

STATE OF MICHIGAN
COURT OF APPEALS

HUNTINGTON NATIONAL BANK,

Plaintiff-Appellee,

v

DAVID W. DALE,

Defendant-Appellant.

UNPUBLISHED

July 21, 2009

No. 284662

Oakland Circuit Court

LC No. 07-082915-CK

Before: Talbot, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Defendant, David W. Dale, appeals as of right the grant of summary disposition in favor of plaintiff, Huntington Bank, pertaining to a debt owed following a foreclosure on real property. We affirm.

Defendant owned real estate located at 925 Dursley in Bloomfield Hills, Michigan. Defendant obtained a first mortgage on the property with First Nationwide/First Chicago. In July 2001, defendant applied and received a line of credit with plaintiff secured by a second mortgage on the same property in the amount of \$99,000. The second mortgage was duly recorded with the Oakland County Register of Deeds and acknowledged the existence of the prior mortgage with First Nationwide.

Defendant incurred financial difficulties and on April 28, 2005, defendant received written communication informing him that plaintiff would be commencing foreclosure proceedings due to default on his second mortgage. However, plaintiff did not initiate any proceedings. Subsequently, defendant's first mortgage was foreclosed through a sheriff's sale, which resulted in the receipt of \$188,559 for the property. Defendant contends he contacted an agent of plaintiff, who informed him that foreclosure of the first mortgage would result in a discharge of the second mortgage and that he relied on this information.

Plaintiff brought a motion for summary disposition, pursuant to MCR 2.116(C)(9) and (10). On March 12, 2008, the trial court granted summary disposition in favor of plaintiff. An order memorializing this ruling was entered and awarded plaintiff a judgment in the amount of \$93,866.97, which included court costs and attorney fees, plus interest pursuant to MCL 600.6013. This appeal ensued.

This Court reviews a trial court's decision to grant a motion for summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). "When deciding a motion under MCR 2.116(C)(9), which tests the sufficiency of a defendant's pleadings, the trial court must accept as true all well-pleaded allegations and properly grants summary disposition where a defendant fails to plead a valid defense to a claim Summary disposition under MCR 2.116(C)(9) is proper when the defendant's pleadings are so clearly untenable that as a matter of law no factual development could possibly deny the plaintiff's right to recovery." *Slater v Ann Arbor Pub Schools Bd of Ed*, 250 Mich App 419, 425-426; 648 NW2d 205 (2002). In reviewing a motion brought pursuant to MCR 2.116(C)(10), a court is required to examine the documentary evidence submitted and, drawing all reasonable inferences in favor of the nonmoving party, determine whether a genuine issue of material fact exists. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

At the outset, we note that defendant's entire argument pertaining to his assertion that foreclosure of the first mortgage resulted in the discharge of the second mortgage is comprised solely of two sentences and the citation to three cases, without any elaboration or articulation of how the holdings of the cited cases are relevant to his appeal or support the particular facts of his case. "A party may not rely on this Court to make his arguments for him." *Rorke v Savoy Energy, LP*, 260 Mich App 251, 260; 677 NW2d 45 (2003). "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. If a party fails to adequately brief a position, or support a claim with authority, it is abandoned." *Moses, Inc v SEMCOG*, 270 Mich App 401, 417; 716 NW2d 278 (2006) (internal citations omitted).

Next, defendant contends the trial court's grant of summary disposition was premature because discovery remained open and he was seeking information to support his asserted affirmative defenses, pertaining specifically to his claims of fraud and violation of various laws. "On this issue the standard of review is whether further discovery stands a fair chance of uncovering factual support for the opposing party's position." *Mowery v Crittenton Hosp*, 155 Mich App 711, 716; 400 NW2d 633 (1987). "Although incomplete discovery generally precludes summary disposition, summary disposition may nevertheless be appropriate if there is no disputed issue before the court or if further discovery does not stand a fair chance of finding factual support for the nonmoving party." *VanVorous v Burmeister*, 262 Mich App 467, 476-477; 687 NW2d 132 (2004). While Michigan's discovery rules are broadly construed, *Shinkle v Shinkle (On Rehearing)*, 255 Mich App 221, 225; 663 NW2d 481 (2003), they are not interpreted to permit "fishing expeditions." *VanVorous, supra* at 477 (citation omitted). The mere promise or assertion that additional facts could be established is insufficient to preclude summary disposition. *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999).

When opposing the grant of summary disposition premised on the basis of incomplete discovery, a litigant is required to comply with MCR 2.116(H), which necessitates the presentation of affidavits in support of his or her position. *Coblentz v Novi*, 475 Mich 558, 570-571; 719 NW2d 73 (2006). Although defendant attached an affidavit to his response to plaintiff's motion for summary disposition, the affidavit had originally been submitted in support of his efforts to set aside a default judgment and did not technically comply with the

requirements of MCR 2.116(H). As such, defendant should not be permitted to now assert that summary disposition was premature. *Coblentz, supra* at 571.

Finally, defendant contends plaintiff failed to mitigate its damages. Notably, defendant does not argue that the sheriff's sale or foreclosure were improperly conducted, merely that plaintiff should have exercised a right to redemption and/or assured that a better price was obtained for the property. Contrary to defendant's assertion, "[n]ot having exercised such right of redemption, the question of sufficiency of price has not been saved to serve defendant[] as a defense in this suit. Inadequacy of price cannot vitiate a statutory foreclosure sale which is otherwise regular. Neither does it afford ground for holding a second mortgage note satisfied." *Blackwood v Sawinski*, 221 Mich 464, 469; 191 NW 207 (1922) (internal citations omitted). As such, there is no basis to support defendant's contention regarding plaintiff's failure to mitigate its damages.

Affirmed.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra