STATE OF MICHIGAN

COURT OF APPEALS

EKBAL KIM ATTISHA, Plaintiff-Appellant,	UNPUBLISHED July 22, 2014
v	No. 314762 Oakland Circuit Court
CENTRAL MORTGAGE COMPANY, Defendant-Appellee.	LC No. 2011-119890-CH

Before: BECKERING, P.J., and HOEKSTRA and GLEICHER, JJ.

PER CURIAM.

In this action to quiet title following a foreclosure, plaintiff appeals as of right the trial court's order granting summary disposition to defendant under MCR 2.116(C)(10). Because no material question of fact remained regarding defendant's compliance with MCL 600.3205a-c or regarding plaintiff's remedy for any purported violation of these provisions, we affirm.

In 2010, after plaintiff defaulted on her mortgage payments, defendant foreclosed on plaintiff's property, employing the procedures for foreclosure by advertisement, MCL 600.3201 *et seq*. Defendant ultimately purchased the property at a sheriff's sale on November 23, 2010. Plaintiff made no effort to redeem the property, and the redemption period on the property expired May 23, 2011. When plaintiff failed to vacate the property at the end of the redemption period, defendant initiated eviction proceedings in district court. Thereafter, plaintiff filed the present suit, alleging seven counts, most notably, the assertion that defendant failed to comply with loan modification procedures provided for in MCL 600.3205a-c.

Defendant moved for summary disposition as to all counts. In opposition to the motion, plaintiff focused on the alleged statutory violations, maintaining that the purported statutory violations gave rise to a claim for quiet title and evidenced fraud or irregularity justifying the setting aside of the foreclosure sale. After holding a hearing, the trial court granted defendant's motion pursuant to MCR 2.116(C)(10), finding no material question of fact remained relating to the purported statutory violations or plaintiff's remedy for any such violation. Plaintiff now appeals as of right to this Court.

On appeal, plaintiff argues that the trial court erred in granting summary disposition because questions of fact remained regarding defendant's compliance with the statutory provisions in question. In particular, plaintiff continues to assert that she did not receive notice of her right to request loan modification, that she did not receive calculations from defendant

related to loan modification, and that she did in fact attempt to contact defendant regarding loan modification but that defendant did not honor her request. According to plaintiff, because of these purported violations, defendant could not proceed with the foreclosure on her property. We disagree.

We review a trial court's decision to grant a motion for summary disposition de novo. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). A motion under MCR 2.116(C)(10) tests the factual support for a claim, and is properly granted when "there is no genuine issue as to any material fact." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). When presenting a motion for summary disposition, the moving party bears the burden of supporting its position with affidavits, depositions, admissions, or other documentary evidence. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the nonmoving party to establish if a genuine issue of material fact remains. *Id.* "Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists." *Id.* In determining whether a conflict in the evidence remains, the pleadings, affidavits, depositions, admissions and other evidence submitted by the parties must be viewed in a light most favorable to the nonmoving party. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). A material question of fact remains when, after viewing the evidence in this light, reasonable minds could differ on the issue. *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

To the extent plaintiff's argument requires analysis of statutory provisions, statutory interpretation is also reviewed de novo. *In re Receivership of 11910 South Francis Rd (Price v Komalski)*, 492 Mich 208, 218; 821 NW2d 503 (2012). The primary goal of statutory interpretation is to ascertain and give effect to the legislative intent. *Id.* at 222. Because the best indicator of legislative intent is the language used, statutes are read as a whole, giving each word its plain and ordinary meaning unless a term has been otherwise defined. *Id.* Clear and unambiguous language must be enforced as written. *In re Moukalled Estate*, 269 Mich App 708, 715; 714 NW2d 400 (2006).

In Michigan, foreclosure by advertisement pursuant to a power of sale clause is governed by MCL 600.3201 *et seq*. A party seeking to set aside a foreclosure after it has been accomplished pursuant to these provisions bears the burden of proof. See *White v Burkhardt*, 338 Mich 235, 238-239; 60 NW2d 925 (1953); *Markoff v Tournier*, 229 Mich 571, 575; 201 NW 888 (1925). At the time of plaintiff's foreclosure,[1] pursuant to MCL 600.3205a, a foreclosing party was required to provide a borrower with notice regarding the opportunity to negotiate loan modification. This notice required both publication in a local paper and a letter sent to the borrower's last known address. MCL 600.3205a(3), (4). Among the information required in the

[1] The relevant statutory provisions in effect during plaintiff's foreclosure proceedings were amended in 2011, see 2011 PA 302, and were more recently repealed, see 2014 PA 138. See also MCL 600.3205e (repealing § 3205a to § 3205d effective June 30, 2014).

letter, a borrower had be given a list of housing counselors approved by MSHDA and notice that "within 14 days after the notice is sent, the borrower may request a meeting," to attempt to work out a modification, at which the housing counselor may be present. MCL 600.3205a(1)(d). Pursuant to MCL 600.3204(4)(a), a party could not commence foreclosure by advertisement proceedings in relation to a principal residence if notice had not been mailed as required by MCL 600.3205a.

Relevant to defendant's obligation to provide such notice, defendant provided the trial court with: (1) a copy of the letter sent to plaintiff which provided her with notice of her rights, including the 14 days in which she could contact a housing counselor; (2) an affidavit, attached to the sheriff's deed, attesting to the defendant's adherence to rules for mailing notice to plaintiff in accordance with MCL 600.3205a(3); and (3) an affidavit from an employee at the *Oakland County Legal News* verifying that notice was published in a local paper. Plaintiff offers no evidence to refute defendant's proof. At most, plaintiff offers the unsworn assertion that "upon information and belief, plaintiff never received the 14 day letter with a copy of the program." Such unsubstantiated denials do not create a material question of fact for purposes of MCR 2.116(C)(10). See *Quinto*, 451 Mich at 362. In short, no material question of fact remained regarding defendant's fulfillment of its obligation to provide plaintiff with notice under MCL 600.3205a.

