STATE OF MICHIGAN

COURT OF APPEALS

HUNTINGTON NATIONAL BANK,

Plaintiff-Appellee,

and

BASIL T. SIMON, Receiver,

Plaintiff,

v

2400 SCIENCE PARKWAY, LLC, SPECKIN FORENSIC LABORATORIES, INC., and ERICH JOSEPH SPECKIN,

Defendants-Appellants,

and

SHELLEY ANDERSON, INGHAM COUNTY TREASURER, MERCANTILE BANK MORTGAGE COMPANY, LLC, MICHIGAN CERTIFIED DEVELOPMENT CORP., PREMIER MOVING SYSTEMS, INC., PREMIER MOVING SYSTEMS, LLC, WILLIAM A. SCHIRO, DDS, PLLC, WILLIAM A. SCHIRO, DDS, and UNITED STATES SMALL BUSINESS ADMINISTRATION,

Defendants.

UNPUBLISHED
January 17, 2013

No. 308874
Ingham Circuit Court
LC No. 10-001273-CH

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

PER CURIAM.

Defendants-appellants, 2400 Science Parkway, LLC, Speckin Forensic Laboratories, Inc., and Erich Speckin (appellants), appeal as of right the trial court's judgment and order of summary disposition in favor of plaintiff-appellee, Huntington National Bank (Huntington). We affirm.

I. FACTUAL BACKGROUND

This case arises out of a series of loans and guarantees executed between Huntington, appellants, and the remaining defendants. Huntington, the lender, initiated this instant litigation, asserting claims for breach of promissory notes, breach of guaranties, foreclosure of mortgages, collection of rents, claim and delivery for vehicles, and for appointment of a receiver.

Before the close of discovery, Huntington moved for partial summary disposition pursuant to MCR 2.116(C)(10) of counts I-XI of the complaint, arguing there was no genuine issue of material fact regarding those claims. The trial court granted the motion, finding that Speckin, 2400 Science Parkway, and Premier Moving, LLC, defaulted on their notes by failing to make the required payments. The trial court also found that the guarantors, Speckin Forensic Laboratories, Speckin, William A. Schiro DDS, PLLC, William A. Schiro, and Premier Moving Systems Inc., also failed to make the required payments after the demand was made. The trial court found that the primary note holders were liable for the outstanding payments and the guarantors owed similar amounts pursuant to the guaranty agreements. The trial court found that Huntington was the owner and holder of the notes and guaranties.

The trial court entered judgment against each defendant accounting for interest and awarded $25,143.61 in legal fees, costs, and expenses, and $59,853.13 for taxes, liens, and other encumbrances. Huntington then moved for summary disposition on the remaining claims in the complaint relating to foreclosure, counts XII and XIII. The trial court granted the motion for summary disposition, and entered a judgment and order of foreclosure. Appellants now appeal.

II. DISCOVERY

A. Standard of Review

"We review de novo a trial court's decision on a motion for summary disposition[.]" *Bronson Methodist Hosp v Auto-Owners Ins Co*, 295 Mich App 431, 440; 814 NW2d 670 (2012). A motion for summary disposition "tests the factual support for a claim and should be granted if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." *MEEMIC Ins Co v DTE Energy Co*, 292 Mich App 278, 280; 807 NW2d 407 (2011). We review for an abuse of discretion a trial court's ruling on a motion to compel discovery. *Bronson Methodist Hosp*, 295 Mich App at 440. "An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes." *Id.* at 442.

B. Analysis

On appeal, appellants posit that granting Huntington's motion for partial summary disposition was improper because discovery was ongoing. In reviewing this claim, we are mindful of the following precepts articulated in *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 292; 769 NW2d 234 (2009) (footnotes and citations omitted):

> Generally, summary disposition under MCR 2.116(C)(10) is premature if it is granted before discovery on a disputed issue is complete. However, the mere

> fact that the discovery period remains open does not automatically mean that the trial court's decision to grant summary disposition was untimely or otherwise inappropriate. The question is whether further discovery stands a fair chance of uncovering factual support for the opposing party's position. In addition, a party opposing summary disposition cannot simply state that summary disposition is premature without identifying a disputed issue and supporting that issue with independent evidence.

Mere speculation that additional discovery "*might* be able to offer additional pertinent information" is insufficient. See *Ensink v Mecosta Co Gen Hosp*, 262 Mich App 518, 540; 687 NW2d 143 (2004) (emphasis in original).

In the instant case, Huntington moved for partial summary disposition before discovery was completed. Appellants then served Huntington with a second request for production of documents, requesting all documents relating to the loans as well as all internal records and communications relating to the indebtedness. At the hearing on Huntington's motion for partial summary disposition, the trial court questioned appellants in regard to their argument that summary disposition was improper because discovery was not over:

> *The court*: What exactly is your defense to guarantees of a loan for deficiencies? I am absolutely puzzled by the, first of all, the Defense that has been put on in this case. And secondly, when you go out and borrow a million two and you sign a form saying, I independently guarantee this loan, separate and apart from whatever documents and any deficiencies in those documents that may exist I guarantee them, that's the way you brought them up yourself . . . . So tell me what discovery is going to do for you when you have had discovery and discovery and discovery onto the Parkway thing coming in here with stacks of E-mails that have no relevance to this case? You tell me.
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> * * *
>
> *The court*: I just want to know what discovery is going to do for you at this point?
>
> *Appellants' counsel*: That's hard to say until I actually am entitled to the discovery that's been requested that I don't have at this point. I am not here to argue that—
>
> *The court*: You are just delaying the inevitable, do you understand that?
>
> *Appellants' counsel*: That may be possible, but the fact that there is still outstanding discovery and it hasn't been fully conducted at this point simply—I'm not here to argue.
>
> * * *
>
> *Appellants' counsel*: . . . discovery has not been completed. We are -- and that's really -- the nature of the motion is that it's premature. I am not here to argue that

> the guarantees or the notes are defective. I can't legitimately stand here and craft arguments --
>
> * * *
>
> *The court*: . . . . I would normally require discovery to be completed but I see no benefit to be gained by your client against them. You can't just have a fishing expedition to hope you find something . . . .

As illuminated by this colloquy, appellants have failed to either produce evidence of a factual dispute or allege how further discovery would produce evidence establishing a genuine issue of material fact. Appellants failed to assert what evidentiary support they expected to uncover, or how such evidence would support their position. They also failed to identify errors in the calculations or contest the authenticity of the loan documents Huntington provided. Appellants offered nothing other than mere speculation that there might be some favorable documentation in existence. They failed to provide any explanation for what that document could be or how it could provide them with a defense to Huntington's claims.

As noted above, "[t]he question is whether further discovery stands a fair chance of uncovering factual support for the opposing party's position[,]" and "a party opposing summary disposition cannot simply state that summary disposition is premature without identifying a disputed issue and supporting that issue with independent evidence." *Marilyn Froling Revocable Living Trust*, 283 Mich App at 292. Appellants failed to identify any prospective evidence that would support a defense. Under these circumstances, appellants' assertion that discovery will uncover additional support for an unidentified defense is the type of conjecture and speculation that is insufficient to render a motion for summary disposition premature. Therefore, we conclude that there was no error in granting summary disposition before the close of discovery and the trial court did not abuse its discretion in denying appellants' motion to compel this discovery for the same reasons.

III. MULTIPLICITY OF RECOVERIES & MCR 2.113

Appellants also assert that summary disposition was improperly granted because there is a genuine issue of material fact regarding the multiplicity of recoveries and whether Huntington attached the proper documentation to the complaint pursuant to MCR 2.113. Appellants raised these issues in response to Huntington's motion for partial summary disposition. However, at the hearing on that motion for summary disposition, the trial court asked appellants if they were standing only on the issue of discovery, to which appellants replied in the affirmative. The trial court then communicated its displeasure with having to review extraneous arguments in appellants' briefs when appellants conceded that their only issue was that summary disposition was premature because discovery was ongoing.

Accordingly, the trial court did not rule on the issues appellants now raise on appeal concerning the multiplicity of recoveries and documents attached to the complaint. While appellants now attempt to assert these issues as errors requiring reversal, they abandoned these claims in the lower court, and "[a] party may not take a position in the trial court and subsequently seek redress in an appellate court that is based on a position contrary to that taken

in the trial court." *Blazer Foods, Inc v Rest Properties, Inc*, 259 Mich App 241, 252; 673 NW2d 805 (2003) (quotation marks and citation omitted).[1]

IV. CONCLUSION

There was no error in granting summary disposition before the close of discovery and appellants have abandoned their claims relating to the multiplicity of recoveries and MCR 2.113. Huntington is entitled to costs as the prevailing party, MCR 7.219(F). We affirm.

/s/ Donald S. Owens
/s/ E. Thomas Fitzgerald
/s/ Michael J. Riordan

[1] Furthermore, we have reviewed appellants' arguments and find them meritless. MCL 600.3105 is extraneous because it contemplates separate actions and MCL 600.3204 is inapplicable because there has been no foreclosure by advertisement. Appellants also failed to demonstrate that Huntington received a "double redress for a single injury," *Orley Enterprises, Inc v Tri-Pointe, Inc*, 206 Mich App 614, 619; 522 NW2d 896 (1994), especially considering evidence that Huntington will not be compensated fully through the foreclosure action. In regard to attaching the appropriate "assignment agreements" to the complaint, there were numerous assignment documents attached to the complaint, including the assignment of the mortgage from Fourteen Corporation to Huntington, dated July 9, 2010. Upon review of these exhibits, it cannot be said that Huntington failed to comply with MCR 2.113.