STATE OF MICHIGAN

COURT OF APPEALS

IN RE PETITION FOR FORECLOSURE OF CERTAIN PARCELS

JACKSON COUNTY TREASURER,

Plaintiff-Appellant,

v

WILLIAM K. CHRISTIE,

Intervenor-Appellee.

and

MICHAEL BAUGHMAN,

Intervenor,

and

RUMLER-CHAPPAREL ENTERPRISES, INC.,

Defendant.

UNPUBLISHED
May 11, 2004

No. 246672
Jackson Circuit Court
LC No. 01-003160-CZ

Before: Bandstra, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from an order granting intervenors relief, pursuant to MCR 2.612, from a judgment of foreclosure upon property which they lease from defendant. We affirm.

Intervenor Christie leases office space in a building owned by defendant. Intervenor Baughman subleases office space from intervenor Christie and maintains a separate business therein. After defendant's property was foreclosed upon, intervenors filed the present motion

claiming that they did not receive proper notice of the show cause and foreclosure proceedings as mandated by MCL 211.78i. During a hearing on intervenors' motion, plaintiff did not dispute that it had not provided either written notices to, nor personally visited, intervenors. The trial court granted intervenors' motion and allowed them to redeem the property by paying the back taxes. Although the motion below was filed by both Christie and Baughman, in this appeal the parties address the issue of notice only with respect to Christie. We review a trial court's decision to grant relief from judgment under MCR 2.612 for an abuse of discretion. *Detroit Free Press, Inc v Dep't of State Police*, 233 Mich App 554, 556; 593 NW2d 200 (1999).

The trial court determined that Christie was entitled to notice under MCL 211.78i, and that the notice provisions of that statute had not been satisfied, entitling Christie to relief. However, the statute states in relevant part:

> The failure of the foreclosing governmental unit to comply with any provision of this section shall not invalidate any proceeding under this act if the owner of a property interest . . . is accorded the minimum due process required under the state constitution of 1963 and the constitution of the United States. [MCL 211.78i(2)].

By allowing Christie to redeem the property by paying the back taxes, the trial court, in effect, "invalidate[d]" the tax foreclosure proceedings. Under this statutory language, whether that invalidation was proper depends on whether Christie was provided due process notice. If he had been given such notice, any failure to comply with the statute would not have authorized the invalidation of the tax foreclosure proceeding. Thus, in a case like this where a property interest owner seeks to invalidate a foreclosure, the notice question becomes one of constitutional due process, not statutory obligation.

Plaintiff first argues that it was not required to provide Christie notice because the foreclosure process is an action in rem against the property. While plaintiff correctly asserts that tax foreclosure proceedings have been consistently characterized by Michigan courts as actions in rem, *Detroit v 19675 Hasse*, 258 Mich App 438, 448-449; 671 NW2d 150 (2003), our Supreme Court has held that "[t]he state has no proper interest in taking a person's property for nonpayment of taxes without proper notice . . . . By reason of the Due Process Clause it may not do so." *Dow v Michigan*, 396 Mich 192, 210; 240 NW2d 450 (1976) (citation omitted). Therefore, plaintiff's argument that Christie was not entitled to notice is without merit.

Plaintiff next argues that Christie was not entitled to notice because he is a leaseholder. However, in *Dow*, *supra*, 196, our Supreme Court stated:

> We hold that *the Due Process Clause requires that an owner of a significant interest in property be given proper notice* and an opportunity for a hearing at which he or she may contest the state's claim that it may take the property for nonpayment of taxes and that newspaper publication is not constitutionally adequate notice of such right. [Emphasis added.]

Thus, Christie was entitled to notice so long as he held a significant property interest. In the present case, it is undisputed that he held a lease for the property. In *De Bruyn Produce Co v Romero*, 202 Mich App 92, 98; 508 NW2d 150 (1993), this Court stated:

> A lease is a conveyance by the owner of an estate of a portion of the interest therein to another for a term less than his own for a valuable consideration. *Minnis v Newbro-Gallogly Co*, 174 Mich 635, 639; 140 NW 980 (1913). See also *Dep't of Natural Resources v Westminster Church*, 114 Mich App 99, 104; 318 NW2d 830 (1982). A lease gives the tenant the possession of the property leased and the exclusive use or occupation of it for all purposes not prohibited by the terms of the lease. *Macke Laundry Service Co v Overgaard*, 173 Mich App 250, 253; 433 NW2d 813 (1988).

Christie was entitled to due process notice regarding the show cause and foreclosure proceedings. As a leaseholder, he was the owner of a property interest and, because his leasehold gave him possession and exclusive use or occupation of the property, his interest was significant.

Plaintiff next argues that it had no duty to provide notice to Christie because his leasehold interest was not a matter of public record. Christie does not dispute that a copy of his lease was not on file with the register of deeds and that the records of the county treasurer did not disclose his interest because he had not voluntarily requested to receive notice of the return of delinquent taxes for an annual fee as allowed by MCL 211.78a(4). However, the mere fact that Christie's leasehold interest may not have been revealed by plaintiff's search of public records did not relieve it of its duty to provide him with notice. Specifically, we note the following language from *Dow*, *supra*, 210-211:

> Real property interests of record are readily identifiable. Accordingly, the titleholder, Smith, was entitled to have the state employ such means "as one desirous of actually informing [her] might reasonably adopt" to notify her of the pendency of the proceedings. [Quoting *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 315; 70 S Ct 652; 94 L Ed 865 (1950).]
>
> It does not appear whether the land contract purchaser's interest of the Dows was of record. Ordinarily a land contract purchaser of a residence is in actual possession and readily identifiable. The Dows were not in possession. The typical land contract requires the purchaser to pay taxes. It does not appear whether the tax assessor or the treasurer were aware of the Dows' interests or, indeed, to whom tax bills had been sent. If their interests were of record or if the assessor or treasurer was aware of their interests, they too were entitled to have the state employ such means "as one desirous of actually informing [them] might reasonably adopt" to notify them of the pendency of the proceedings. [Bracketed insertions in *Dow*.]

We interpret this language from *Dow* as requiring plaintiff to provide due process notice to Christie if his interest was readily identifiable because of his possession. It is undisputed that

Christie was in possession and that Mark Hunter, hired by plaintiff to conduct personal visits to the properties being foreclosed upon, along with his wife, who worked for the treasurer's office, observed that Christie was in possession when they served a personal notice of the show cause and foreclosure hearings upon another office in the same building. Therefore, upon plaintiff's noticing that intervenor Christie was in possession, Christie was "entitled to have the [county] employ such means 'as one desirous of actually informing [him] might reasonably adopt' to notify [him] of the pendency of the proceedings." *Dow*, *supra*, 210, quoting *Mullane*, *supra*, 315.

Plaintiff asserts, however, that it complied with any notice requirement because it made newspaper publication of the show cause and foreclosure proceedings. However, our Supreme Court held in *Dow* that notice by newspaper publication is not constitutionally adequate to inform the owner of an interest in property of a right to attend hearings to contest the government's attempt to take the property for delinquent taxes. *Dow*, *supra*, 207-211; see also *Smith v Cliffs on the Bay Condo Ass'n*, 463 Mich 420, 427; 617 NW2d 536 (2000). Instead, if the interest is readily identifiable, as Christie's was in this case, the interest holder is entitled to such further notice as might reasonably be adopted to inform him of the hearings. *Dow*, *supra*, 211.

That kind of notice was not provided to Christie here. Plaintiff does not dispute that it did not personally serve Christie, provide notice by direct mail, or post the property. Further, its visit to defendant's building, through Hunter and his wife, did not satisfy the notice requirement as to Christie. Hunter testified that he only had one notice for the property, which he provided to another office. Further, he did not attempt to return to the property to personally visit Christie, and did not inquire as to when Christie might return to his office, despite recognizing that his office was also in the building. There was no testimony that anyone from the office upon which notice had been served ever informed Christie of Hunter's visit. By virtue of his lease, Christie possessed his own rights in the property separate from those of other tenants, *De Bruyn*, *supra*, 95, and he was entitled to separate notice. *Dow*, *supra*, 198, n 10.

Finally, we note plaintiff's argument that intervenors were barred from filing a motion for relief from judgment pursuant to MCR 2.612. In support of its assertion, plaintiff relies on MCL 211.78k(6) and (7), which provide that a foreclosing governmental unit's title to the property foreclosed upon shall not be stayed or held invalid except by appeal to this Court within twenty-one days, and MCL 211.78l, which provides that the owner of an extinguished interest in the property who claims that he did not receive any notice as provided in the act may not bring an action for possession against any subsequent owner, but may only seek monetary damages in the Court of Claims. However, plaintiff did not raise this issue below and it was not decided by the trial court; therefore, it is unpreserved for review. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). Moreover, aside from quoting MCL 211.78k(6) and (7) and MCL 211.78l, plaintiff presents almost no argument on this issue. An appellant may not merely announce its position and leave it to this Court to discover and rationalize the basis for its claims. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). Instead, "[i]t is axiomatic that where a party fails to brief the merits of an allegation of error, the issue is deemed abandoned by this Court." *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). Therefore,

because plaintiff has neither preserved this issue nor adequately briefed this Court, we decline to review the issue.

We conclude that plaintiff failed to comply with applicable notice requirements. The lower court properly allowed Christie to redeem its leasehold interest by paying the back taxes. We affirm that correct decision, albeit for reasons different from those employed by the lower court. *Wickings v Artic Enterprises, Inc*, 244 Mich App 125, 150; 624 NW2d 197 (2000).

We affirm.

/s/ Richard A. Bandstra
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald