

STATE OF MICHIGAN
COURT OF APPEALS

CITY OF DETROIT,

Plaintiff-Appellee,

v

MICHAEL KELLY, DETROIT LEASING
COMPANY and DETROIT LEASING, INC.,

Defendants-Appellants,

and

TAXPAYER (6821 EAST FERRY), PRESTON
INVESTMENTS, INC. and ROBERT W. PHILIP,

Defendants.

UNPUBLISHED

October 13, 2009

No. 280974

Wayne Circuit Court

LC No. 07-710328-CH

Before: Murray, P.J., and Gleicher and M.J. Kelly, JJ.

PER CURIAM.

In this real property ownership dispute, defendants Michael Kelly, Detroit Leasing Company and Detroit Leasing, Inc. appeal as of right a circuit court order quieting title in plaintiff City of Detroit. We affirm.

This action commenced when plaintiff filed a one-count complaint seeking to quiet title in its favor with respect to 6821 East Ferry Street in Detroit. The complaint alleged that plaintiff “acquired the property through tax foreclosure,” specifically a circuit court judgment of tax foreclosure ultimately entered on June 29, 2005. The complaint also averred that “[d]efendants all claim an interest in 6821 E. Ferry through documents filed with the Wayne County Register of Deeds *after*” plaintiff had recorded with the register of deeds in April 2004 a notice of “lis pendens in connection with the tax foreclosure matter.” (Emphasis in original). Plaintiff theorized that because the “lis pendens constitutes constructive notice from the time of its recording that not only is there active litigation pending that could effect [sic] the title to the property, but that any interest in the property claimed by . . . Defendants . . . will be subject to the judgment rendered in the litigation,” the interests that defendants claimed through subsequently filed documents qualified as void against plaintiff’s tax foreclosure judgment.

After Kelly and the Detroit Leasing entities answered the complaint, plaintiff filed a motion for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff argued that as a matter of law, “any . . . interests claimed [by defendants] via documents filed with the Register of Deeds after the date that the lis pendens was filed” were secondary or subject to the ownership interest that plaintiff obtained through the June 2005 judgment of foreclosure on 6821 East Ferry.

Kelly and Detroit Leasing responded that “[a] notice of lis pendens is ineffectual against a party with an interest in property that existed prior to the notice, even if that interest was not recorded until after the notice was filed.” Kelly and Detroit Leasing asserted that several undisputed facts proved that they possessed an interest in 6821 East Ferry before plaintiff filed the notice of lis pendens on April 9, 2004: (1) on September 13, 2002, Detroit Leasing obtained a tax deed for paying 1998 taxes due on 6821 East Ferry, which invested them with “absolute title” to the property pursuant to MCL 211.72, (2) in July 2004, Detroit Leasing commenced an action to quiet title under MCL 211.79a, which mandates notice to all persons or entities “with a legal interest” in the property, (3) plaintiff did not receive its interest in the property until June 2005, (4) by this time, on May 13, 2005, the circuit court had entered a judgment quieting title in 6821 East Ferry in Detroit Leasing, thus perfecting Detroit Leasing’s interest in the property, and (5) Detroit Leasing recorded its quiet title judgment on July 13, 2005, while plaintiff recorded its judgment of foreclosure on May 22, 2006, giving Detroit Leasing a prior and superior interest according to MCL 565.29. Kelly and Detroit Leasing further maintained that plaintiff did not qualify as a bona fide purchaser of 6821 East Ferry because it neither paid consideration for its judgment of foreclosure nor received its interest in good faith, and, alternatively, that the terms of plaintiff’s foreclosure judgment plainly contemplated that it did not affect prior or subsequent tax lien-related interests. Kelly and Detroit Leasing urged the circuit court to grant summary disposition in their favor.

