STATE OF MICHIGAN

COURT OF APPEALS

CLIFFORD STAFFORD and MARY STAFFORD, Plaintiffs-Appellants, v SELECT PORTFOLIO SERVICING INC., and REMINGTON MORTGAGE INC., Defendants-Appellees.	UNPUBLISHED April 15, 2008 No. 277041 Wayne Circuit Court LC No. 06-632314-CK

Before: Jansen, P.J., and Donofrio and Davis, JJ.

PER CURIAM.

Plaintiffs appeal by right the trial court's orders granting summary disposition in favor of defendants Select Portfolio Servicing, Inc. ("Select Portfolio"), and Remington Mortgage, Inc. ("Remington"). We affirm.

I

Sometime prior to the filing of this action, plaintiffs purchased a certain parcel of residential real property in the city of Detroit using a mortgage loan obtained from One Stop Mortgage, Inc. In April 2001, plaintiffs obtained a second mortgage loan from defendant Remington. Plaintiffs used this second mortgage loan to pay off their existing loan.

Immediately after the second mortgage and note were executed, Remington assigned the note to Key Bank. The note was later reassigned to a third party. In 2005, defendant Select Portfolio began servicing the note and mortgage. Admissible documentary evidence established that the mortgage loan was not in default when Select Portfolio began servicing it and that foreclosure proceedings had not yet begun at that time.

After Select Portfolio obtained the loan for servicing, plaintiffs defaulted on their payment obligations and foreclosure proceedings were commenced. The property was sold at sheriff's sale and plaintiffs did not redeem. Plaintiffs were eventually evicted from the property. Plaintiffs sued defendants alleging violations of the Fair Debt Collection Practices Act, 15 USC 1692 *et seq.* ("FDCPA"). Plaintiffs alleged that they were entitled to money damages under 15 USC 1692k as a result of defendants' allegedly unlawful actions. The trial court granted both

defendants' motions for summary disposition. The court also granted attorney fees in favor of Select Portfolio in the amount of $5,000.

II

We review de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). We review for an abuse of discretion the trial court's decision to limit or dispense with oral argument. *American Transmission, Inc v Channel 7 of Detroit, Inc*, 239 Mich App 695, 709; 609 NW2d 607 (2000). Finally, we also review for an abuse of discretion the trial court's decision to award attorney fees and its determination of the reasonableness of the fees requested. *Windemere Commons I Ass'n v O'Brien*, 269 Mich App 681, 682; 713 NW2d 814 (2006). An abuse of discretion occurs when the trial court chooses a decision falling outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

III

Plaintiffs argue that the trial court erred by granting summary disposition in favor of defendants Remington and Select Portfolio. We disagree.

The FDCPA applies to "debt collectors" only. *Pollice v Nat'l Tax Funding, LP*, 225 F3d 379, 403 (CA 3, 2000); *Pettit v Retrieval Masters Creditor Bureau, Inc*, 211 F3d 1057, 1059 (CA 7, 2000); *Heller v Graf*, 488 F Supp 2d 686, 691 (ND Ill, 2007); *Oldroyd v Assoc Consumer Discount Co*, 863 F Supp 237, 241 (ED Pa, 1994). Plaintiffs assert that defendants are "debt collectors" because they have referred to themselves in the past as businesses that collect debts. However, the mere fact that defendants collect certain debts is irrelevant for purposes of this case. Instead, the particular question presented here is whether defendants fall within the unique statutory definition of "debt collector[s]" contained in the FDCPA.

For purposes of the FDCPA, "a debt collector does not include the consumer's creditors, a mortgage servicing company, or an assignee of a debt, as long as the debt was not in default at the time it was assigned." *Perry v Stewart Title Co*, 756 F2d 1197, 1208 (CA 5, 1985); see also *Scott v Wells Fargo Home Mortgage Inc*, 326 F Supp 2d 709, 717 (ED Va, 2003). Nor does an entity act as a "debt collector" when it collects or attempts to collect a debt that was not in default at the time the debt was obtained for servicing. 15 USC 1692a(6)(F)(*iii*); see also *Wadlington v Credit Acceptance Corp*, 76 F3d 103, 107 (CA 6, 1996). Indeed, "the legislative history of the FDCPA . . . clearly illustrates Congress's intent that the term debt collector not include parties who obtained an interest in the loan prior to default . . . ." *Skerry v Massachusetts Higher Ed Assistance Corp*, 73 F Supp 2d 47, 54 (D Mass, 1999).

