in favor of the Oakland County Treasurer in 2007. The Oakland County Treasurer then recorded in the property records a notice of judgment stating that the court's judgment, under MCL 211.28k, had vested "absolute title" in the Oakland County Treasurer. The Oakland County Treasurer then held a foreclosure sale, where plaintiff purchased the lot. In October of 2007, the Oakland County Treasurer conveyed the lot "in fee simple interest" to plaintiff via quit claim deed.

In 2019, plaintiff decided to sell the lot. A title company examined the Oakland County property records and found defendant's 2004 quit claim deed in which defendant reserved a conditional right of reverter in the lot. According to plaintiff, her real-estate agent contacted defendant and asked defendant to release this interest. Defendant refused.

Plaintiff filed a complaint in the Oakland Circuit Court to quiet title in her name and to discharge defendant's interest. In response, defendant sought to enforce its right of reverter, moving for summary disposition under MCR 2.116 (C)(8) and MCR 2.116 (C)(10). Defendant asked the court to find that possession of the lot had reverted to defendant because plaintiff had failed to obtain certificates of occupancy in accordance with the 2004 quit claim deed.

Plaintiff acknowledged that she had not obtained certificates of occupancy for the lot, instead, she contended that defendant's right of reverter had been extinguished by the 2007 judgment of foreclosure. In support of this argument, plaintiff cited MCL 211.78k(5) and (6) of the General Property Tax Act (GPTA), MCL 211.1, *et seq.*

The trial court agreed with plaintiff, noting that, under MCL 211.78k(5)(e), foreclosure extinguishes "all existing recorded and unrecorded interests in that property . . . except . . . private deed restrictions." Concluding that defendant's right of reverter was not a private deed restriction,

the trial court denied defendant's motion for summary disposition and granted plaintiff's motion. The trial court therefore held that the 2007 judgment of foreclosure had extinguished defendant's right of reverter. This appeal then ensued.

II. ANALYSIS

On appeal, the parties agree that MCL 211.78k(5)(e) precludes defendant from obtaining the property if the language in the 2004 quit claim deed bestowed on defendant a right of reverter and not a private deed restriction. Hence, defendant argues the trial court erred by concluding that defendant's retention of an interest in the land constituted a right of reverter but did not create a private deed restriction.

This Court reviews a trial court's decision to grant summary disposition de novo. *Pontiac Police & Fire Retiree Prefunded Group Health & Ins Trust Bd of Trustees v City of Pontiac*, 309 Mich App 611, 617; 873 NW2d 783 (2015). Likewise, this Court reviews de novo questions of statutory interpretation. *McQueer v Perfect Fence Co*, 502 Mich 276, 285-286; 917 NW2d 584 (2018), rev'd in part on other grounds 502 Mich 276 (2018).

In 1999, our Legislature amended the GPTA, MCL 211.1, *et seq.*, to establish a forfeiture and foreclosure scheme for the government to collect delinquent property taxes. *Comben v State*, 263 Mich App 474, 476; 688 NW2d 840 (2004), vacated on other grounds 475 Mich 901 (2006). Using this scheme, the government may recover unpaid property taxes by foreclosing and selling the property on which there is a tax delinquency. *Rafaelli, LLC v Oakland Co*, 505 Mich 429, 441-442; 952 NW2d 434 (2020). Once the government obtains a judgment of foreclosure and that judgment becomes effective, "fee simple title to the property vests absolutely in the foreclosing governmental unit" *Id.* at 445, citing MCL 211.78k(5) and (6). Thus, upon foreclosure, "all existing recorded and unrecorded interests in that property are extinguished," that is except for the property interests specified in MCL 211.78k(5)(e). See *Lakes of the North Ass'n v TWIGA Ltd Partnership*, 241 Mich App 91, 100; 614 NW2d 682 (2000). "Private deed restrictions" are one the property interests protected from foreclosure. *Id.*, quoting MCL 211.78k(5).

At issue here is the proper categorization of what defendant refers to as its "right of reverter" and whether this property interest is synonymous with a private deed restriction. In *Ditmore v Michalik*, 244 Mich App 569, 580-81; 625 NW2d 462 (2001), this Court stated: "A right of reversion, or possibility of reverter, is a future interest that remains in a grantor and is associated with a fee simple determinable." See also, *Ludington & Northern Railway v Epworth Assembly*, 188 Mich App 25, 35-36; 468 NW2d 884 (1991). A right of entry is an interest remaining when the grantor creates an estate on condition subsequent. *Id.* at 36. Thus, if the grantor reserves the right to reenter and take back possession of the property upon violation of a condition, the grantor has conveyed the property to the grantee in fee simple subject to condition subsequent. *Ditmore*, 244 Mich App at 580. When the grantor conveys his or her property in fee simple subject to condition subsequent, the grantor has not conveyed all his or her interest the property. Instead the grantor retains a future possessory interest in the property known as a "right of entry." *Id.* If the grantee (or whomever the grantee assigns his or her interest) violates the condition subsequent, the grantor may then exercise his or her right of entry, thus divesting the grantee of possession. *Id.* at 580-581. Here, the plain language of the 2004 quit claim deed clearly shows that defendant retained a right of entry. See *Mich Dep't of Natural Resources v Carmody-Lahti Real Estate, Inc.*,

472 Mich 359, 370; 699 NW2d 272 (2005) (explaining that this Court examines a deed's plain language in determining whether a grantor has reserved a right of entry.) Notwithstanding defendant's choice of words to describe its right of entry, the 2004 quit claim deed unequivocally describes defendant's right as "conditional," and it unequivocally states that defendant may exercise this right only upon violation of a condition—namely—the failure to obtain certificates of occupancy by July 7, 2005. Hence, defendant retained what is legally known as a right of entry. See *Ditmore*, 244 Mich App at 580. A right of entry is not a private deed restriction.