The circuit court held a summary disposition hearing, and initially declined to find that the language in plaintiff’s foreclosure judgment had no impact on the validity of Detroit Leasing’s interest. The court explained, “I just don’t read it to have the effect that [defense counsel] assert[s].” Concerning Detroit Leasing’s position that it had the priority interest because it recorded its quiet title judgment before plaintiff recorded its foreclosure judgment, the circuit court accepted plaintiff’s argument,

Plaintiff’s counsel: Well, technically, the operative date is the date the complaint for foreclosure is filed.

We go by the les pendence [sic] date just because we felt it’s more equitable. It’s a registered deed to something that everybody has access to. It’s a public record.

The Court: That’s enough. Okay. That’s all. Agreed for [plaintiff’s counsel].

The court lastly rejected that Kelly’s payment of taxes in 2004 and 2006, after plaintiff commenced its foreclosure action, affected its analysis regarding the priority of plaintiff’s interest. On September 7, 2007, the circuit court entered an order quieting title to 6821 East Ferry in plaintiff.

Kelly and Detroit Leasing maintain on appeal that the circuit court erroneously quieted title in plaintiff. We review de novo the circuit court’s summary disposition ruling, the equitable ruling quieting title, and any inherent legal questions of statutory interpretation.¹ *Richards v Tibaldi*, 272 Mich App 522, 528; 726 NW2d 770 (2006). A summary disposition motion premised on MCR 2.116(C)(10) tests the factual support for a claim. *Lewis v LeGrow*, 258 Mich App 175, 192; 670 NW2d 675 (2003). In reviewing a (C)(10) motion, this Court considers the pleadings and any affidavits, depositions, and other documentary evidence submitted by the parties in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists for trial, or whether the moving party was entitled to judgment as a matter of law. *Michigan Ed Employees Mut Ins Co v Turow*, 242 Mich App 112, 114-115; 617 NW2d 725 (2000).

When Detroit Leasing obtained its tax deed to 6821 East Ferry in September 2002, after paying in 2001 the overdue 1998 property taxes levied on the property, MCL 211.72 described the nature of Detroit Leasing’s interest, in relevant part as follows:

Upon presentation of the purchaser’s certificate of sale prescribed by section 71 to the state treasurer or his or her authorized representative after the expiration of the time provided by law for the redemption of lands sold for the nonpayment of taxes, the state treasurer shall cause a tax deed of conveyance of the land described in the certificate of sale to be executed and delivered to the purchaser, or his or her heirs or assigns, unless the sale was redeemed or annulled as provided by law. . . . The tax deed may be recorded in the office of the register of deeds of the proper county in the same manner and with like effect as other deeds duly witnessed, acknowledged, and certified. *The tax deeds convey an absolute title to the land sold, and constitute conclusive evidence of title, in fee, in the grantee, subject, however, to all taxes assessed and levied on the land subsequent to the taxes for which the land was bid off.* This title is also subject to

¹ “Well-established principles guide this Court’s statutory construction efforts. We begin our analysis by consulting the specific statutory language at issue.” *Bloomfield Charter Twp*, 253 Mich App 1, 10; 654 NW2d 610 (2002).

When faced with questions of statutory interpretation, our obligation is to discern and give effect to the Legislature’s intent as expressed in the words of the statute. We give the words of a statute their plain and ordinary meaning, looking outside the statute to ascertain the Legislature’s intent only if the statutory language is ambiguous. Where the language is unambiguous, we presume that the Legislature intended the meaning clearly expressed—no further judicial construction is required or permitted, and the statute must be enforced as written. [*Id.* (internal quotation omitted).]

When interpreting tax statutes, only “[w]hen there is doubt . . . [must] tax laws . . . be construed in favor of the taxpayer.” *Ameritech Publishing, Inc v Dep’t of Treasury*, 281 Mich App 132, 136; 761 NW2d 470 (2008) (internal quotation omitted).

unpaid special assessments and unpaid installments of special assessments. . . .
[Emphasis added.]²

The clear and unambiguous language of MCL 211.72 reflects that Detroit Leasing's tax deed vested it with "absolute title" to 6821 East Ferry, "subject, however, to all taxes assessed and levied on the land subsequent to the taxes for which the land was bid off."