In responding to a motion for summary disposition under MCR 2.116(C)(10), 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." *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). "Mere conjecture does not meet the burden of the opposing party to come forward with documentary evidence that a genuine issue of material fact exists." *Little v Howard Johnson Co*, 183 Mich App 675, 683; 455 NW2d 390 (1990). Nor are unsworn statements and other inadmissible materials sufficient to create a genuine issue of material fact. *Marlo Beauty Supply, Inc v Farmers Ins Group*, 227

Mich App 309, 321; 575 NW2d 324 (1998). If the nonmoving party fails to present sufficient admissible documentary evidence to establish the existence of a material factual dispute, the motion is properly granted. *Smith*, *supra* at 455.

Admissible documentary evidence established that plaintiffs' loan was not in default at the time that Select Portfolio obtained it for servicing. Plaintiffs offered no documentary evidence of their own to refute or otherwise rebut this evidence. In other words, there was no genuine issue of material fact with respect to whether plaintiffs' loan was in default at the time it was obtained for servicing. Because plaintiffs' loan was not in default when Select Portfolio obtained it for servicing, defendant Select Portfolio was not a "debt collector" within the meaning of the FDCPA for purposes of this case. 15 USC 1692a(6)(F)(*iii*); *Skerry*, *supra* at 54. Summary disposition was properly granted in favor of Select Portfolio.

Summary disposition was also properly granted in favor of Remington. As an initial matter, we note that the allegations of wrongdoing in plaintiffs' complaint relate only to the actions of Select Portfolio, and not to the actions of Remington. Nevertheless, even assuming that plaintiffs' complaint set forth legally cognizable claims against Remington, Remington simply was not a "debt collector" under the FDCPA. Remington held the note on plaintiffs' loan for only a brief time before assigning it to another entity. Plaintiffs presented no evidence in response to Remington's motion for summary disposition to establish that they were in default on their loan during the brief period when Remington held the note. Therefore, Remington was not a "debt collector" within the meaning of the FDCPA for purposes of this case. 15 USC 1692a(6)(F)(*iii*); *Skerry*, *supra* at 54.

The trial court correctly granted summary disposition in favor of defendants Remington and Select Portfolio, and properly dismissed plaintiffs' claims with prejudice.

IV

Contrary to plaintiffs' argument, the trial court did not abuse its discretion by limiting oral argument on the motions for summary disposition. It is true that the trial court did not permit plaintiffs' attorney to make a lengthy argument. However, the issues presented in this case were clear and had already been addressed in the relevant federal case law. Therefore, extended oral argument would not have been helpful to the court. A trial court is specifically authorized, in its discretion, to dispense with or limit oral argument with respect to motions. MCR 2.119(E)(3); *American Transmission*, *supra* at 709. The court did not abuse its discretion by limiting the length of oral argument in this case. *Id*.

V

Nor did the trial court abuse its discretion by awarding defendant Select Portfolio attorney fees in the amount of $5,000. This issue has not been properly presented for review because it is not included in plaintiffs' statement of the questions presented. MCR 7.212(C)(5); *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000). Nor is this issue raised or addressed in the argument section of plaintiffs' brief on appeal. MCR 7.212(C)(7). Nonetheless, we note that 15 USC 1692k(a)(3) specifically authorizes a court of competent jurisdiction—including a state court—to award reasonable attorney fees "[o]n a finding by the court that an action under [the FDCPA] was brought in bad faith and for the purpose of

harassment . . . ." As noted above, it is well settled that entities such as defendants in this case are not "debt collectors" within the meaning of the FDCPA when they obtain an interest in loans that are not in default. The evidence presented below suggested that plaintiffs filed this action for the sole purpose of interfering with the pending foreclosure proceedings and causing additional delay. Furthermore, the trial court's award of $5,000 was less than half of what defendant Select Portfolio actually requested. We cannot conclude that the trial court abused its discretion by awarding Select Portfolio attorney fees in the amount of $5,000 under 15 USC 1692k(a)(3). *Windemere Commons, supra* at 682.

Affirmed.

/s/ Kathleen Jansen
/s/ Pat M. Donofrio
/s/ Alton T. Davis