

STATE OF MICHIGAN
COURT OF APPEALS

CHARLENE J. HANSON,

Plaintiff-Appellant,

v

CENTRAL SAVINGS BANK and RICHARD F.
HANSON,

Defendants-Appellees.

UNPUBLISHED

October 11, 2005

No. 254658

Chippewa Circuit Court

LC No. 04-007269 – CH

Before: O’Connell, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Plaintiff brought this action to establish priority of a judgment lien she acquired through her consent judgment of divorce over defendant Central Savings Bank’s mortgage against the same property. She appeals as of right an order granting summary disposition under MCR 2.116(C)(10) in favor of defendant Central Savings Bank. We reverse and remand.

We review de novo a trial court’s decision to grant summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion for summary disposition is generally premature if discovery on a disputed issue has not been completed, unless “further discovery does not stand a reasonable chance of uncovering factual support for the opposing party’s position.” *Trentadue v Buckler Automatic Lawn Sprinkler Co*, 266 Mich App 297, 306; 701 NW2d 756 (2005).

On June 20, 2000, defendant Richard Hanson and defendant Bank executed a note secured by a mortgage against Richard’s real property. The defendants executed another note on April 16, 2002, after plaintiff secured and recorded an order authorizing her to execute her original judgment against the same property. The issue in this case is whether the defendants’ intent was to cancel and replace the June 20, 2000, note or simply to renew it. At the time the trial court granted defendant Central Savings Bank’s motion for summary disposition, plaintiff had outstanding requests for the production of all documents relating to separate loans from June 20, 2000, July 24, 2001, September 18, 2001, and April 16, 2002. Given the monetary value of the loans, the second mortgage, and defendants’ “settlement agreement,” there is a reasonable

chance that the other documents relating to the loans could reveal defendants' intent that the April 16, 2002, note would cancel the June 20, 2000, note. Therefore, the trial court's granting of summary disposition in favor of defendants was premature.¹ *Trentadue, supra*.

Reversed and remanded to allow plaintiff time to complete discovery. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ David H. Sawyer

/s/ William B. Murphy

¹ We also note that there remains an issue regarding plaintiff's priority over the alleged "future advance" paid by the bank to defendant Richard Hanson on April 16, 2002. Without deciding this corollary to other factually sensitive issues, we direct the trial court's attention to MCL 565.903a(5), *Ladue v The Detroit & Milwaukee R Co*, 13 Mich 380, 397-398 (1865), and *Seiberling Tire & Rubber Co v State Bank of Fraser*, 78 Mich App 587, 590-591; 261 NW2d 13 (1977).