Kelly and Detroit Leasing do not contest plaintiff's assertion that neither paid the taxes levied on 6821 East Ferry during tax years 1999, 2000, or 2001, which with penalties, interest and administration fees exceeded \$17,000. Several Michigan statutory provisions describe the potential impact of a real property owner's neglect to pay property taxes. "For taxes levied after December 31, 1998, property returned for delinquent taxes is subject to forfeiture, foreclosure, and sale as provided in sections 78 to 79a." MCL 211.60a(3). Section 78 authorizes the state or county treasurers to foreclose on forfeited property, and defines "forfeited" or "forfeiture" as "a foreclosing governmental unit may seek a judgment of foreclosure under section 78k if the property is not redeemed as provided under this act, but does not acquire a right to possession or any other interest in the property." MCL 211.78(6)(b).³ A local governmental unit, like plaintiff, also may collect property taxes and enforce tax liens on entering an agreement with the county. MCL 211.78(5).⁴

In MCL 211.78a, the Legislature described the circumstances in which forfeiture, foreclosure and sale of tax delinquent properties may occur. Section 78a contemplates, in pertinent part, as follows:

(1) For taxes levied after December 31, 1998, all property returned for delinquent taxes, and upon which taxes, interest, penalties, and fees remain unpaid after the property is returned as delinquent to the county treasurers of this state under this act, is subject to forfeiture, foreclosure, and sale for the enforcement and collection of the delinquent taxes as provided in section 78, this section, and sections 78b to 79a. As used in section 78, this section, and sections 78b to 79a, "taxes" includes interest, penalties, and fees imposed before the taxes become delinquent and unpaid special assessments or other assessments that are due and payable up to and including the date of the foreclosure hearing under section 78k.

(2) On March 1 in each year, taxes levied in the immediately preceding year that remain unpaid shall be returned as delinquent for collection. . . . Except as otherwise provided in section 79 for certified abandoned property, property delinquent for taxes levied in the second year preceding the forfeiture under section 78g or in a prior year to which this section applies shall be forfeited

² The Legislature repealed MCL 211.72 effective December 31, 2003. 1999 PA 123.

³ These definitions currently appear in MCL 211.78(7)(b).

⁴ Currently MCL 211.78(6).

to the county treasurer for the total of the unpaid taxes, interest, penalties, and fees for those years as provided under section 78g.

Pursuant to the referenced § 78g, “[O]n March 1 in each tax year, . . . property that is delinquent for taxes, interest, penalties, and fees for the immediately preceding 12 months or more is forfeited to the county treasurer for the total amount of those unpaid delinquent taxes, interest, penalties, and fees.” MCL 211.78g(1).

[F]ee simple title to property set forth in a petition for foreclosure filed under section 78h on which forfeited delinquent taxes, interest, penalties, and fees are not paid on or before the March 31 immediately succeeding the entry of a judgment foreclosing the property under this section, or in a contested case within 21 days of the entry of a judgment foreclosing the property under this section, shall vest absolutely in the foreclosing governmental unit, and the foreclosing governmental unit shall have absolute title to the property, including all interests in oil or gas in that property except the interests of a lessee or an assignee of an interest of a lessee under an oil or gas lease in effect as to that property or any part of that property if the lease was recorded in the office of the register of deeds in the county in which the property is located before the date of filing the petition for foreclosure under section 78h, and interests preserved as provided in section 1(3) of 1963 PA 42, MCL 554.291. The foreclosing governmental unit's title is not subject to any recorded or unrecorded lien and shall not be stayed or held invalid except as provided in subsection (7) or (9). [MCL 211.78k(6) (emphasis added).]

