

STATE OF MICHIGAN
COURT OF APPEALS

ASHLEY’S MANAGEMENT COMPANY LLC,

Plaintiff-Appellant,

v

TOORAK CAPITAL PARTNERS LLC and 2020-1
REALTY HOLDINGS III, LLC, and WAYNE
COUNTY SHERIFF,

Defendants-Appellees,

and

WAYNE COUNTY TREASURER,

Defendant.

Before: BAZZI, P.J., and PATEL and ACKERMAN, JJ.

PER CURIAM.

In this property dispute arising from mortgage foreclosure proceedings, plaintiff challenges the trial court’s denial of its motion for summary disposition under MCR 2.116(C)(9) and (C)(10), grant of summary disposition to defendants Toorak Capital Partners LLC, 2020-1 Realty Holdings III, LLC under MCR 2116(I)(2), and denial of plaintiff’s motion for reconsideration. We affirm.

I. BACKGROUND

Many of the facts in this case are undisputed. Plaintiff purchased the subject property for \$154,000 in October 2019. Plaintiff financed the purchase with a \$201,900 loan from Patch of Land Lending, LLC, and executed a mortgage for the same amount to Patch of Land to secure the loan. Patch of Land assigned its mortgagee interest to Toorak. On December 27, 2022, Toorak published a notice of foreclosure by advertisement regarding the subject property stating that plaintiff was in default, owed \$147,467.32 for the unpaid mortgage, and the property would be

sold at public auction on January 26, 2023. The notice was published on three additional dates. The notice was also posted “upon the premises” of the subject property.

On January 26, 2023, the Wayne County Sheriff (WCS) conducted a public auction of the subject property. Toorak submitted the highest bid: \$234,600. No other bids were submitted. Toorak purchased the subject property using a credit bid to satisfy plaintiff’s debt.¹ No money was tendered to the WCS. A sheriff’s deed conveyed the subject property to Toorak, or its “successors and assigns,” for \$234,600. On January 31, 2023, Toorak executed a quitclaim deed conveying the subject property to 2020-1 Realty for \$1.

The sheriff’s deed was recorded on February 7, 2023, and included an “affidavit of purchaser” executed by Toorak’s counsel. The affidavit indicated that the property could be redeemed for \$234,600.00 plus interest and any additional amounts authorized under MCL 600.3240. The affidavit identified Toorak’s counsel as the designated representative to contact for an official written computation of the redemption amount and warned that a redemption made without a current written computation from Toorak’s counsel would be subject to audit and potentially rejected. The last day to redeem the property was July 26, 2023. Plaintiff did not redeem the property.

After the redemption period expired, plaintiff commenced this action.² Before discovery ended, plaintiff moved for summary disposition against Toorak and 2020-1 Realty under MCR 2.116(C)(9) and (C)(10) asserting that Toorak breached the mortgage and promissory note by not paying the bid amount to the WCS or refunding plaintiff the amount paid in excess of the amount owed for the mortgage (i.e., the surplus funds). Plaintiff further argued that Toorak and 2020-1 Realty unlawfully converted the surplus funds. Alternatively, plaintiff contended that the sheriff’s deed was voidable and the statutory redemption period had not begun because Toorak did not pay the full purchase price. In response, Toorak and 2020-1 Realty maintained that they were entitled to summary disposition under MCR 2.116(I)(2) because Toorak purchased the subject property using a credit bid to satisfy plaintiff’s debt and therefore plaintiff was not entitled to any surplus funds.

The WCS also moved for summary disposition under MCR 2.116(C)(8) and (C)(10) arguing that plaintiff was not entitled to any surplus funds from the foreclosure sale because such funds never existed and were not received by the WCS. In response, plaintiff argued the WCS was liable for statutory conversion for retaining the surplus funds.

