STATE OF MICHIGAN

COURT OF APPEALS

SHAHENAZ RI AYESH and RAAFAT AYESH,

Plaintiffs-Appellants,

v

CLAUDIA TAISSIR CHAALAN,

Defendant/Third-Party Plaintiff-Appellee,

v

FEDERAL HOME LOAN MORTGAGE CORPORATION,

Third-Party Defendant.

UNPUBLISHED
September 30, 2021

No. 354966
Wayne Circuit Court
LC No. 20-003764-CH

Before: CAVANAGH, P.J., and K. F. KELLY and REDFORD, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's opinion and order denying their motion for summary disposition or, alternatively, for leave to amend their complaint, and dismissal of their claims in this action to quiet title. We affirm.

I. FACTS AND PROCEDURAL BACKGROUND

Plaintiff, Shahenaz Ayesh, purchased a home in Dearborn Heights, Michigan in 2007 and granted a purchase money mortgage on the property to her lender Washington Mutual Bank, FA. JPMorgan Chase Bank, National Association, the successor in interest by purchase from the FDIC as Receiver of Washington Mutual Bank, FA, acquired the mortgage in 2012 and later assigned it to Homeward Residential, Inc. which in turn assigned the mortgage to Ocwen Loan Servicing, LLC (Ocwen) in 2016 which also serviced the loan. On February 19, 2019, Ocwen sent a letter to Shahenaz indicating receipt of her request for mortgage assistance (RMA) and submitted documents. Three days later, however, Ocwen informed Shahenaz by letter that it closed review

of the RMA because Ocwen no longer serviced the loan and that it would forward the submissions to the new loan servicer. During February 2019, PHH Mortgage Services (PHH) became Shahenaz's mortgage loan servicer.

Months later on August 30, 2019, because Shahenaz defaulted on the mortgage loan, PHH initiated a foreclosure by advertisement as permitted by the terms of the mortgage, and the Detroit Legal News published the notice of foreclosure by advertisement four consecutive weeks on August 30, 2019, September 6, 2019, September 13, 2019, and September 20, 2019. On September 6, 2019, PHH's foreclosure counsel, Potestivo & Associates, PC, posted a copy of the foreclosure notice in a conspicuous place on the subject premises. The published and posted foreclosure notice stated that the sheriff's sale would occur on October 3, 2019, the mortgage loan amount due on the date of notice, and that the statutory redemption period would commence upon the sheriff's sale of the subject property.

On October 3, 2019, PHH purchased the subject property at the sheriff's sale for $157,000, and recorded the Sheriff's Deed on Mortgage Sale along with copies of the notices and affidavits of publication, posting, and purchase in the Wayne County Register of Deeds. PHH's recorded affidavit of purchaser stated that the last day to redeem the property would be April 3, 2020, and specified the redemption amount plus per diem interest that would accrue. On October 14, 2019, PHH sent Shahenaz a letter regarding her incomplete application for home owners assistance explaining that it had previously contacted her about applying for assistance and had provided her "an application and a list of outstanding items needed in order to complete [her] application." The letter advised Shahenaz that PHH had not received the outstanding items and the deadline to provide them had since passed. The letter also advised Shahenaz to call if she had any questions.

In late November 2019, PHH quitclaimed the subject property to third-party defendant, Federal Home Loan Mortgage Corporation (FHLM). In mid-December 2019, FHLM sold the property to defendant, Claudia Chaalan for $126,160, and conveyed title to her via a covenant deed. She recorded her covenant deed in the Wayne County Register of Deeds on January 8, 2020.

