STATE OF MICHIGAN

COURT OF APPEALS

SALVATORE MANNONE, JR.,

Plaintiff-Appellant,

v

CHASE BANK NA, FEDERAL NATIONAL MORTGAGE ASSOCIATION, FLAGSTAR BANK FSB, ORLANS AND ASSOCIATES, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., and SETERUS, INC.,

Defendants-Appellees.

UNPUBLISHED
March 6, 2014

No. 310492
Macomb Circuit Court
LC No. 2011-005171-CH

Before: MURPHY, C.J., and M. J. KELLY and RONAYNE KRAUSE, JJ.

PER CURIAM.

In this action to quiet title, plaintiff appeals as of right the trial court's order granting defendants Federal National Mortgage Association (FNMA), Mortgage Electronic Registration Systems, Inc. (MERS), and Seterus, Inc. (Seterus) summary disposition pursuant to MCR 2.116 (C)(8), and (C)(10). We affirm.

Plaintiff obtained a loan from Flagstar Bank secured by a mortgage on his residential property. Pursuant to the mortgage, Flagstar Bank was designated as the mortgagee with the right of foreclosure and the power of sale. Subsequently, the mortgage was assigned to MERS, and the assignment was recorded on November 3, 2003. It was then assigned to Chase Home Finance, LLC, and the assignment was recorded on July 21, 2010. Finally, it was assigned to FNMA, with the assignment having been recorded on March 3, 2011.

After plaintiff defaulted on the loan, defendants foreclosed on the property by advertisement, and a sheriff's sale was held where FNMA was the highest bidder. Plaintiff brought this action to quiet title. Defendants FNMA, MERS, and Seterus moved for summary disposition, and the trial court granted defendants' motion.[1]

[1] The other defendants were dismissed from the action by separate orders. This appeal involves only defendants FNMA, MERS, and Seterus.

On appeal, plaintiff contends that defendant Seterus was not a proper party to the action, and that summary disposition was improper.

We first address the issue of whether joinder of Seterus was proper. Plaintiff argues that Seterus was not properly added as a defendant. The record reflects otherwise. Plaintiff filed a motion requesting that Seterus be added as a defendant, and the trial court granted the motion and entered an order to this effect. It does not appear that plaintiff filed an amended complaint adding Seterus as a defendant. However, at every scheduled court hearing after that motion was granted, Seterus made an appearance before the court through its attorney.

Defendant Seterus does not object to being added into the lawsuit, regardless of not being served with amended complaint. Typically, the issue of service of a complaint is raised by a defendant in situations in which a complaint was not served within the required timeframe. In that situation, this Court has found that a party waives any objection to service of process by making a general appearance and submitting to the court's jurisdiction. *Macomb Concrete Corp v Wexford Corp*, 37 Mich App 423, 425; 195 NW2d 93 (1972).

Here, there is no question that Seterus appeared at every scheduled court hearing after the trial court granted plaintiff's motion to add Seterus as a defendant and submitted to the trial court's jurisdiction. Therefore, the trial court had jurisdiction over Seterus, making Seterus a party to the proceedings.

The court rules regarding joinder also provide guidance. MCR 2.205(A) provides for the necessary joinder of parties.

> [P]ersons having such interests in the subject matter of an action that their presence in the action is essential to permit the court to render complete relief must be made parties and aligned as plaintiffs or defendants in accordance with their respective interests.

Further, MCR 2.207 provides that "[p]arties may be added or dropped by order of the court on motion of a party or on the court's own initiative at any stage of the action and on terms that are just." In the instant case, therefore, even if plaintiff had not moved to have Seterus added as a defendant, the trial court, on its own initiative, could have added Seterus as a party. Accordingly, plaintiff's argument is without merit.

Next, we turn to the issue of whether the grant of summary disposition to defendants was proper. We review a trial court's decision to grant summary disposition de novo. *Gillie v Genesee Co Treasurer*, 277 Mich App 333, 344; 745 NW2d 137 (2007). Whether a party has authority to initiate foreclosure proceedings involves statutory interpretation and application, which are questions of law that we review de novo. *Adams Outdoor Advertising v City of Holland*, 463 Mich 675, 681; 625 NW2d 377 (2001).

Because plaintiff does not argue specifically that the trial court erred with respect to MCL 2.116(C)(7), we will not review this issue on appeal. Thus, plaintiff properly appeals only the trial court's grant of summary disposition under MCR 2.116(C)(8) and (C)(10).

A trial court may properly grant summary disposition under MCR 2.116(C)(8) if "the opposing party has failed to state a claim on which relief can be granted." *Morris & Doherty, PC v Lockwood*, 259 Mich App 38, 42; 672 NW2d 884 (2003). Motions brought pursuant to this subrule test the legal sufficiency of a claim based solely upon the pleadings. When deciding a motion under subrule (C)(8), the trial court must accept all well-pleaded factual allegations as true and construe them in the light most favorable to the non-moving parties. *Adair v State of Michigan*, 470 Mich 105, 119; 680 NW2d 386 (2004).

