

STATE OF MICHIGAN
COURT OF APPEALS

CITIBANK, NA,

Plaintiff-Appellant,

v

JAMES RENNER, and JANELLE RENNER,

Defendants-Appellees.

UNPUBLISHED
November 27, 2012

No. 308841
Washtenaw Circuit Court
LC No. 11-001067-CK

Before: BORRELLO, P.J., and FITZGERALD and OWENS, JJ.

PER CURIAM.

In this breach of contract action, plaintiff appeals the trial court's grant of defendants' motion for summary disposition. We affirm.

Plaintiff filed a complaint against defendants to enforce a promissory note. Plaintiff attached a copy of the promissory note, which listed the mortgagee as Home Loan Center, Inc, DBA Lendingtree Loans. Defendants responded and moved for summary disposition under MCR 2.116(C)(5), (C)(8), and (C)(10), on the basis that plaintiff did not have standing because it was not a party in interest. The trial court scheduled oral arguments for the motion for December 22, 2011. Two days before the motion hearing, the trial court had not received plaintiff's response. Plaintiff maintains it mailed the response on December 16, 2011, and attached to it was paperwork showing plaintiff purchased defendants' mortgage and note and, therefore, had standing to bring suit. On December 22, 2011, the trial court granted defendants' motion for summary disposition and cancelled oral arguments on the motion. Plaintiff then filed a motion for reconsideration, asking the trial court to consider the documents showing plaintiff, in fact, had standing to bring suit. The trial court denied plaintiff's motion.

“[This Court] reviews for an abuse of discretion a trial court's decision to decline to entertain motions and briefs filed after the deadlines set in applicable court rules.” *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes. *Id.* Similarly, the decision to dispense with oral argument is reviewed for an abuse of discretion. *Fisher v Belcher*, 269 Mich App 247, 252; 713 NW2d 6 (2005). The trial court's ultimate decision to grant summary judgment is reviewed de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

A trial court should grant a summary disposition motion under MCR 2.116(C)(10) when there is no genuine question of material fact and the movant is entitled to a judgment as a matter of law. MCR 2.116(C)(10). “Once the moving party has supported its position by documentary evidence, the burden shifts to the opposing party to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, summary disposition may properly be granted.” *Abbott v John E Green Co*, 233 Mich App 194, 197-198; 592 NW2d 96 (1998).

The Michigan Court Rules require a party to file its response to a motion for summary disposition at least seven days before the hearing on the motion. MCR 2.116(G)(1)(a)(ii). A document is not considered filed until it is delivered to the clerk of the court or to the judge. MCR 2.107(G); *Biafore v Baker*, 119 Mich App 667, 669; 326 NW2d 598 (1982). The trial court is not required to consider a response that was not timely filed. *EDI Holdings, LLC v Lear Corp*, 469 Mich 1021; 678 NW2d 440 (2004).

Here, plaintiff plainly did not comply with the rule requiring responses be filed at least seven days before the hearing. The trial court, therefore, acted within its discretion in refusing to consider plaintiff’s untimely response. *EDI Holdings, LLC*, 469 Mich at 1021. Because plaintiff did not respond to the motion, it did not raise any genuine issue of material fact. MCR 2.116(G)(4) specifically requires a nonmovant to support its position with documentary evidence instead of resting on the allegations and denials in its pleadings. Therefore, defendants were entitled to judgment as a matter of law, and summary disposition was proper because defendants’ undisputed documentary evidence established that plaintiff did not have the right to enforce the note. MCL 440.3301.

Plaintiff argues, however, that the trial court erred in dispensing with oral arguments, and that it could have presented its case at argument instead of filing a brief. A trial court has the discretion to dispense with oral arguments on a motion. MCR 2.119(E)(3). A trial court does not abuse that discretion when it dispenses with oral arguments, even if one party fails to respond to a motion, if it is fairly apprised of the issues that need to be decided. *Fisher*, 269 Mich App at 252. Here, the trial court was apprised of all the issues because “[w]ithout [plaintiff’s] argument, [defendants’] position required no further elaboration.” *Id.*¹

¹ Plaintiff argues that the trial court erred in dispensing with oral arguments because, per MCR 2.119(E)(4), a party can file a response *or* appear at the motion hearing, and therefore, plaintiff did not have to file a response and could have appeared at oral arguments instead. “[I]t is a settled rule of statutory construction that where a statute contains a specific statutory provision and a related, but more general, provision, the specific one controls.” *In re Haley*, 476 Mich 80, 198; 720 NW2d 246 (2006). “[T]he rules governing the interpretation of statutes apply with equal force to the interpretation of court rules.” *Colista v Thomas*, 241 Mich App 529, 535; 616 NW2d 249 (2000).] Even if MCR 2.119(E)(4) could be read to support plaintiff’s contention that it could forgo filing a response and instead only appear at oral arguments, MCR 2.116(G)(4) specifically requires a party to oppose a (C)(10) motion with affidavits or other documentary evidence, and that rule controls.

Plaintiff further argues that the trial court erred in denying its motion for reconsideration. To warrant reconsideration, a moving party “must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.” MCR 2.119(F)(3). Here, plaintiff has failed to demonstrate any error made by the trial court. It simply wishes the trial court to reconsider its decision to not consider plaintiff’s untimely brief. Therefore, we conclude that the trial court did not err in denying plaintiff’s motion for reconsideration.

Affirmed.

/s/ Stephen L. Borrello
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens