

STATE OF MICHIGAN
COURT OF APPEALS

DAN-KAI TUS and NU CHEN YEN TUS,

Plaintiffs/Counter-
Defendants/Appellees-Cross
Appellants,

v

SHIRLEY HURT f/k/a SHIRLEY ROBBINS,

Defendant-Cross Defendant,

and

STERLING MORTGAGE & INVESTMENT
COMPANY,

Defendant/Counter-Plaintiff/Cross
Plaintiff/Appellant-Cross Appellee,

and

AMERICAN TITLE COMPANY OF
WASHTENAW and REPUBLIC BANC
MORTGAGE COMPANY,

Third-Party Defendants.

Before: Zahra, P.J., and Whitbeck and M. J. Kelly, JJ.

PER CURIAM.

Defendant Sterling Mortgage & Investment Company (Sterling) appeals as of right from the trial court's order quieting title in plaintiffs Dan-Kai Tus's and Nu Chen Yen Tus's names. Sterling also challenges the trial court's pre-trial order extending the redemption period beyond the statutorily established six-month period. The Tuses cross appeal as of right the trial court's order imposing sanctions for a frivolous motion. We affirm in part and reverse in part.

I. Basic Facts And Procedural History

This case involves a dispute over real property commonly known as 2106 Jackson Place in Ann Arbor, Michigan, and more specifically described as Lot 26, Fairview Heights

Subdivision, as recorded in Liber 3, Page 26 of Plats, of the Washtenaw County Records. On October 10, 1990, William Hurt and Sterling entered into a 15-year mortgage agreement on the subject property, in the amount of \$76,500. The mortgage was duly recorded on October 11, 1990. A large payment, almost \$58,000, was made against the principal balance of the loan within a few weeks. It was followed by two additional payments totaling approximately \$9,500, leaving a balance of approximately \$9,000. As a result of the large payments that had been made, Sterling lowered the monthly payment. However, the last payment Sterling received was in May 1991.

In February 2000, William Hurt executed a quitclaim deed conveying the subject property to himself and his wife, Shirley Hurt. Shirley Hurt then became the sole owner of the property on April 19, 2000, when William Hurt passed away. On June 28, 2000, the Tuses purchased the subject property from Shirley Hurt, and a closing was held. American Title Company of Washtenaw handled the closing. Its president testified that the title commitment paperwork prepared by the closing agent indicated that Sterling's mortgage on the subject property was discovered, and it was the agent's understanding that it would be paid by the closing. He also testified that he called Sterling on the day of closing to verify there was a zero balance on its mortgage. In contrast, Sterling's representative testified that Sterling's policy was to only release payoff information to a non-client if an original signature of the client was included in the request. He further stated that it would not have been possible to obtain payoff or loan balance information by telephone.

In 2005, Sterling's file related to the mortgage on the subject property, which had apparently been misplaced, was discovered. Sterling instituted foreclosure proceedings by publishing a notice for sale. A foreclosure sale was held, and Sterling acquired a sheriff's deed to the property on March 30, 2006. Thereafter, the Tuses instituted suit against Sterling.

Following a bench trial, the trial court determined that, although Sterling was authorized to foreclose on the subject property, the undue delay in bringing the foreclosure proceedings would result in unjust enrichment to Sterling. Therefore, the trial court granted the Tuses' claim to quiet title in their favor, but awarded Sterling a money judgment in the amount of \$27,351.54, plus interest accruing from the date of the sheriff's sale.

II. Standing

A. Standard Of Review

As a preliminary matter, the Tuses contend that the money judgment has been satisfied and that Sterling therefore lacks standing to pursue this appeal. Whether a party has standing to appeal is a question of law subject to de novo review.¹

¹ *Dept of Consumer & Industry Services v Shah*, 236 Mich App 381, 384; 600 NW2d 406 (1999).

B. Legal Standards

Generally, “a satisfaction of judgment is the end of proceedings and bars any further effort to alter or amend the final judgment.”² “[A] party who accepts satisfaction in whole or in part waives the right to maintain an appeal or seek review of the judgment for error, as long as the appeal or review might result in putting at issue the right to the relief already received.”³

C. Applying The Standards

Following the bench trial, the Tuses attempted to tender payment to Sterling in the amount necessary to satisfy the lien that the trial court had ordered. Sterling refused to accept the tendered payment and filed a motion for instruction with the trial court. The trial court ordered the funds be placed in escrow pending the outcome of this appeal. The Tuses claim that tender of the payment, followed by the placement of the funds into the escrow account, constitutes satisfaction of the judgment, thereby precluding appeal. However, Sterling itself has not accepted or received any part of the judgment. The placement of the tendered funds in an escrow account does not constitute receipt of the funds by Sterling.⁴ Therefore, the Tuses’ claim that Sterling lacks standing to appeal is without merit.

III. Fraud, Accident, Or Mistake

A. Standard Of Review

Sterling argues that the trial court erred in granting an ex parte motion for a temporary restraining order and motion to extend the redemption period. This Court reviews for an abuse of discretion a trial court’s decision to grant or deny a preliminary injunction.⁵ An abuse of discretion occurs when the trial court’s decision results in an outcome that is not within the range of reasonable and principled outcomes.⁶

B. MCL 600.3201

MCL 600.3201 *et seq.* governs the procedure and requirements for foreclosing a mortgage by advertisement. Post-foreclosure issues, including the manner of redemption, the amount necessary for exercising redemption, and the time period allotted for exercising redemption, are set forth in MCL 600.3240. The redemption period applicable here was six

² *Becker v Halliday*, 218 Mich App 576, 578; 554 NW2d 67 (1996).

³ *Id.*

⁴ Compare *Eltel Assocs, LLC v City of Pontiac*, 278 Mich App 588, 591; 752 NW2d 492 (2008) (deeds held in escrow did not transfer title until conditions precedent for delivery of deeds were met).

⁵ *Michigan Coalition of State Employee Unions v Michigan Civil Service Comm*, 465 Mich 212, 217; 634 NW2d 692 (2001).

⁶ *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

months.⁷ Sterling acquired a sheriff's deed to the subject property on March 30, 2006. Five days prior to the expiration of the statutory redemption period, the Tuses filed their ex-parte motion. In granting the motion, the trial court extended the redemption period until 30 days after the entry of a final order in this case.

C. Applying The Legal Standards

When conditions upon which rights are vested or forfeited are set forth by statute, including the right of redemption, courts can neither abridge nor enlarge those rights, absent a showing of fraud.⁸ This legal theory has been expanded to include mistake or accident.⁹ The Tuses' motion to extend the redemption period did not include an allegation of fraud, mistake, or accident. As such, the trial court abused its discretion in extending the statutory redemption period.

IV. Quieting Title

A. Standard Of Review

Sterling argues that the trial court erred in quieting title in favor of the Tuses. In an action to quiet title, we review a trial court's findings of fact for clear error, while its conclusions of law are subject to de novo review.¹⁰

B. Legal Standards

An action to quiet title is equitable.¹¹ However, a court may not act in equity to avoid the application of a statute, regardless of the apparent harshness of the statutory penalty.¹²

C. Applying The Standards

Here, the trial court concluded that Sterling was legally entitled to start a foreclosure proceeding when he did upon the subject property based on its mortgage. The Tuses have not established that this finding was clear error. The foreclosure of a mortgage operates to extinguish subordinate liens and interests.¹³ The Tuses' predecessor in title executed a promissory note and granted the mortgage in favor of Sterling on October 10, 1990. Sterling duly recorded that mortgage. "A properly recorded mortgage is notice to all subsequent

⁷ MCL 600.3240(8).

⁸ *Heimerdinger v Heimerdinger*, 299 Mich 149, 154-155; 299 NW 844 (1941).

⁹ *Senters v Ottawa Savings Bank, FSB*, 443 Mich 45, 54-55; 503 NW2d 639 (1993).

¹⁰ *Fowler v Doan*, 261 Mich App 595, 598; 683 NW2d 682 (2004).

¹¹ *Deutsche Bank Trust Co Americas v Spot Realty, Inc*, 269 Mich App 607, 612; 714 NW2d 409 (2005).

¹² *Stokes v Millen Roofing Co*, 466 Mich 660, 671-672; 649 NW2d 371 (2002).

¹³ *Advanta Nat'l Bank v McClarty*, 257 Mich App 113, 125; 667 NW2d 880 (2003).

purchasers that they take subject to any lien the mortgagor may have on the property whether the record has been examined or not.”¹⁴ Sterling’s mortgage remained a matter of public record on June 28, 2000, when the Tuses purchased the subject property. There is no dispute that the mortgage was not satisfied by the proceeds from the sale, or at any other time. The Tuses’ interest in the property was subordinate to Sterling’s interest. The lawful foreclosure extinguished the Tuses’ interest in the property, notwithstanding available redemption remedies. The Tuses failed to redeem within the statutory period.

The Tuses contend that the trial court reached the correct result because Sterling “sat on its hands for almost 15 years” and because Sterling’s representative testified that the mortgage in question was misfiled or misplaced. However, a mortgagor is expressly entitled to foreclose on a mortgage up to 15 years from the date of the last payment¹⁵ and, therefore, the admitted delay did not affect Sterling’s right to foreclose on the property.

The trial court’s decision to quiet title in the Tuses’ names, despite the determination that Sterling was lawfully entitled to foreclosure on the mortgage, constituted an impermissible attempt to act in equity to avoid the application of a statute.¹⁶ Therefore, we conclude that the trial court erred in quieting title in favor of the Tuses.

V. Unjust Enrichment

A. Standard Of Review

Sterling argues that the trial court erred in concluding an alternative result would result in its unjust enrichment. “Whether a specific party has been unjustly enriched is generally a question of fact. However, whether a claim for unjust enrichment can be maintained is a question of law, which we review de novo.”¹⁷

B. Legal Standards

A claim for unjust enrichment occurs when there is (1) the receipt of a benefit by one party from another party, and (2) an inequity resulting to the party conferring the benefit, because of the retention of the benefit by the recipient.¹⁸

C. Applying The Standards

Sterling’s argument that it could not be unjustly enriched when it did not receive a benefit from the Tuses is persuasive. Sterling held a mortgage on the subject property granted by the

¹⁴ *Ameriquest Mortgage Co v Alton*, 273 Mich App 84, 94; 731 NW2d 99 (2006).

¹⁵ MCL 600.5803.

¹⁶ *Stokes*, *supra* at 671.

¹⁷ *Morris Pumps v Centerline Piping, Inc*, 273 Mich App 187, 193; 729 NW2d 898 (2006) (internal citations omitted).

¹⁸ *Sweet Air Investment, Inc v Kenney*, 275 Mich App 492, 504; 739 NW2d 656 (2007).

Tuses' predecessor in title. Following default of the mortgage, Sterling instituted foreclosure within the statutory time permitted, albeit very near the end of this time period. Sterling was the purchaser of the subject property at the foreclosure sale. The six-month redemption period expired without the property being redeemed. The fact that the value of the property exceeded the amount owed on the mortgage does not constitute a benefit received *from the Tuses*. The Tuses could have avoided the alleged windfall to Sterling by acting to redeem the property within the statutory redemption period.

VI. Cross Appeal

As a final matter, we need not address the Tuses' argument on cross-appeal that the trial court erred in imposing sanctions for violation of MCR 2.114, as the Tuses have failed to provide citation to authority to support their position. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow."¹⁹

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ William C. Whitbeck
/s/ Michael J. Kelly

¹⁹ See *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).