On March 11, 2020, plaintiffs filed a complaint against Chaalan to quiet title to the subject property and alleged that Chaalan breached the statutory notice requirements of MCL 600.3208 by not posting the foreclosure notice, breached the RMA by foreclosing when they sought a financial accommodation, and that they were entitled to an injunction to stay and toll the expiration of the redemption period. On April 1, 2020, plaintiffs moved for an ex parte temporary restraining order (TRO) to stay the redemption period's expiration, or alternatively, to convert the foreclosure by advertisement to a judicial sale.[1] The trial court granted plaintiffs' motion and entered a TRO that stayed and tolled the redemption period and ordered Chaalan to appear to show cause why a preliminary injunction should not be entered. Later, on June 10, 2020, the trial court extended the TRO, and again on June 18, 2020, extended it until June 30, 2020. In its June 18, 2020 order, the trial court set a schedule for plaintiffs to move for summary disposition, for Chaalan to respond, and for plaintiffs to reply. The trial court entered no further order respecting staying and tolling

[1] Chaalan filed a third-party complaint against FHLM on April 15, 2020, seeking to quiet title to the subject property in herself and to have FHLM indemnify and hold her harmless regarding plaintiffs' claims.

of the redemption period. Plaintiffs did not redeem the property and the redemption period, therefore, expired on June 30, 2020.

On July 6, 2020, plaintiffs moved for summary disposition or, alternatively, to amend their complaint to add Ocwen, PHH, and FHLM. Plaintiffs argued that the foreclosure had been wrongful because of the failure to post notice of the foreclosure and follow the requirements of MCL 600.3204. Plaintiffs asserted that the sheriff's sale had been improper due to fraud because Chaalan's predecessors failed to notify them of the foreclosure which they contended required setting aside the sheriff's sale and starting the foreclosure process from the beginning. Plaintiffs stated that they might have been able to procure money to reinstate the loan and keep the property. Plaintiffs also asserted that Chaalan's predecessors failed to adequately respond to plaintiffs' RMA while pursuing foreclosure. Alternatively, plaintiffs moved to add Ocwen, PHH, and FHLM as defendants but did not specify what claims they sought to raise against them.

Chaalan opposed plaintiffs' motion on the ground that she held title to the subject property under a recorded covenant deed granted to her by FHLM for the consideration she paid. Chaalan relied on Shahenaz's mortgage's provisions which specified that her lender could accelerate the debt and foreclose by advertisement and presented a copy of the recorded covenant deed along with evidence of the propriety of the foreclosure and sheriff's sale including the duly executed and recorded Sheriff's Deed on Mortgage Sale, Affidavit of Publication, Affidavit of Posting, Evidence of Sale, Non-Military Affidavit, and Affidavit of Purchase. Chaalan asserted that, at no time, had she committed any wrongdoing and had no liability to plaintiffs. Chaalan, therefore, requested that the trial court dismiss plaintiffs' case in its entirety.

The trial court dispensed with oral argument pursuant to MCR 2.119(E)(3) and entered an opinion and order on September 22, 2020, denying plaintiffs' motion for summary disposition or to amend their complaint. After briefly summarizing the factual background of the case, the trial court ruled that, under MCL 600.3236, Chaalan "obtained a valid title to the property." The trial court explained that, "[a]fter a valid sheriff's sale" and "expiration of the redemption period," the deed "becomes a valid deed vested in the purchaser, who may then grant or assign to someone else, 'all the right, title, and interest' in the property." The trial court stated that plaintiffs failed to "convince the Court that [Chaalan] can in any way be held responsible for any claims of wrongdoing prior to the sheriff's sale." Moreover, noting plaintiffs' claim that "they were not properly notified of the sheriff's sale," the trial court stated that plaintiffs submitted "no affidavit . . . nor is the complaint verified, thus there is no support for this allegation." The trial court also concluded that plaintiffs failed to demonstrate "how [Chaalan] is responsible if there were defects in the sale." Additionally, the trial court concluded that plaintiffs' request for leave to amend the complaint to add Ocwen, PHH, and FHLM "would be futile" because "adding them [would] not give [p]laintiffs any right to possession." This appeal followed.

