

STATE OF MICHIGAN
COURT OF APPEALS

JULIA A. TROUPE and BARBARA SMITH,

Plaintiffs-Appellants,

v

PROVIDENT CONSUMERS FINANCIAL,

Defendant-Appellant.

UNPUBLISHED
December 8, 2005

No. 263285
Wayne Circuit Court
LC No. 04-406441-CH

Before: Smolenski, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's order granting summary disposition to defendant. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

Plaintiff Troupe executed a mortgage in February 1999 that was assigned to defendant in March 1999. In December 2001, plaintiff Troupe assigned a portion of her interest in the property to plaintiff Smith, her mother.

In January 2004, defendant sent a notice of default to plaintiff Troupe for mortgage payments that were past due under the terms of the loan. The notice of default stated that plaintiff Troupe owed \$1,963.84 and if the default was not cured by February 9, 2004, the loan could be accelerated and foreclosure proceedings could begin.

Plaintiffs filed their complaint on March 3, 2004 alleging that they had never missed a monthly payment according to the agreement and that there was no legal reason to justify the actions of defendant. In February 2005, defendant filed its motion for summary disposition claiming that there was no genuine issue of material fact that defendant was entitled to judgment as a matter of law.

The trial court determined that the foreclosure was proper because at the time the notice of default was sent out, plaintiff was behind on the payments due under the mortgage. Accordingly, the trial court granted summary disposition in favor of defendant.

II. JURISDICTION

This Court has jurisdiction over appeals filed following a final judgment. MCR 7.203(A)(1). A final judgment is defined in a civil case as “the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties . . .” MCR 7.202. The trial court’s order in this case granted summary disposition to defendant. There is no indication that any claims or rights and liabilities of the parties remain outstanding where the initial complaint related solely to propriety of the default and foreclosure of the mortgage between plaintiff Troupe and defendant. Accordingly, the order granting summary disposition to defendant stating that plaintiff Troupe was in default and the foreclosure was proper was a final order and this Court has jurisdiction over this appeal from the order granting summary disposition to defendant.

III. STANDARD OF REVIEW

A trial court’s decision to grant summary disposition under MCR 2.116(C)(10) is reviewed de novo. *Graham v Ford*, 237 Mich App 670, 672; 604 NW2d 713 (1999).

A motion for summary disposition under MCR 2.116(C)(10) tests whether there is factual support for a claim. When deciding a motion for summary disposition, we consider the pleadings, affidavits, depositions, admissions, and other documentary evidence. In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. 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. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. [*Id.*, 672-673 (internal citations omitted).]

IV. ANALYSIS

In this case, defendant, as the moving party, presented documentary evidence including a Loan Summary that indicated as of October and November 2003 payments received were being applied to the August and September mortgage payment amounts, which were then past due. In addition to mortgage payments being two months in arrears, the Loan Summary showed that additional funds were being paid by defendant for escrow-related items such as insurance premiums and property taxes, which then also had to be paid for by sums received from plaintiffs.

Plaintiffs presented documentary evidence of eight payments totaling \$2,389.95 being made to defendant from July 2003 to January 2004. Those payments are not disputed by defendant. Despite the accounting for those payments, however, the documentary evidence from defendant, showing the history of the loan from its inception, continues to show that plaintiff Troupe was in default of the terms of the mortgage because monthly payments were not made in a timely manner.

Defendant supported its position with documentary evidence, therefore, the burden was on plaintiffs to show with documentary evidence that there was a genuine issue concerning whether the mortgage payments were not past due. See *Graham, supra*, 672-673. The plaintiffs relied on their statements that they had made all monthly payments and only accounted for eight payments that they concluded were within the “period of default.” Plaintiffs may not rely on mere allegations or denials in pleadings. See *Id.* Plaintiffs did not provide any documentary evidence to suggest that the mortgage payments were current at the time they made the July 16, 2003 payment, which was the first payment amount supported by documentary evidence by plaintiffs. According to the Loan Summary provided by defendant, the monthly payments were at least one month past due at the time of plaintiffs’ July payment. The partial payment of \$200.00 that was received on July 21, 2003, was combined with other funds being held to make a regular payment that was actually due on June 3, 2003.

Following that date, mortgage payments became increasingly past due because of other obligations also owed under the terms of the mortgage. By October and November 2003 payments were applied to the mortgage payments due two months prior.

Plaintiffs provided documentary evidence concerning payments only from July 2003 to January 2004. Plaintiffs did not, however, show either that the mortgage payments were up to date as of July 2003 or that all funds paid by plaintiffs were required to be applied only to mortgage payments. The trial court properly granted defendant’s motion for summary disposition because plaintiffs did not present documentary evidence establishing the existence of a material factual dispute and because plaintiffs relied only on allegations and denials in the pleadings to assert that they had made all of the mortgage payments.

Affirmed.

/s/ Michael R. Smolenski

/s/ Bill Schuette

/s/ Stephen L. Borrello