In *Lakes of the North Ass'n v TWIGA Ltd Partnership*, 241 Mich App 91, 99; 614 NW2d 682 (2000), this Court addressed whether restrictive covenants, including a covenant to pay association assessments, were "private deed restrictions" for purposes of MCL 211.78k(5)(e) or whether such restrictions were encumbrances otherwise extinguished by a tax sale. The *TWIGA* Court explained that "[p]lanned unit developments are a modern trend in residential living. Deed restrictions and covenants are vital to the existence and viability of such communities, and 'if clearly established by proper instruments, are favored by definite public policy.'" *Id.*, quoting *Oosterhouse v Brummel*, 343 Mich 283, 287; 72 NW2d 6 (1995). The *TWIGA* Court also explained that, "[b]ecause public policy favors restrictions and covenants regarding residential use, we believe that the Legislature did not intend to cancel such restrictions and covenants in the event of a tax sale." *Id.* This Court thus held that "[r]estrictive covenants and covenants to pay association assessment[s] are private deed restrictions" that the Legislature did not intend to cancel by a tax sale. 241 Mich App at 100.

By reviewing the definitions of a right of entry and a private deed restriction it becomes clear that they are two separate and distinct types of property interests. In property law context, a restriction is "[a] limitation, (esp. in a deed) placed on the use or enjoyment of property." *Black's Law Dictionary* (11th ed); see also *Ditmore*, 244 Mich App at 582-583 (describing the difference between a deed restriction and a deed condition). Hence, generally speaking, a "private deed restriction" is language in a private deed that limits how a grantee may use the deeded property. A grantor's right of entry, however, does not limit how the grantee may use the deeded property. The grantor's right of entry is simply a future possessory interest in the land. Of course, the condition subsequent that triggers the grantor's right of entry may affect how the grantee decides to use the property. But the actual property interest itself does not limit the grantee's use of the property. Accordingly, based only on the plain language of the statute, it is clear that a right of entry is not a private deed restriction.

Additionally, *Black's Law Dictionary* (10th ed) defines "restrictive covenant," as the term pertains to real property, as "[a] private agreement, usually in a deed or lease, that restricts the use or occupancy of real property, especially by specifying lot sizes, building lines, architectural styles, and the uses to which the property may be put." Hence, generally speaking, a "private deed restriction" is language in a private deed that limits how a grantee may use the deeded property. A grantor's right of entry, however, does not limit how the grantee may use the deeded property. The grantor's right of entry is simply a future possessory interest in the land. Of course, the condition subsequent that triggers the grantor's right of entry may affect how the grantee decides to use the property. But the actual property interest itself does not limit the grantee's use of the property.

Here, if we were to adopt defendant's definition of a private deed restriction, we would effectively nullify MCL 211.78k(5)(b). Once a judgment of foreclosure becomes effective, MCL

211.78k(5)(b) requires that “fee simple title to the property vest[] absolutely in the foreclosing governmental unit” See *Rafaeli, LLC*, 505 Mich at 445. But if future possessory interests survived foreclosure, a foreclosing government unit could never take fee simple absolute title to the property. See 28 Am Jur 2d, Estates, § 13 (“ ‘Fee simple absolute’ and ‘fee simple’ represent the entire and absolute interest and property in the land. No one can have a greater interest.”); MCL 554.2 (“[W]hen not defeasible or conditional, [an estate] shall be a fee simple absolute, or an absolute fee.”) A foreclosing government unit would take fee simple absolute title only if the dispossessed property owner already owned the property in fee simple absolute.

Additionally, adoption of defendant’s argument would impede the object of the GPTA, which is to allow the foreclosing government entity “to attract prospective buyers for the property and to ultimately restore the property to the tax rolls.” *Lakes of the North Ass’n*, 241 Mich App at 98-99, quoting *Wayne Co Chief Executive v Mayor of Detroit*, 211 Mich App 243, 247; 535 NW2d 199 (1995). If, as defendant argues, future interests survived judgment of foreclosure, attracting prospective buyers would be at a minimum, difficult. Under those circumstances, the government could achieve its objective of recuperating delinquent property taxes only if the dispossessed property owner had fee simple title to the property.

Hence, reading the phrase “private deed restriction” in MCL 211.78k(5)(e) to refer to a right of entry would be inconsistent with the phrase’s plain meaning as reading it this way would nullify MCL 211.78k(5)(b) and would impede the object of the GPTA. Consequently, the trial court correctly granted plaintiff’s motion for summary disposition and denied defendant’s motion. After the Oakland County Treasurer obtained a judgment of foreclosure against the vacant lot in this case, “fee simple title to the property vest[ed] absolutely in” the Oakland County Treasurer. See *Rafaeli, LLC*, Mich at 441-442, citing MCL 211.78k(5) and (6). At that point “all existing recorded and unrecorded interests in that property [were] extinguished,” including defendant’s right of entry. See *Lakes of the North Ass’n*, 241 Mich App at 100. Hence, when the Oakland County Treasurer sold the lot to plaintiff in October of 2007, fee simple absolute title passed to plaintiff.

Affirmed. No costs are awarded a public question being involved. MCR 7.216(A)(7) and MCR 7.219(A). *City of Bay City v Bay County Treasurer*, 292 Mich App 156, 172; 807 NW2d 892 (2011).

/s/ Elizabeth L. Gleicher

/s/ Stephen L. Borrello

/s/ Brock A. Swartzle