II. STANDARDS OF REVIEW

Plaintiffs moved for summary disposition under MCR 2.116(C)(8) and (C)(10). "When a motion seeks summary disposition under both (C)(8) and (C)(10), but the parties and trial court rely on matters outside of the pleadings, we review the matter through the lens of (C)(10)." *Mazzola v Deeplands Dev Co, LLC*, 329 Mich App 216, 223; 942 NW2d 107 (2019). We review de novo a trial court's decision whether to grant or deny a motion for summary disposition. *Ingham*

Co v Mich Co Rd Comm Self-Ins Pool, 321 Mich App 574, 579; 909 NW2d 533 (2017), remanded on other grounds by 503 Mich 917 (2018).

> A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. [*Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999) (citations and quotation marks omitted).]

"We review de novo questions of statutory interpretation." *Hayford v Hayford*, 279 Mich App 324, 325-326; 760 NW2d 503 (2008). We review for an abuse of discretion a trial court's decision on a motion to amend a complaint. *Long v Liquor Control Comm'n*, 322 Mich App 60, 67; 910 NW2d 674 (2017). "An abuse of discretion occurs when a court chooses an outcome outside the range of principled outcomes." *Baynesan v Wayne State Univ*, 316 Mich App 643, 651; 894 NW2d 102 (2016).

III. ANALYSIS

Plaintiffs argue that their complaint presented valid claims and that Chaalan's predecessors failed to comply with statutory requirements for foreclosure by advertisement because neither PHH, nor its agents, posted a true copy of the notice of foreclosure "within the 15-day statutory timeframe or at any other time" and they claim that they suffered prejudice by being placed in a position that prevented them from preserving their interest in the subject property by PHH's initiation of the sheriff's sale without notice. Plaintiffs contend that the foreclosure sale should be set aside. We disagree.

"This Court has made clear that the plaintiff in a quiet-title action has the initial burden of establishing a prima facie case of title, and that summary disposition in favor of the defendant is properly entered if the plaintiff fails to carry this burden." *Special Prop VI LLC v Woodruff*, 273 Mich App 586, 590; 730 NW2d 753 (2007) (citations omitted). If the plaintiff makes out a prima facie case, the defendant then has the burden of proving superior right or title in itself. *Beulah Hoagland Appleton Qualified Personal Residence Trust v Emmet Co Rd Comm*, 236 Mich App 546, 550; 600 NW2d 698 (1999). Actions to quiet title are equitable in nature. *Dobie v Morrison*, 227 Mich App 536, 538; 575 NW2d 817 (1998).

A mortgage "is a lien on real property intended to secure performance or payment of an obligation." *Prime Fin Servs LLC v Vinton*, 279 Mich App 245, 256; 761 NW2d 694 (2008) (citation omitted). "Foreclosure sales by advertisement are defined and regulated by statute. Once the mortgagee elects to foreclose a mortgage by this method, the statute governs the prerequisites of the sale, notice of foreclosure and publication, mechanisms of the sale, and redemption." *Senters v Ottawa Savings Bank, FSB*, 443 Mich 45, 50; 503 NW2d 639 (1993) (citations omitted). Foreclosure by advertisement is governed by MCL 600.3201 *et seq*. The notice requirements are set forth in MCL 600.3208 which provides:

> Notice that the mortgage will be foreclosed by a sale of the mortgaged premises, or some part of them, shall be given by publishing the same for 4 successive weeks at least once in each week, in a newspaper published in the county where the premises included in the mortgage and intended to be sold, or some part of them, are situated. If no newspaper is published in the county, the notice shall be published in a newspaper published in an adjacent county. In every case within 15 days after the first publication of the notice, a true copy shall be posted in a conspicuous place upon any part of the premises described in the notice.

If a holder of a mortgage on real property forecloses, the foreclosure extinguishes the mortgage. *Trademark Props of Mich, LLC v Fed Nat'l Mortg Ass'n*, 308 Mich App 132, 139; 863 NW2d 344 (2014). Following foreclosure, the rights and obligations of the parties are fixed by statute rather than controlled by the mortgage. *Senters*, 443 Mich at 52. "Pursuant to MCL 600.3240, after a sheriff's sale is completed, a mortgagor may redeem the property by paying the requisite amount within the prescribed time limit." *Bryan v JPMorgan Chase Bank*, 304 Mich App 708, 713; 848 NW2d 482 (2014). Under MCL 600.3236, the purchaser at a foreclosure sale who obtained a sheriff's deed is vested with all the rights, title, and interest in the subject property unless redeemed by the mortgagor during the statutory redemption period. *Id*. at 713-715. Upon the elapse of the statutory redemption period, the mortgagor's "right, title, and interest in and to the property" is completely extinguished. *Piotrowski v State Land Office Bd*, 302 Mich 179, 187; 4 NW2d 514 (1942). "If a mortgagor fails to avail him or herself of the right of redemption, all the mortgagor's rights in and to the property are extinguished," and the mortgagor does not have standing to bring any claim related to the property absent clear proof of fraud or irregularity. *Bryan*, 304 Mich App at 713-715.

When the statutory requirements for a mortgage foreclosure are met, a trial court generally lacks authority to set aside a foreclosure sale except in "a strong case of fraud or irregularity, or some peculiar exigency . . . ." *Sweet Air Inv, Inc v Kenney*, 275 Mich App 492, 497; 739 NW2d 656 (2007) (quotation marks and citations omitted). Only fraud or irregularity related to the foreclosure proceeding itself justifies setting aside a foreclosure sale. *Diem v Salle Mae Home Loans, Inc*, 307 Mich App 204, 210-211; 859 NW2d 238 (2014).

Plaintiffs asserted without evidentiary support that they did not receive proper notice of the sheriff's sale. The trial court noted that plaintiffs had neither filed a verified complaint nor provided any affidavit in support for their allegation. The record reflects that Chaalan submitted unrebutted evidence of the propriety of PHH's foreclosure by advertisement and the propriety of the sheriff's sale. The trial court, therefore, correctly concluded that defendant obtained a valid title to the property. Moreover, plaintiffs failed and could not demonstrate how Chaalan bore responsibility for any alleged defects in the foreclosure by advertisement or the sheriff's sale.

Plaintiffs seek to rely on plaintiff, Raafat Ayesh's affidavit that plaintiffs submitted in support of their motion for an ex parte TRO. Raafat's affidavit, however, simply asserts that plaintiffs' allegations in their complaint were true to the best of his knowledge and that plaintiffs were prejudiced and would have been in a "better position to preserve their interest in the subject property" if Chaalan "had not gone forward with the Sheriff's Sale without notice . . . and" if Chaalan had allowed plaintiffs to complete the financial accommodation or reinstate their loan and not foreclosed. The record, however, demonstrably establishes that Raafat's statements and

plaintiffs' allegations lacked any evidentiary foundation. Chaalan did not foreclose or go forward with the sheriff's sale, and had nothing to do with plaintiffs' desire for some sort of financial accommodation from Shahenaz's mortgage lender or servicer. Chaalan merely purchased the property from FHLM which conveyed its interest under the sheriff's deed to her via a covenant deed.

In their reply brief in support of summary disposition, plaintiffs asserted that they "filed an Affidavit stating that they did not receive the notice[.]" MCL 600.3208, however, does not require that plaintiffs personally *received* the notice. This Court explained in *Cheff v Edwards*, 203 Mich App 557, 560-561; 513 NW2d 439 (1994), that personal notice or service is not required by MCL 600.3208. By statute, "publication in a newspaper for four consecutive weeks and a posting of the foreclosure notice on the premises is all that is required." *Id*. at 561. To the extent that plaintiffs contend that they had entitlement to personal "receipt" of the notice under MCL 600.3208, plaintiffs are mistaken. Moreover, the record evidence establishes that the statutory notice requirements were met by PHH, and therefore, plaintiffs had notice of the foreclosure by advertisement and the sheriff's sale.

The affidavits attached to the Sheriff's Deed on Mortgage Sale were recorded in the county register of deeds on October 16, 2019, in compliance with MCL 600.3256 and MCL 600.3260, making them "presumptive evidence of the facts therein contained" pursuant to MCL 600.3264. Specifically, the affidavit of publication stated the notice of foreclosure by advertisement for the subject property "was published in Detroit Legal News[,] a newspaper circulated in Wayne County[,] on August 30, September 6, September 13, [and] September 20, 2019 A.D." The affidavit of posting states that a true copy of the notice of foreclosure by advertisement was "posted . . . in a conspicuous place upon the" subject property premises on September 6, 2019. These affidavits, therefore, are presumptive evidence of both publishing the notice and posting of the notice as required under MCL 600.3208. Plaintiffs failed to rebut this presumption with any evidence to the contrary. Further, plaintiffs failed to demonstrate any fraud or irregularity respecting the foreclosure by advertisement or the sheriff's sale. Accordingly, the trial court did not err by finding that plaintiffs failed to establish any grounds to set aside the foreclosure or the sheriff's sale.

Plaintiffs also argue that the sheriff's sale had been improper because of fraud and the failure of Chaalan and her predecessors to follow foreclosure procedures, thereby causing prejudice to plaintiffs. Specifically, plaintiffs claim that Chaalan's predecessors "acted fraudulently when they did not adequately respond" to plaintiffs' RMA. Further, plaintiffs assert that Chaalan's predecessors improperly initiated foreclosure proceedings and sold plaintiffs' home before a full and fair review and evaluation of their RMA. We disagree.

Plaintiffs alleged that fraud or irregularity occurred when Chaalan's predecessors allegedly committed "dual tracking" by offering them an RMA while, at the same time, PHH pursued foreclosure. "Dual tracking" refers to a lender's initiation of foreclosure proceedings at the same time that a borrower in default seeks a loan modification. *Kloss v RBS Citizens, NA*, 996 F Supp 2d 574, 585 (ED Mich, 2014). "The result is that the borrower does not know where he or she stands, and by the time foreclosure becomes the lender's clear choice, it is too late for the borrower to find options to avoid it." *Id*. (quotation marks and citation omitted). Under the Real Estate Settlement Procedures Act (RESPA), 12 USC 2601 *et seq*., specifically, 12 CFR 1024.41(f)(2),

foreclosure referral is prohibited if a "complete loss mitigation application" has been submitted "during the pre-foreclosure review period" unless certain events occur. Further, under 12 CFR 1024.41(g), a foreclosure sale is prohibited if the borrower submits a complete loss mitigation application after the servicer makes first notice or filing required by law for any foreclosure process, but more than 37 days before the foreclosure sale, unless certain events occur. However, dual-tracking violations constitute fraud or irregularity in the loan-modification process—not the foreclosure process—and "the only remedy for a violation of the loan modification process is a conversion of the foreclosure by advertisement into a judicial foreclosure, which must have occurred before the foreclosure by advertisement was completed." *Kloss*, 996 F Supp 2d at 585-586.

Ocwen's February 19, 2019 letter to Shahenaz acknowledged submission of an RMA and explained that Ocwen had reviewed it and considered it complete as of February 14, 2019, but stated that if it required additional documentation it would notify her. Ocwen indicated that it would "review the account for all possible mortgage assistance options" and that the process could take up to 30 calendar days to determine if she qualified. Ocwen stated that foreclosure actions had begun but were on hold. On February 22, 2019, Ocwen sent Shahenaz a second letter that informed her that Ocwen closed its review of her RMA since Ocwen no longer serviced the loan. The letter advised Shahenaz that her submission would be transferred to PHH, her new servicer, for review. Additionally, the February 22, 2019 letter instructed Shahenaz to submit any future requests or any questions regarding the status of the review to the new servicer and provided her PHH's address and telephone number.

PHH commenced foreclosure by advertisement on or around August 30, 2019. The record does not indicate that, from February 22, 2019, until the sheriff's sale which occurred on October 3, 2019, plaintiffs took any action respecting their defaulted loan. On October 14, 2019, 11 days after the sheriff's sale, PHH sent Shahenaz a letter that explained that PHH previously contacted her "regarding an application for a Homeowners Assistance Program(s)" and provided "an application and a list of outstanding items needed in order to complete [the] application." The letter stated that, as of October 14, 2019, PHH had not received the outstanding items and the deadline to provide them had since passed.

PHH's October 14, 2019 letter suggests that PHH may have pursued foreclosure proceedings at the same time it evaluated plaintiffs' RMA in violation of RESPA by engaging in dual-tracking contrary to 12 CFR 1024.41(f)(2) and 12 CFR 1024.41(g). However, six months elapsed from the time that PHH became the servicer and initiated its foreclosure of the mortgage. PHH's letter suggests that it made an effort to assist Shahenaz but she failed to comply with requests for additional information which stymied efforts to help her. Regardless, a dual-tracking violation constitutes fraud or irregularity in the loan modification process—not the foreclosure process. "[T]he only remedy for a violation of the loan modification process is a conversion of the foreclosure by advertisement into a judicial foreclosure, which must have occurred *before* the foreclosure by advertisement was completed." *Kloss*, 996 F Supp 2d at 585-586 (emphasis added). And, as indicated, a foreclosure sale can only be set aside on a clear showing of fraud or irregularity in the foreclosure process, not the loan modification evaluation. *Diem*, 307 Mich App at 210-211. Accordingly, if a dual-tracking violation occurred, such would not justify setting aside the foreclosure sale after the redemption period expired. See *Kloss*, 996 F Supp 2d at 586.

The fact that a dual-tracking violation would not have justified setting aside the foreclosure sale makes it unnecessary to consider plaintiffs' argument that they suffered prejudice from the alleged fraud or irregularity in the foreclosure process. Moreover, "defects or irregularities in a foreclosure proceeding result in a foreclosure that is voidable, not void *ab initio*." *Kim v JPMorgan Chase Bank, NA*, 493 Mich 98, 115; 825 NW2d 329 (2012). "To demonstrate such prejudice, [plaintiffs] must show that they would have been in a better position to preserve their interest in the property absent [the] defendant's noncompliance with the statute." *Id*. at 115-116.

In this case, plaintiffs failed to support their claim of prejudice by failing to provide any supporting evidence demonstrating that they could have successfully modified or reinstated their loan, could have redeemed the subject property, or could have otherwise preserved their interest in the property, were it not for the alleged dual-tracking. In fact, the October 14, 2019 letter from PHH suggests that, in actuality, plaintiffs failed to provide PHH with requested documents by a specific deadline to complete their application for assistance. As a result, plaintiffs did not suffer prejudice because of Ocwen's or PHH's conduct but their own failure to take necessary steps to complete the RMA process. Accordingly, the trial court did not err.

The record also supports the trial court's conclusion that Chaalan could not in any way be held responsible for any claims of wrongdoing in the foreclosure process. The record establishes that Chaalan had neither involvement nor responsibility for any conduct by anyone before she purchased the property from FHLM, and plaintiffs failed to demonstrate that PHH violated RESPA by foreclosing, or violated any provision of the foreclosure by advertisement statutory requirements. Therefore, as a matter of law, plaintiffs could not establish their prima facie case of title to the property having lost it by Shahenaz's failure to redeem the property following the sheriff's sale. Upon expiration of the redemption period on June 30, 2020, all rights, title, and interest in the subject property vested in Chaalan. Accordingly, the trial court did not err by denying plaintiffs' summary disposition motion and dismissing their claims against Chaalan.

Plaintiffs argue further that Chaalan failed to address several issues raised by plaintiffs in their motion for summary disposition and contend that she waived any defenses to them. Plaintiffs' arguments, however, merely repeat arguments already addressed. Those arguments are meritless.

Plaintiffs also argue without citation to any authority that Chaalan stands in the shoes of FHLM because her covenant deed purportedly requires her to defend title to the subject property against all claims or demands. Analysis of the covenant deed, however, establishes that FHLM actually covenanted to Chaalan to do so, and as the grantor, warranted title to Chaalan. Plaintiffs' argument in this regard fails as a matter of law. Further, to the extent that plaintiffs argue that Chaalan waived any defense to their claim for injunctive relief, they have abandoned that argument by failing to cite in their brief on appeal any authority or provide any analysis regarding that issue. An appellant may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claims of error, nor may an appellant give issues cursory treatment with little or no citation of supporting authority. See *Houghton ex rel Johnson v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003). Even if plaintiffs had presented some argument in this regard, they lacked any entitlement to injunctive relief as a matter of law because Chaalan holds superior title to the subject premises and plaintiffs have no right to injunctive relief of any sort having failed to redeem the subject property.

Plaintiffs argue last that, at a minimum, the trial court erred in denying leave to amend their complaint to add Ocwen, PHH, and FHLM as defendants. We disagree.

"[T]he primary function of a pleading in Michigan is to give notice of the nature of the claim or defense sufficient to permit the opposite party to take a responsive position." *Stanke v State Farm Mut Auto Ins Co*, 200 Mich App 307, 317; 503 NW2d 758 (1993). Trial courts should freely grant leave to amend a complaint when justice so requires. MCR 2.118(A)(2); *Sanders v Perfecting Church*, 303 Mich App 1, 9; 840 NW2d 401 (2013). Generally, a motion to amend a complaint "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, or (5) futility of the amendment." *Lane v KinderCare Learning Ctrs, Inc*, 231 Mich App 689, 697; 588 NW2d 715 (1998). "If a trial court denies a motion to amend, it should specifically state on the record the reasons for its decision." *Weymers v Khera*, 454 Mich 639, 659; 563 NW2d 647 (1997). An amendment is futile if it fails to state a claim upon which relief can be granted. See *Hakari v Ski Brule, Inc*, 230 Mich App 352, 355; 584 NW2d 345 (1998).

In this case, the trial court found that plaintiffs' request for leave to amend their complaint to add defendants "would be futile, as adding them will not give Plaintiffs any right to possession." As noted, to set aside a foreclosure sale and quiet title to the property in plaintiffs, plaintiffs had to establish a substantial defect in the foreclosure proceedings that prejudiced them, and show that they "would have been in a better position to preserve their interest in the property absent [the] defendant's noncompliance with the statute." *Kim*, 493 Mich at 115-116. Plaintiffs, however, failed and could not rebut the presumption raised by the affidavits attached to and recorded with the Sheriff's Deed on Mortgage Sale, all of which established statutory compliance in the mortgage foreclosure by advertisement in this case. PHH satisfied the notice publication and notice posting requirements set forth in MCL 600.3264. Further, plaintiffs failed to provide any evidence demonstrating that they could have successfully obtained modification or reinstatement of Shahenaz's loan, failed to timely redeem the subject property, and failed to otherwise preserve their interest in the property. The evidence indicated that plaintiffs failed to timely provide PHH with requested documents resulting in an incomplete application for mortgage loan assistance. The record reflects that plaintiffs failed to indicate in their motion for leave to file an amended complaint what claims they desired to raise and failed to submit to the trial court a proposed amended complaint. Further, because plaintiffs failed and could not establish impropriety or irregularity in the foreclosure procedure or prejudice caused by Chaalan or Ocwen, PHH, or FHLM, the trial court did not err by ruling that amendment of plaintiffs' complaint would have been futile. Moreover, to the extent that plaintiffs' motion to amend could be deemed to have intimated their intent to state a RESPA violation claim against Ocwen, PHH, or FHLM, such claim would have been futile because "the only remedy for a violation of the loan modification process is a conversion of the foreclosure by advertisement into a judicial foreclosure, which must have occurred *before* the foreclosure by advertisement was completed." *Kloss*, 996 F Supp 2d at 585-586. Here, the foreclosure by advertisement had been completed, the redemption period had

expired, and title vested in Chaalan. Accordingly, the trial court did not abuse its discretion by denying plaintiffs' motion to amend.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly
/s/ James Robert Redford