

STATE OF MICHIGAN
COURT OF APPEALS

RAGOSA INVESTMENT COMPANY,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant-Appellee.

UNPUBLISHED

January 20, 2004

No. 243688

Wayne Circuit Court

LC No. 02-208351-CZ

Before: Fort Hood, P.J., and Bandstra and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting summary disposition to defendant under MCR 2.116(C)(8). We affirm.

In March 2002, plaintiff filed a complaint alleging, among other things, that (1) plaintiff obtained an interest in a parcel of real property in Detroit by purchasing tax liens from the State of Michigan; (2) plaintiff failed to record its interest in the property with the Wayne County Register of Deeds; (3) despite plaintiff's failure to record its interest, defendant should have known that a tax lien purchaser existed and therefore should have ascertained plaintiff's identity before instituting a foreclosure suit; and (4) defendant failed to ascertain plaintiff's identity before instituting a foreclosure suit and therefore did not notify plaintiff about the foreclosure. In Count I of the complaint, plaintiff claimed that defendant erred by failing to notify them about the foreclosure. In Count II, plaintiff claimed that defendant's foreclosure methods conflicted with methods prescribed by the state and were therefore void.

Defendant moved for summary disposition under MCR 2.116(C)(8), arguing that (1) it had no duty to search for parties that might have obtained an unrecorded interest in the property in order to notify them about the foreclosure, and (2) case law indicates that a home rule city such as Detroit may adopt and enforce its own tax collection measures, including measures relating to foreclosures. In response, plaintiff reiterated the position taken in its complaint. The trial court ruled that defendant could indeed adopt and enforce its own measures concerning foreclosures. It additionally ruled:

Count I of the [c]omplaint, that the plaintiff should have had notice of the underlying foreclosure procedure, necessarily must be dismissed for failure to state a claim as well because under the statutory scheme set up by the city, which is consistent with their ability granted them by the home rule provision as

interpreted by the Supreme Court, complied [sic] with all the necessary due process notice requirements, and the additional undertaking the plaintiff would impose upon the City to learn the identity of tax certificate holders is not required by – is not required by any legal basis. Because there is no legal basis for that undertaking, the failure to comply with that undertaking cannot give rise to a cause of action.

On appeal, plaintiff first argues that the trial court erred in granting summary disposition to defendant because defendant had no authority to adopt rules concerning foreclosures that conflicted with state law. This Court reviews de novo a trial court's ruling with regard to a summary disposition motion. *Sewell v Southfield Public Schools*, 456 Mich 670, 674; 576 NW2d 153 (1998). Motions brought under MCR 2.116(C)(8) test the legal sufficiency of a claim with regard to the pleadings alone. *Madejski v Kotmar Ltd*, 246 Mich App 441, 443-444; 633 NW2d 429 (2001). "All well-pleaded facts are accepted as true and are construed in the light most favorable to the nonmoving party." *Id.* at 444. "Summary disposition under MCR 2.116(C)(8) is proper 'when the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and justify recovery.'" *Corley v Detroit Bd of Ed*, 246 Mich App 15, 18; 632 NW2d 147 (2001), quoting *Smith v Stolberg*, 231 Mich App 256, 258; 586 NW2d 103 (1998).

In support of its argument, plaintiff primarily relies on MCL 117.36, which states that "[n]o provisions of any city charter shall conflict with or contravene the provisions of any general law of the state." Plaintiff contends that because the state provides its own foreclosure methods, the city's methods are void. Plaintiff further cites MCL 211.78a(6), enacted in 1999 (after the foreclosure at issue in the instant case), which states:

Notwithstanding any charter provision to the contrary, the governing body of a local government unit that collects delinquent taxes may establish for any property, by ordinance, procedures for the collection of delinquent taxes and the enforcement of tax liens and the schedule for the forfeiture or foreclosure of delinquent tax liens. The procedures and schedule established by ordinance shall conform at a minimum to those procedures and schedules established under [certain state laws]. . . .

Plaintiff states, "[i]f the adoption of . . . an ordinance by the City of Detroit prior to the enactment of this new tax scheme by the State was legal and proper, the State would not have put in the new statute permission for the Cities to enact a similar law. (See: MCL 211.78a(6)[,] which allows the City to do what it did for taxes after those levied in 1998[.]")"

We cannot agree with plaintiff's argument. In *Magee v City of Detroit (Booker I)*, 203 Mich App 228, 233; 511 NW2d 717 (1994), overruled in part by *Booker v City of Detroit (Booker III)*, 469 Mich 887, 887; 668 NW2d 623 (2003), the Court, citing MCL 117.36, concluded that if a city's foreclosure methods differ from those of the state's, the state's methods must prevail. In *Booker v Detroit (Booker II)*, 251 Mich App 167, 181; NW2d (2002), reversed in part by *Booker III*, *supra* at 887, the Court expressed its opinion that the *Booker I* panel had erred in reaching this conclusion. Although the *Booker II* panel's conclusion in this regard appeared to be dicta, the Supreme Court later agreed with *Booker II* in relevant part, stating the following:

. . . [MCL 211.107(1), a provision of the state property tax laws,] provides:

“The requirements of this act relating to the amount and imposition of interest, penalties, collection or administration fees, the procedures for collection of taxes, and the enforcement of tax liens are applicable to all cities and villages if not inconsistent with their respective charters or an ordinance enacted pursuant to their respective charters”

Thus, the statute plainly provides that if a conflict exists between the [state tax laws] and the city charter, the charter governs. It appears that the Court of Appeals decision in *Booker I* overlooked this provision in finding that the [state tax laws] govern[] where a conflict exists. Accordingly, we . . . conclude that the foreclosure sale was valid under the controlling provisions of the city charter. [*Booker III*, *supra* at 887.]

Therefore, the Supreme Court has clearly ruled against plaintiff’s position in the instant case. Defendant’s charter provisions prevail. See also *City of Detroit v Walker*, 445 Mich 682, 689; 520 NW2d 135 (1994) (“home rule cities have power to make all reasonable provisions for the collection of . . . taxes”). The trial court correctly ruled for defendant with respect to this issue.

Next, plaintiff contends that the trial court acted prematurely in deciding that plaintiff, in light of its unrecorded interest in the property, was not entitled to notice of the foreclosure proceedings. Plaintiff has waived this issue, however, by failing to cite any authority in support of its position. See *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), and *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984).

Affirmed.

/s/ Karen M. Fort Hood
/s/ Richard A. Bandstra
/s/ Patrick M. Meter