Once notice was provided, MCL 600.3205b(1) provides that a "borrower who wishes to participate in negotiations to attempt to work out a modification of a mortgage loan shall contact a housing counselor from the list provided . . . within 14 days after the list is mailed to the borrower." The housing counselor then had 10 days from the time of contact with the borrower to initiate contact with the lender or lender's agent regarding loan modification. See MCL 600.3205b(1). Pursuant to MCL 600.3204(4)(b), foreclosure by advertisement could not proceed if the time for the housing counselor to make contact had not yet expired. Alternatively, pursuant to MCL 600.3204(4)(c), foreclosure by advertisement could not proceed for 90 days provided that, within 14 days after notice was mailed, the borrower requested a meeting through the procedures described in MCL 600.3205b.

In this case, defendant's uncontroverted proofs show that the time for plaintiff to request a meeting pursuant to MCL 600.3205b had expired without a request from plaintiff. Specifically, defendant offered an affidavit, attached to the sheriff's deed, attesting to the fact that "the time for a housing counselor to notify the person designated under MCL 600.3205a(1)(c) of a request by the borrower[] has expired without request for a meeting." Plaintiff offers no evidence to refute defendant's proofs.[2] Because plaintiff failed to present any evidence that she attempted contact with a housing counselor, or that a housing counselor

[2] At most, there is evidence that plaintiff's attorney attempted contact regarding loan modification. But, this contact occurred after the expiration of the relevant timeframe, and plaintiff does not explain how contact by her attorney satisfies the statutory requirement that she initiate contact through a housing counselor. See MCL 600.3205b(1).

thereafter contacted defendant within the specified time period, no material question of fact remains on this point.

Given that plaintiff failed to request loan mediation in the manner prescribed in MCL 600.3205b, it follows that she was not entitled to engage in the loan modification process, to receive loan modification calculations, or to otherwise delay the foreclosure. For example, the obligation to postpone the foreclosure 90 days was imposed by MCL 600.3204(4)(c), which states that a foreclosure may not proceed, "*if* . . . [w]ithin 14 days after a notice is mailed to the mortgagor under section 3205a, the mortgagor has requested a meeting under section 3205b . . . and 90 days have not passed after the notice was mailed (emphasis added)." Thus, clearly, to trigger the required 90 day delay, plaintiff needed to contact a housing counselor and request a meeting in the manner described in MCL 600.3205b. Having failed to do so, plaintiff was not entitled to a moratorium. Similarly, defendant's obligation to evaluate plaintiff for loan modification depended upon her request for a meeting. That is, under MCL 600.3205b(2), it is only "*after* being informed of a borrower's request to meet" that defendant must move forward with assessments of a borrower's eligibility. Likewise, under MCL 600.3205c(1), it is only "*if* a borrower has contacted a housing counselor" that the calculations related to assessment of eligibility must be performed. Because plaintiff failed to contact a housing counselor and failed to pursue a meeting as described in MCL 600.3205b, she was not entitled to evaluation of her modification eligibility and there were no calculations that defendant was required to provide to her. See MCL 600.3205c(1), (5). In short, defendant was not required to afford plaintiff these measures and she has not demonstrated defendant's violation of the relevant provisions. Because no material question of fact remains regarding defendant's adherence to the statutory provisions, the trial court did not err in granting summary disposition pursuant to MCR 2.116(C)(10).

Furthermore, as the trial court properly concluded, plaintiff's remedy for any purported violation of the relevant statutory provisions rested in the statutory remedies created by MCL 600.3205a(5) and MCL 600.3205c(8). That is, if defendant did not provide the required notice, plaintiff had the option of bringing an action in circuit court to enjoin the foreclosure. See MCL 600.3205a(5). Likewise, if defendant failed to follow the requirements of MCL 600.3205b-c relating to calculation of loan modification eligibility, plaintiff's remedy was to file an action in circuit court to convert the foreclosure by advertisement to judicial foreclosure proceedings. See MCL 600.3205c(8). These are the only remedies contemplated by the statutes, and plaintiff offers no authority for the proposition that she may rely on purported violations of MCL 600.3205a-c to set aside a sheriff's sale after the redemption period has expired. On the contrary, "if a statute provides a remedy for a violation of a right, and no common-law counterpart right exists, the statutory remedy is typically the exclusive remedy." *Lewandowski v Nuclear Mgt*, 272 Mich App 120, 127; 724 NW2d 718 (2006). We know of no common law counterpart to the statutes at issue, and, consequently, plaintiff's only available remedy was to enjoin the sheriff's sale pursuant to MCL 600.3205a(5) or to convert the foreclosure to a judicial foreclosure pursuant to MCL 600.3205c(8). Having failed to avail herself of these options,

plaintiff may not now challenge the foreclosure sale on these grounds after the completion of the sheriff's sale and expiration of the redemption period.[3]

Affirmed.

/s/ Jane M. Beckering
/s/ Joel P. Hoekstra
/s/ Elizabeth L. Gleicher

[3] Indeed, we agree with the alternative grounds for affirmance advanced by defendant on appeal. Specifically, we agree that plaintiff lacked standing to pursue her claims in this case. It is clear that, at the end of the redemption period, all of plaintiff's rights in the property were extinguished. *Piotrowski v State Land Office Bd*, 302 Mich 179, 187; 4 NW2d 514 (1942). Here, it follows that, once her rights in the property were extinguished, plaintiff lost standing to bring her claims related to the property. *Bryan v JP Morgan Chase Bank*, __ Mich App __, __; __ NW2d __ (2014); slip op at 3-4.