STATE OF MICHIGAN

COURT OF APPEALS

CHASE MANHATTAN BANK, Plaintiff-Appellant,	UNPUBLISHED October 19, 2004
v JAMES J. BOS and AMERICUS L.L.C., Defendants-Appellees,	No. 247603 Van Buren Circuit Court LC No. 02-049870-CK
and REBECCA A. BOS, Defendant.	

Before: Neff, P.J., and Smolenski and Schuette, JJ.

PER CURIAM.

In this action for injunctive and equitable relief to set aside a property foreclosure sale, plaintiff appeals as of right the decision of the trial court denying plaintiff's motion for summary disposition under MCR 2.116(C)(10), and granting defendant Americus' motion under the same rule. We affirm.

I

Plaintiff is the mortgagee on property originally mortgaged by both James and Rebecca Bos. Defendants Bos defaulted on the mortgage and plaintiff conducted a foreclosure sale by advertisement. Plaintiff was the only bidder at the sheriff's sale, bidding $41,672.81. The outstanding debt, including costs and fees, was $108,795.61, and the market value of the property was approximately $136,000. Plaintiff alleges that it intended to start bidding at $108,795.61, but that due to a calculation mistake, the amount that plaintiff instructed its attorney to bid at the sale, via e-mail, was $41,672.81.

After the sheriff's sale plaintiff realized its error and brought suit seeking an order enjoining defendants Bos or their agents from tendering the redemption amount in satisfaction of the mortgage sale and/or sheriff's deed. Defendant Americus intervened as a party defendant, stating that James Bos' interest in the property was transferred to Rebecca Bos as part of a divorce, and in turn, Rebecca's interest was transferred to Americus. As a result, Americus claimed status as a bona fide purchaser for value. Plaintiff and Americus filed cross-motions for summary disposition; the court denied plaintiff's and granted defendant's on the grounds that the mistake was unilateral, brought about by plaintiff's own negligence, therefore not entitling it to have the sale set aside.

II

Plaintiff first argues that the trial court erred in failing to set aside the sale because Americus is not a bona fide purchaser for value. We disagree.

We review the grant or denial of a motion for summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The particular question of whether to set aside a sale made upon the foreclosure of a mortgage upon real estate is one resting largely in the discretion of the trial court and should not be interfered with on appeal unless it appears such discretion has been misused. *Nugent v Nugent*, 54 Mich 557, 558-560; 20 NW 584 (1884).

The general and long established rule in Michigan is that the inadequacy of a sale price in relation to the actual value of property will not vitiate an otherwise fair and regular statutory foreclosure. *Macklem v Warren Const Co,* 343 Mich 334, 339; 72 NW2d 60, 63 (1955); *Carlisle v Dunlap*, 203 Mich 602; 169 NW 936 (1918). However, a sale may be set aside if there is both a grossly inadequate sale price and some other defect, such as a mistake. *Id.* at 608.

Plaintiff does not argue that the sheriff's sale was other than a regular statutory procedure. Rather, plaintiff argues that defendants knew or should have known of the mistake because they were aware of the disparity between the debt, the market value of the property, and the price bid. In essence, plaintiff argues that these facts known to Americus were sufficient to make Americus aware of plaintiff's mistake and that because of that knowledge Americus could not be a bona fide purchaser for value. While not precisely articulated, plaintiff seems to claim that Americus' knowledge renders this a case of mutual mistake.

However, in support of its motion for summary disposition, Americus offered an uncontested affidavit averring that foreclosure sales occur, relatively frequently, where the amount bid by the mortgagee is less than the amount of the debt thus clearly countering plaintiff's claim that Americus must have known there was a mistake. Plaintiff on the other hand failed to provide any other evidence to suggest that defendants knew or should have known of the mistake or were otherwise guilty of fraud, concealment, misrepresentation, or other

inequitable conduct.[1] We cannot conclude that the trial court abused its discretion in finding that Americus was a bona fide purchaser for value.

Moreover, here, the mistake complained of by plaintiff was brought about by its own negligence. In *Federal Land Bank of St Paul v Edwards,* 262 Mich 180; 247 NW 147 (1933), our Supreme Court specifically stated that a sale may be vacated on the basis of a mistake where the party seeking to set the sale aside “is guilty of no negligence or lack of attention.” *Id.* at 183. Here, it is undisputed that plaintiff made a negligent calculation error. Accordingly, relief in the form of vacating the sale is not available to plaintiff under these facts.

III

Plaintiff next claims that the trial court erred in ruling that MCL 600.3280 would provide a defense to defendant James Bos in a subsequent action for a deficiency judgment. Even if plaintiff is correct regarding the trial court’s analysis of the effect of that statute,[2] the issue is not properly before this Court in this appeal because the trial court’s statements constitute mere dicta and not a binding order or ruling.

MCL 600.3280, generally restricts a mortgagee from seeking a judgment for the deficiency on the debt secured by the mortgage if the mortgagee takes title to the property by way of a foreclosure sale and that property’s value is equal to, or more than, the amount of the debt. However, this is not an action for deficiency on the debt. Therefore, the statements of the trial court regarding this issue do not constitute an actual decision of the trial court, but are mere dicta. *Reynolds v Bureau of State Lottery*, 240 Mich App 84, 95; 610 NW2d 597 (2000) (defining dicta as “a principle of law not essential to the determination of the case”).

In any event, this issue is not ripe for judicial review. Our Supreme Court recently reiterated the principles of legal standing:

> First, the plaintiff must have suffered an "injury in fact"--an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not 'conjectural' or 'hypothetical.' Second, there must be a causal connection between the injury and the conduct complained of--the injury has to be "fairly ... traceable to the challenged action of the defendant, and not ... the result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." [*National Wildlife Federation v Cleveland Cliffs Iron Co*, __ Mich __; 684 NW2d 800 (Docket No. 121890, issued 7/30/04),

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[1] On appeal, plaintiff argues that the evidence of foreclosure sales for less than the amount of the debt owed occur when the market value of the property is less than the debt. However, this argument was not made in the trial court and plaintiff presented no evidence in support of it or that any of the sales cited by Americus fell into that category.

[2] See *Bankers Trust Co v Rose*, 322 Mich 256; 33 NW2d 783 (1948).

slip op, 25, quoting *Lujan v Defenders of Wildlife*, 504 US 555, 560-561; 112 S Ct 2130; 119 L Ed 2d 351 (1992).]

In order for MCL 600.3280 to be applicable, plaintiff must take title to the property, meaning that the mortgagors failed to redeem. See *Bankers Trust Co v Rose*, 322 Mich 256; 260; 33 NW2d 783 (1948). This may or may not happen. Accordingly, under the principles of standing, this issue is not ripe as the facts only present speculation or a hypothetical scenario, not an actual set of facts.

Affirmed.

/s/ Janet T. Neff
/s/ Michael R. Smolenski
/s/ Bill Schuette