The trial court denied plaintiff’s motion for summary disposition and granted summary disposition to Toorak and 2020-1 Realty under MCR 2.116(I)(2). First, the trial court concluded that Toorak and 2020-1 Realty sufficiently pleaded their defenses to overcome summary disposition under MCR 2.116(C)(9). The trial court found that the foreclosure by advertisement

¹ “A credit bid occurs when a secured creditor uses their claim against a debtor to bid on the debtor’s collateral in an auction.” *K2 Retail Constr Services, Inc v West Lansing Retail Dev, Inc*, __ Mich App __, __; __ NW3d __ (2026) (Docket No. 367762); slip op at 16.

² Plaintiff named the Wayne County Treasurer in its complaint but later stipulated to its dismissal.

was proper, the relevant statutory requirements were satisfied, the overbid was a mistake, plaintiff could not show that it was prejudiced by the overbid, plaintiff could not demonstrate malice by Toorak's erroneous credit bid, and no surplus funds existed. On the basis of these findings, the trial court concluded that plaintiff's claims against Toorak and 2020-1 Realty failed as a matter of law. Although the trial court did not expressly decide the WCS's motion for summary disposition, it dismissed all parties and claims with prejudice. Plaintiff moved for reconsideration, which the court denied. Plaintiff now appeals.

II. STANDARDS OF REVIEW

"We review de novo a trial court's decision on a motion for summary disposition." *El-Khalil v Oakwood Healthcare, Inc.*, 504 Mich 152, 159; 934 NW2d 665 (2019). The trial court denied plaintiff's motion for summary disposition under MCR 2.116(C)(9) and (C)(10) and granted summary disposition to Toorak and 2020-1 Realty under MCR 2.116(I)(2). The trial court impliedly granted the WCS's motion for summary disposition under MCR 2.116(C)(8) and (C)(10) by entering the order of dismissal. Because the trial court considered documentary evidence outside of the pleadings, MCR 2.116(C)(10) is the appropriate basis for review. *Silberstein v Pro-Golf of America, Inc.*, 278 Mich App 446, 457; 750 NW2d 615 (2008).

Summary disposition under MCR 2.116(C)(10) is warranted when, "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." MCR 2.116(C)(10). "A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ." *El-Khalil*, 504 Mich at 160 (cleaned up). When reviewing a motion for summary disposition under MCR 2.116(C)(10), a court must consider the evidence submitted by the parties in the light most favorable to the nonmoving party. *Id.* Summary disposition should be granted when, after reviewing the evidence in the light most favorable to the nonmoving party, there are no remaining issues of material fact and the moving party is entitled to judgment as a matter of law. *Lowrey v LMPS & LMPJ, Inc.*, 500 Mich 1, 5; 890 NW2d 344 (2016). But "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment, the court may render judgment in favor of the opposing party." MCR 2.116(I)(2); see also *Holland v Consumers Energy Co.*, 308 Mich App 675, 681–682; 866 NW2d 871 (2015) ("Summary disposition may be granted in favor of an opposing party under MCR 2.116(I)(2) if there is no genuine issue of material fact and the opposing party is entitled to judgment as a matter of law.").

"The existence and interpretation of a contract are questions of law reviewed de novo." *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006). "Statutory interpretation is a question of law, which this Court also reviews de novo." *O'Neal v St John Hosp & Med Ctr*, 487 Mich 485, 493; 791 NW2d 853 (2010). And "whether equitable relief is proper . . . is a question of law that an appellate court reviews de novo." *McDonald v Farm Bureau Ins Co*, 480 Mich 191, 197; 747 NW2d 811 (2008).

III. ANALYSIS

Plaintiff contends that the trial court erred by denying it summary disposition and instead granting summary disposition to defendants. We disagree.

On appeal, plaintiff does not dispute that it defaulted on the mortgage and thus Toorak had a right to pursue a foreclosure by advertisement under MCL 600.3201, *et seq.* Plaintiff also does not challenge the fact that all requirements under the foreclosure by advertisement statute, MCL 600.3204,³ were met and there was substantial compliance with the foreclosure by advertisement process regarding notice and the conduct of the public auction.⁴ Nor does plaintiff contest that Toorak was entitled to purchase the foreclosed property at the sheriff's sale. See MCL 600.3228 ("The mortgagee . . . may . . . purchase the premises . . . at such sale."). Rather, plaintiff argues that Toorak was bound by its bid and required to pay the full amount of its bid, and plaintiff was entitled to the surplus under MCL 600.3252. Alternatively, plaintiff contends that there was no consideration for the foreclosure sale and it must be set aside because Toorak did not pay the full bid amount.

³ MCL 600.3204, which governs the requirements for a foreclosure by advertisement, states in relevant part:

(1) A party may foreclose a mortgage by advertisement if all of the following circumstances exist:

(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, either the action or proceeding has been discontinued or an execution on a judgment rendered in the 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.

⁴ MCL 600.3208 governs a notice of a foreclosure, requiring that notice of a mortgage foreclosure sale "shall be given by publishing the same for 4 successive weeks at least once in each week, in a newspaper published in the county where the premises . . . are situated," and "within 15 days after the first publication of the notice, a true copy shall be posted in a conspicuous place upon any part of the premises described in the notice." MCL 600.3208. MCL 600.3212(1) governs the contents of a notice of foreclosure by advertisement. Under MCL 600.3216, the sale shall be held in public and "shall be made by the person appointed for that purpose in the mortgage, or by the sheriff, undersheriff, or a deputy sheriff of the county, to the highest bidder." "The mortgagee . . . may, fairly and in good faith, purchase the premises so advertised, or any part thereof, at such sale." MCL 600.3228.

A mortgage is “[a] conveyance of an interest in real estate to secure the performance of an obligation, typically a debt. The very purpose of mortgage foreclosure is to ensure that the mortgagor’s debt, secured by a mortgage to a mortgagee, is satisfied.” *In re \$55,336.17 Surplus Funds*, 319 Mich App 501, 508; 902 NW2d 422 (2017) (cleaned up). Our Supreme Court has explained:

A mortgagee that elects to foreclose by advertisement may bid on the property at the sale, and a mortgagee who does so stands in the position of an ordinary purchaser. However, unlike a third-party purchaser, a mortgagee is not required to make a cash bid. Instead, a mortgagee can make a bid on credit because any cash it tenders would be returned to it, and thus actual payment to the sheriff would be an idle gesture. [*Bank of America, NA v First American Title Ins Co*, 499 Mich 74, 88; 878 NW2d 816 (2016) (cleaned up).]

If a mortgagee makes a bid “in an amount equal to the unpaid principal and interest of the mortgage debt, together with costs, fees, and other expenses of the foreclosure[.]” this is referred to as a full credit bid. *Id.* (cleaned up). The full credit bid rule “bars a mortgagee who takes title at a nonjudicial foreclosure sale following a full credit bid from pursuing a deficiency judgment against the mortgagor.” *Id.* at 89. If a “mortgagor fails to redeem the property within the statutory redemption period, all right, title, and interest in the property vest in the holder of the sheriff’s deed.” *Fed Home Loan Mtg Corp v Werme*, 335 Mich App 461, 473-474; 966 NW2d 729 (2021). “[I]f a mortgagor fails to avail him or herself of the right of redemption, all the mortgagor’s rights in and to the property are extinguished, and the mortgagor does not have standing to bring any claim related to the property absent clear proof of fraud or irregularity.” *Id.* at 474 (cleaned up).

In this case, it is undisputed that Toorak’s credit bid exceeded the amount due under the mortgage and no money was paid to the WCS. Plaintiff argued to the trial court that Toorak was bound by its bid and that plaintiff was entitled to the surplus created by the overbid. Toorak claimed that the overbid was a mistake and there was no surplus because no money ever changed hands. The trial court agreed.

MCL 600.3252 governs the distribution of surplus funds after a mortgage foreclosure by advertisement:

If after any sale of real estate, made as herein prescribed, there shall remain *in the hands of the officer or other person making the sale*, any surplus money after satisfying the mortgage on which the real estate was sold, and payment of the costs and expenses of the foreclosure and sale, the surplus shall be paid over by the officer or other person on demand, to the mortgagor, his legal representatives or assigns, unless at the time of the sale, or before the surplus shall be so paid over, some claimant or claimants, shall file with the person so making the sale, a claim or claims, in writing, duly verified by the oath of the claimant, his agent, or attorney, that the claimant has a subsequent mortgage or lien encumbering the real estate, or some part thereof, and stating the amount thereof unpaid, setting forth the facts and nature of the same, in which case the person so making the sale, shall forthwith upon receiving the claim, pay the surplus to, and file the written claim with the clerk of the circuit court of the county in which the sale is so made; and thereupon

any person or persons interested in the surplus, may apply to the court for an order to take proofs of the facts and circumstances contained in the claim or claims so filed. Thereafter, the court shall summon the claimant or claimants, party, or parties interested in the surplus, to appear before him at a time and place to be by him named, and attend the taking of the proof, and the claimant or claimants or party interested who shall appear may examine witnesses and produce such proof as they or either of them may see fit, and the court shall thereupon make an order in the premises directing the disposition of the surplus moneys or payment thereof in accordance with the rights of the claimant or claimants or persons interested. [Emphasis added.]

Resolution of this issue requires us to interpret this statute. “The principal goal of statutory interpretation is to give effect to the Legislature’s intent, and the most reliable evidence of that intent is the plain language of the statute.” *South Dearborn Environmental Improvement Ass’n, Inc v Dep’t of Environmental Quality*, 502 Mich 349, 360-361; 917 NW2d 603 (2018). “We accord to every word or phrase of a statute its plain and ordinary meaning, unless a term has a special, technical meaning or is defined in the statute.” *Guardian Environmental Servs, Inc v Bureau of Const Codes and Fire Safety*, 279 Mich App 1, 6; 755 NW2d 556 (2008). “Where the statutory language is unambiguous, the plain meaning reflects the Legislature’s intent and the statute must be applied as written.” *Honigman Miller Schwartz & Cohn LLP v City of Detroit*, 505 Mich 284, 294; 952 NW2d 358 (2020) (cleaned up). We must assign each word and phrase “such meanings as are in harmony with the whole of the statute, construed in light of history and common sense.” *Id.* at 295. If a statutory term is undefined, it “must be accorded its plain and ordinary meaning.” *Brckett v Focus Hope, Inc*, 482 Mich 269, 276; 753 NW2d 207 (2008), citing MCL 8.3a.

The purpose of MCL 600.3252 is to protect the rights of others after the mortgagee has recovered its debt. *\$55,336.17 Surplus Funds*, 319 Mich App at 510-511. Because there are no claims by subsequent lienholders in this case, there is no dispute that any surplus proceeds, if they exist, would belong to plaintiff. The term “surplus” is not defined in MCL 600.3252. However, the statute provides that a mortgagor is entitled to be paid, on demand, any money remaining “*in the hands of* the officer or other person making the sale” after the outstanding debt and the costs and expenses of the foreclosure are satisfied. The plain meaning of the phrase “*in the hands of*” is in the possession of. Toorak’s credit bid was the only bid on the property. It is undisputed that the credit bid satisfied the outstanding debt and the costs and expenses of the foreclosure and no money changed hands. Under these facts and circumstances, “actual payment to the sheriff would be an idle gesture.” *Bank of America*, 499 Mich at 88. After the debt was satisfied, no surplus funds were held by the WCS. Accordingly, no surplus was owed to plaintiff.⁵ And because no

⁵ To the extent that plaintiff relies on caselaw that predates the January 1, 1963 effective date of MCL 600.3252, we do not find any of those cases persuasive.

surplus funds existed, the trial court did not err by concluding that defendants were not liable for conversion.⁶

Alternatively, plaintiff asserts that the trial court erred by failing to set aside the sheriff's deed. "[A] mortgagor seeking to set aside a foreclosure by advertisement must allege facts to support three essential elements . . . (1) fraud or irregularity in the foreclosure procedure, (2) prejudice to the mortgagor, and (3) a causal relationship between the alleged fraud or irregularity and the alleged prejudice." *Diem v Sallie Mae Home Loans, Inc*, 307 Mich App 204, 210-211; 859 NW2d 238 (2014). A plaintiff "must show that they were prejudiced by defendant's failure to comply with MCL 600.3204" and "[t]o demonstrate such prejudice, they must show that they would have been in a better position to preserve their interest in the property absent defendant's noncompliance with the statute." *Id.* at 210 (cleaned up). Regardless of plaintiff's unsupported claim of irregularity in the subject sale because of the mistaken bid amount, plaintiff failed to present any evidence that it suffered actual prejudice. Plaintiff contends that Toorak "fraudulently outbid" other potential bidders who may have offered an amount higher than the debt but lower than the bid. As the moving party, plaintiff bore the initial burden to identify the issues about which there is no genuine issue of material fact with supporting evidence. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369-370; 775 NW2d 618 (2009). Absent any evidence that there were other persons intending to bid on the property, this is nothing more than speculation. Plaintiff also erroneously claims that it "effectively lost its right of

⁶ Conversion under common law includes "any distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his rights therein." *Aroma Wines & Equip, Inc v Columbian Distribution Servs, Inc*, 497 Mich 337, 346; 871 NW2d 136 (2015) (cleaned up). "To support an action for conversion of money, the defendant must have an obligation to return the specific money entrusted to his care. The defendant must have obtained the money without the owner's consent to the creation of a debtor and creditor relationship." *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 111-112; 593 NW2d 595 (1999) (cleaned up). In addition, MCL 600.2919a(1) states:

(1) A person damaged as a result of either or both of the following may recover 3 times the amount of actual damages sustained, plus costs and reasonable attorney fees:

(a) Another person's stealing or embezzling property or converting property to the other person's own use.

(b) Another person's buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property when the person buying, receiving, possessing, concealing, or aiding in the concealment of stolen, embezzled, or converted property knew that the property was stolen, embezzled, or converted.

In addition to proving the common-law elements, to prove statutory conversion, a party must prove "that the conversion was to the other person's own use." *Aroma Wines & Equip, Inc*, 497 Mich at 357 (cleaned up).

redemption” because Toorak’s overbid inflated plaintiff’s redemption amount. Contrary to plaintiff’s unsupported assertion, if it had redeemed the property, it would have been required to remit the amount of indebtedness on the mortgage, not the overbid amount. The affidavit of purchaser identified Toorak’s counsel as the designated representative to contact for an official written computation of the redemption amount and warned that a redemption made without a current written computation from Toorak’s counsel would be subject to audit and potentially rejected. Plaintiff failed to produce any evidence that it attempted to redeem the property and was otherwise prejudiced. Accordingly, the trial court did not err by declining to set aside the sheriff’s deed.

Plaintiff also broadly challenges the order denying reconsideration. Because plaintiff did not include this issue in the statement of questions presented, it is deemed waived. See *Seifeddine v Jaber*, 327 Mich App 514, 521; 934 NW2d 64 (2019); see also MCR 7.212(C)(5) (stating that an appellant’s brief must contain “[a] statement of questions involved, stating concisely and without repetition the questions involved in the appeal.”).

Affirmed.

/s/ Mariam S. Bazzi
/s/ Sima G. Patel
/s/ Matthew S. Ackerman