While the trial court granted summary disposition pursuant to MCR 2.116(C)(8), it based its decision on documentary evidence outside the pleadings. Therefore, reliance on this subrule was erroneous.

Summary disposition, however, was appropriately granted under MCR 2.116(C)(10). A motion brought under MCR 2.116(C)(10) tests the factual sufficiency of the plaintiff's complaint. *Robinson v Ford Motor Co*, 277 Mich App 146, 150; 744 NW2d 363 (2007). When reviewing a motion under subrule (C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant record evidence in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists warranting a trial. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

Plaintiff argues that defendants' mortgage interest was invalid because the mortgage was severed from the note during the securitization process. The Michigan Supreme Court rejected this argument in *Residential Funding Co LLC v Saurman*, 490 Mich 909, 910; 805 NW2d 183 (2011), where the Court stated: "The security is always made in trust to secure obligations, and the trust and the beneficial interest need not be in the same hands." The Court also specified that the mortgage and the note are to be construed together. *Id.* at 909.

Plaintiff also argues that, because defendants' mortgage interest was invalid, it was not entitled to foreclose on the property. MCL 600.3204(1) allows an eligible party to foreclose by advertisement when the following conditions are met:

> (a) A default in a condition of the mortgage has occurred, by which the power to sell became operative.
>
> (b) An action or proceeding has not been instituted, at law, to recover the debt secured by the mortgage or any part of the mortgage; or, if an action or proceeding has been instituted, the action or proceeding has been discontinued; or an execution on a judgment rendered in an action or proceeding has been returned unsatisfied, in whole or in part.
>
> (c) The mortgage containing the power of sale has been properly recorded.
>
> (d) The party foreclosing the mortgage is either the owner of the indebtedness or of an interest in the indebtedness secured by the mortgage or the servicing agent of the mortgage.

The parties do not dispute the facts that the mortgage was in default, that no other proceedings had been initiated for collection, and that the mortgage had been recorded, consistent with the requirements of MCL 600.3204(1)(a), (b), and (c). Plaintiff appears to argue that neither FNMA nor Seterus were the owner of the indebtedness and that this precluded their authority to foreclose by advertisement on the property in accordance with MCL 600.3204(3), which states: "If the party foreclosing a mortgage by advertisement is not the original mortgagee, a record chain of title shall exist prior to the date of sale . . . evidencing the assignment of the mortgage to the party foreclosing the mortgage."

The exhibits attached to defendants' brief in support of the motion for summary disposition provide evidence of a record chain of title. Plaintiff executed a note on March 26, 2003 in which he promised to pay $104,800 to Flagstar Bank. On the same day and as security for the loan, plaintiff also executed a mortgage in which he mortgaged, warranted, granted and conveyed to Flagstar Bank and its successors and assigns, with power of sale, his residence. The mortgage was assigned to MERS on September 1, 2003 and recorded on November 3, 2003. The mortgage was subsequently assigned to Chase Home Finance LLC on July 13, 2010, and recorded on July 21, 2010. Finally, the mortgage was assigned to FNMA on October 1, 2010, and recorded on March 3, 2011.

"Only the record holder of the mortgage has the power to foreclose." *Arnold v DMR Fin Serv(s), Inc*, 448 Mich 671, 678; 532 NW2d 852 (1995). However, it has further been explained by the Michigan Supreme Court that the Legislature's use of the phrase "interest in the indebtedness" for identifying a category of parties entitled to foreclose by advertisement indicates the intent to include mortgagees of record along with parties who "own[ ] the indebtedness" and parties who act as "the servicing agent of the mortgage." *Residential Funding*, 490 Mich at 910; see also MCL 600.3204(1)(d). Therefore, as long as the servicing agent is the agent for the record mortgage holder, foreclosure by such an agent is permitted.

There is no genuine issue of fact disputing that, at the time of the foreclosure, Seterus was the servicing agent of the mortgage and that FNMA was the record owner of an interest in the indebtedness secured by the mortgage. This is in compliance with MCL 600.3204(1)(d), which permits "the servicing agent of the mortgage" to "foreclose a mortgage by advertisement." *Residential Funding*, 490 Mich at 910. Overall, defendants were in compliance with the foreclosure laws.

Finally, plaintiff lacked standing to challenge the validity of the assignments because he was not a party to them, *Bowles v Oakman*, 246 Mich 674, 677; 225 NW 613 (1929). Plaintiff also lacked standing to challenge the foreclosure because the redemption period had expired. *Piotrowski v State Land Office Bd*, 302 Mich 179, 187-188; 4 NW2d 514 (1942). Because

plaintiff failed to redeem the property before the redemption period expired, FNMA became vested with "all the right, title, and interest" in the property by operation of law, *Id.* at 187, and plaintiff lost standing to assert claims with respect to the property. On this basis alone, defendants were entitled to dismissal of the claims against them.

Affirmed.

/s/ William B. Murphy
/s/ Michael J. Kelly
/s/ Amy Ronayne Krause