

STATE OF MICHIGAN  
COURT OF APPEALS

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MITCHELL JONES,

Plaintiff-Appellant,

v

SAXON MORTGAGE,

Defendant-Appellee.

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UNPUBLISHED

August 29, 2006

No. 267496

Wayne Circuit Court

LC No. 04-422449-CH

Before: Whitbeck, C.J., and Hoekstra and Wilder, JJ.

PER CURIAM.

Plaintiff Mitchell Jones, acting *in propria persona*, appeals as of right from the trial court's order granting defendant Saxon Mortgage's motion for summary disposition and dismissing this case with prejudice. We affirm. We decide this appeal without oral argument.<sup>1</sup>

I. Basic Facts And Procedural History

On September 1, 2000, Jones and his wife<sup>2</sup> executed a mortgage and note to Pinnfund, USA, for certain property. In November 2000, the mortgage was assigned to Deutsche Bank Trust Company Americas, f/k/a Bankers Trust Company. Saxon Mortgage serviced the loan on behalf of Deutsche Bank.

Jones and his wife failed to pay the mortgage, and Saxon Mortgage initiated foreclosure proceedings. A sheriff's tax sale was postponed when Jones and his wife filed bankruptcy proceedings. Jones and his wife received a discharge in bankruptcy. Deutsche Bank was the highest bidder following the sheriff's sale. Jones and his wife did not redeem the property.

Jones, acting *in propria persona*, filed a complaint alleging that the sheriff's sale was unlawful, that Saxon Mortgage breached the "alleged mortgage contract" by failing to accept

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<sup>1</sup> MCR 7.214(E).

<sup>2</sup> Only Jones filed suit in the trial court, and his name alone appears as the plaintiff on the order granting Saxon Mortgage's motion for summary disposition. It is not clear from the record why Jones' wife did not appear as a plaintiff in the proceedings below.

Jones' "lawful tendered offer" to pay off the mortgage,<sup>3</sup> and that Saxon Mortgage had no claim against the property. The complaint alleged that Saxon Mortgage had perpetrated a fraud and had violated several of Jones' constitutional rights.

Saxon Mortgage moved for summary disposition pursuant to MCR 2.116(C)(8) and (10), asserting that, because Jones could not show mutual mistake or unilateral mistake induced by fraud, rescission was inapplicable, that it did nothing to breach the mortgage contract, and that, in fact, Jones breached the contract by failing to make payments as required. Saxon Mortgage also argued that Jones could not establish that the sheriff's sale was unlawful because the evidence showed that the sale complied with all statutory requirements for foreclosure by advertisement.

The trial court initially denied the motion without prejudice; however, Saxon Mortgage renewed the motion, and the trial court granted it for the reasons stated in the motion. Subsequently, the trial court denied Jones' motions for reconsideration and stay pending appeal.

Thereafter, Saxon Mortgage initiated summary eviction proceedings in the 36<sup>th</sup> District Court. The district court entered a judgment of possession that provided for a writ of restitution.

## II. Summary Disposition

### A. Standard Of Review

A motion for summary disposition brought pursuant to MCR 2.116(C)(8) tests the legal sufficiency of a claim. It must be decided on the pleadings alone, with all well-pled facts and reasonable inferences taken as true. The motion should be denied unless the claim is so clearly unenforceable as a matter of law that no factual support could establish the claim and justify recovery.<sup>4</sup> In reviewing the decision on a motion brought pursuant to MCR 2.116(C)(10), this Court must review the record evidence and all reasonable inferences drawn therefrom in a light most favorable to the nonmoving party, and decide whether a genuine issue of material fact exists.<sup>5</sup> We review a trial court's decision on a motion for summary disposition de novo.<sup>6</sup>

### B. Conspiracy Theory

Jones argues that Saxon Mortgage and unnamed persons at the 36<sup>th</sup> District Court conspired to obstruct justice by failing and refusing to file motions in the district court case. Jones asserts that he is in possession of "information" that Saxon Mortgage colluded with district court personnel to ensure that Jones' filings were not placed in the district court file. This

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<sup>3</sup> Jones tendered a promissory note to Saxon Mortgage with the expectation that Saxon Mortgage would accept the note as payment.

<sup>4</sup> *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999).

<sup>5</sup> *Id.* at 120.

<sup>6</sup> *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

argument is without merit. Jones offers no proof whatsoever that any conspiracy or collusion occurred, or that any pleadings he filed in the district court were not inserted into the court file. A bald assertion without supporting authority is insufficient to present an issue for examination by this Court.<sup>7</sup> Jones may not merely announce his position and then leave it to us to discover and rationalize the basis for his claim.<sup>8</sup>

### C. Acknowledgement of Debt

Jones argues that Saxon Mortgage violated federal law pertaining to the fair collection of debts and his right to due process under US Const, Am VI, by failing to validate the debt in response to his requests. These issues are without merit. Jones does not clarify how any failure by Saxon Mortgage to acknowledge the debt, which Jones does not deny he incurred, relieved him of the obligation to make mortgage payments in a timely fashion.<sup>9</sup> Moreover, Jones' citation to US Const, Am VI, is inapposite since that amendment, by its very terms, applies to criminal proceedings.

### D. Wrongful Dishonor Of Payments

Jones argues that Saxon Mortgage violated his right to due process under US Const, Am V, by failing to answer his allegations regarding wrongful dishonor of payments that would have made his mortgage obligation current. Jones contends that Saxon Mortgage wrongfully foreclosed on his property. This issue is without merit. Jones' position was that his tender of a promissory note to Saxon Mortgage constituted payment of his mortgage obligation. Jones cited no authority to support this proposition, and Saxon Mortgage sought summary disposition on the ground that Jones failed to state a claim on which relief could be granted. On appeal, Jones cites no authority in support of his allegation that Saxon Mortgage wrongfully failed to address his allegations. Jones has not properly presented the issue.<sup>10</sup>

### E. Fraud And Perjury

Jones argues that Saxon Mortgage's counsel perpetrated fraud and committed perjury by representing to the trial court that no issues of material fact existed in this case. Jones asserts that by doing so, Saxon Mortgage's counsel wrongfully failed to respond to the allegations of illegal foreclosure. These allegations are without merit. In support of the motion for summary disposition, defense counsel argued that no genuine issue of material fact existed because the undisputed evidence showed that Jones failed to make mortgage payments as required, and that

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<sup>7</sup> *People v Noble*, 152 Mich App 319, 328; 393 NW2d 619 (1986), overruled on other grounds *People v Lively*, 470 Mich 248; 680 NW2d 878 (2004).

<sup>8</sup> *Ambs v Kalamazoo Co Rd Comm*, 255 Mich App 637, 650; 662 NW2d 424 (2003).

<sup>9</sup> *See id.*

<sup>10</sup> *See id.*

the sheriff's sale complied with statutory requirements. Jones has failed to cite authority to support his assertion that such argument constitutes fraud or perjury.<sup>11</sup>

#### F. Wrongfully Returned Payments

Jones argues that the trial court erred by granting Saxon Mortgage's motion for summary disposition because the trial court failed to address the allegations regarding wrongfully returned payments, i.e., the promissory note. Jones notes that a judgment entered by a court lacking jurisdiction is void. This issue is without merit. Initially, we note that the trial court did not lack subject matter jurisdiction in this case.<sup>12</sup> Moreover, the trial court did not fail to address Jones' allegations. Rather, the trial court adopted the argument put forth by Saxon Mortgage, i.e., that summary disposition was appropriate because no genuine issue of fact existed regarding Jones' failure to pay a valid mortgage obligation.

#### G. Equal Protection

Jones argues that he was denied equal protection of the law as guaranteed by US Const, Am XIV, because he was not allowed to address "all pleadings by the circuit court." This issue is without merit. Evidently, Jones' assertion that he was denied the right to address certain matters refers to the trial court's refusal to allow Jones or his wife to read documents into the record during the course of a hearing on the motion for stay pending appeal. The documents had been filed and were part of the trial court record. Jones cites no authority to support his apparent proposition that a litigant must be allowed to read documents aloud in order to preserve his rights. This issue is not properly before us.<sup>13</sup>

#### H. Extortion

Jones argues that Saxon Mortgage committed extortion by foreclosing on his property. Jones contends that Saxon Mortgage had a security interest in the note only, not the property. Jones failed to argue this issue to the trial court; thus, this issue is not properly preserved, and we need not address it.<sup>14</sup> Further, this issue is without merit. The trial court found that Saxon Mortgage was entitled to summary disposition because Jones failed to show that a genuine issue of material fact existed regarding either his failure to pay the mortgage as required or the legality of the sheriff's sale. Moreover, Jones has failed to show that Saxon Mortgage acted in any illegal fashion. Jones' assertion that Saxon Mortgage had a security interest in the "note" only is wholly inexplicable.

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<sup>11</sup> See *Richmond Twp v Erbes*, 195 Mich App 210, 220; 489 NW2d 504 (1992), overruled in part on other grounds *Bechtold v Morris*, 443 Mich 105; 503 NW2d 654 (1993).

<sup>12</sup> See MCL 600.601.

<sup>13</sup> *Ambs, supra*.

<sup>14</sup> *Higgins Lake Prop Owners Ass'n v Gerrish Twp*, 255 Mich App 83, 117; 662 NW2d 387 (2003).

### III. Other Issues

Jones argues that Saxon Mortgage failed to adhere to generally accepted accounting principles and generally accepted auditing standards. Jones also argues that Saxon Mortgage has no lawful claim to or equity in the property or note. Jones has failed to address the merits of these assertions of error and, thus, has abandoned these issues.<sup>15</sup>

### IV. Conclusion

Jones has made no showing that the trial court erred by granting Saxon Mortgage's motion for summary disposition.

Affirmed.

/s/ William C. Whitbeck  
/s/ Joel P. Hoekstra  
/s/ Kurtis T. Wilder

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<sup>15</sup> *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).