For the period applicable to the 1998 through 2001 real estate tax years, the 1997 Detroit City Charter provided that “the rights, duties, powers, and immunities established by state law shall apply in the collection and enforcement of city property taxes.” § 8-403(1). Pursuant to § 8-403(2), “City property taxes shall become a debt of the persons liable for them on the date provided by state law and shall become payable, and a lien upon the property, on the first (1st) day of the city’s fiscal year or such other date as may be provided by ordinance.” “Before the end of the city’s fiscal year, the treasurer shall give reasonable notice to all persons who are liable for delinquent real property taxes that, on the last day of the fiscal year, the city’s lien on real property for delinquent city real property taxes shall be deemed ‘sold’ to the finance director,” who “may sell the lien . . .” § 8-403(5).

Two (2) years after such a sale of the lien on any real property to the finance director, the city or other holder of the lien may bring a civil action to foreclose its lien.

If the city or other holder of the lien prevails in the action, the judgment, which may not be entered before one-hundred and twenty (120) days have expired from the filing of the complaint, shall provide that possession of the real property to which the lien attached shall be given to the city or other holder of the lien, unless the judgment and costs are paid within sixty (60) days. *The judgment when final shall be conclusive evidence of the city’s or other lienholder’s title in fee simple, subject only to unextinguished interests or encumbrances.* [§ 8-403(6) (emphasis added).]

The application of the clear and unambiguous terms of the General Property Tax Act (GPTA), and the relevant terms of the Detroit Charter, direct us to our conclusion in this case. Detroit Leasing correctly observes that its 2002 tax deed covering the 1998 real property tax year invested Detroit Leasing with absolute title to 6821 East Ferry. MCL 211.72. However, as plainly envisioned in MCL 211.72, this title remained “subject . . . to all taxes assessed and levied on the land subsequent to the taxes for which the land was bid off.” Detroit Leasing’s uncontested failure to pay real estate taxes on the property between 1999 and 2001 forfeited or relinquished its right to claim absolute title to the property on the basis of its 2002 tax deed. At a minimum, Detroit Leasing’s neglect to pay taxes between 1999 and 2001 subjugated its formerly “absolute title” to the title plaintiff obtained after Detroit Leasing’s unpaid tax-related forfeiture of its interest in the property and plaintiff’s pursuit of foreclosure under the GPTA; we emphasize that Kelly and Detroit Leasing do not challenge the propriety of plaintiff’s tax collection procedures or its initiation and pursuit of foreclosure proceedings. Because the possession of a tax deed under former MCL 211.72 does not immunize the deed holder from any further obligation to pay real estate taxes levied on the parcel, and because Detroit Leasing presented no evidence tending to suggest that it satisfied its property tax responsibility between 1999 and 2001, we conclude that as a matter of law plaintiff properly purchased tax liens for these years and properly pursued a foreclosure action, giving it a superior interest in the property. See MCL 211.78k(6) (“[F]ee simple title to [the] property set forth in a petition for foreclosure . . . shall vest absolutely in the foreclosing governmental unit, and the foreclosing governmental unit shall have absolute title to the property.”).

Kelly and Detroit Leasing seek to avoid the clear statutory import of their failure to pay real estate taxes levied subsequent to the 1998 tax lien purchase concerning 6821 East Ferry by suggesting, “DLC recorded before the City and the City’s notice of lis pendens did not affect DLC’s interest; therefore, DLC has a superior interest in the property to the City.” By operation of the GPTA and Detroit Charter provisions discussed above, when Detroit Leasing commenced its quiet title action in July 2004 and recorded its judgment quieting title on July 13, 2005, it had forfeited and failed to redeem 6821 East Ferry, giving plaintiff, the tax lien purchaser with respect to the 1999 through 2001 tax years, a superior interest in the property. Furthermore, plaintiff commenced its foreclosure action on April 6, 2004, and on April 9, 2004 recorded a notice of lis pendens concerning 6821 East Ferry, which served “[t]o render the filing of [the] complaint constructive notice to a purchaser of . . . [the] real estate” about the pending foreclosure action. MCL 600.2701(1). Consequently, Detroit Leasing’s later pursuit of a quiet title action and July 2005 recording of its judgment all occurred with constructive notice that plaintiff claimed a superior interest in 6821 East Ferry by virtue of Detroit Leasing’s prolonged failure to pay real estate taxes levied on the property. In summary, Detroit Leasing’s undisputed failure to pay property taxes over the course of several years or offer redemption forfeited or foreclosed it from asserting or obtaining an interest in 6821 East Ferry, premised on its purchase of the 1998 tax lien, superior to the interest that plaintiff obtained when it purchased the 1999 through 2001 tax liens and properly pursued foreclosure.

Kelly and Detroit Leasing additionally urge that the following paragraph of plaintiff's foreclosure judgment reflects the viability of its lien interests in 6821 East Ferry:

IT IS FURTHER ORDERED AND ADJUDGED: That unless the amount of this judgment and costs be paid as ordered on or before the expiration of sixty (60) days from the date hereof, this judgment shall be conclusive of and vest all right, title and interest in the City of Detroit in and to the said premises in fee as against all persons claiming any estate or interest whatsoever, whether arising or existing prior to the time such tax or special assessment first became a lien or subsequent thereto; provided, that *the foreclosure hereby ordered and the deed predicated upon this judgment (1) shall not affect any state or county taxes or assessments that have been bid to the State of Michigan or remain unpaid in the office of the Auditor General of the State of Michigan or Wayne County Treasurer whether the lien for such taxes or assessments became a lien prior to or subsequent to the tax and assessment lien hereby foreclosed; (2) shall not affect estates or interests arising from taxes or assessments becoming a lien subsequent to the lien hereby foreclosed,* [Emphasis added.]

Although Kelly and Detroit Leasing suggest that judgment clause (1) preserves the integrity of their 1998 tax lien purchase, by operation of statute Detroit Leasing simply has forfeited any claim of entitlement against plaintiff related to the 1998 tax lien by virtue of its prolonged failure to pay taxes levied on 6821 East Ferry. Moreover, the clear language of clause (1) does not extend to or encompass Detroit Leasing's payment of 1998 real property taxes, which have not "been bid to the State of Michigan or remain unpaid in the office of the Auditor General of the State . . . or Wayne County Treasurer."

Kelly and Detroit Leasing lastly maintain that judgment clause (2) above secured redemption lien interests they obtained by virtue of Kelly's property tax payments in 2004 and 2006. Kelly and Detroit Leasing neglected to raise their request for the imposition of 2004 and 2006 statutory redemption liens in either a counterclaim or their affirmative defenses. And "[w]hile issues not raised in the pleadings may be decided if the parties consent, here plaintiff specifically did not consent to the inclusion of the claims concerning the" 2004 and 2006 liens. *City of Bronson v American States Ins Co*, 215 Mich App 612, 619; 546 NW2d 702 (1996). Furthermore, even after reviewing the merits of Kelly's position, and the 2004 and 2006 Kelly-generated tax payment "claims" attached to defendants' brief, we find no proof that (1) Kelly's payments in 2004 and 2006 satisfied the entirety of the property taxes levied and delinquent with regard to 6821 East Ferry, together with "interest, penalties and fees," MCL 211.78g(3)(a), or (2) Kelly or Detroit Leasing adhered to the statutory mandate that they "record[] within 30 days with the register of deeds" the instruments documenting the redemption liens they claimed. MCL 211.78g(5).

We conclude that the circuit court correctly granted plaintiff summary disposition of its quiet title claim to 6821 East Ferry as a matter of law pursuant to MCR 2.116(C)(10), and that the court properly rejected Kelly's and Detroit Leasing's 2004 and 2006 redemption lien claims under subrule (C)(10). The circuit court reached the correct

results in this case, notwithstanding that it may have arrived at these results, at least in part, through incorrect reasoning. *2000 Baum Family Trust v Babel*, ___ Mich App ___; ___ NW2d ___ (Docket No. 284547, issued June 23, 2009), slip op at 11.

Affirmed.

/s/ Christopher M. Murray
/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly