

STATE OF MICHIGAN
COURT OF APPEALS

GABRIELLA BARTHLOW,

Plaintiff-Appellant,

v

FEDERAL HOME LOAN MORTGAGE
CORPORATION,

Defendant-Appellee.

UNPUBLISHED

February 9, 2010

No. 288427

Oakland Circuit Court

LC No. 2008-092300-CH

Before: Beckering, P.J., and Markey and Borrello, JJ.

PER CURIAM.

Plaintiff, acting *in propria persona*, appeals as of right from the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10). For the reasons set forth in this opinion, we affirm.

On October 1, 2003, Plaintiff contracted for a mortgage with ABN AMRO Mortgage Group for a property in Beverly Hills, Michigan. Plaintiff fell behind in her regularly scheduled payments, and made her last payment to ABN AMRO in July 2007. In August 2007, ABN AMRO notified plaintiff that CitiMortgage was the new servicer of the mortgage. A month later, plaintiff received notice that CitiMortgage was starting foreclosure proceedings. Notice of foreclosure was published in the *Oakland County Legal News* on October 5, 12, 19, and 26, 2007. Defendant purchased the property at a sheriff's sale on November 6, 2007. Although plaintiff continued to live in the home after the sale, she did not attempt to redeem the property during the six-month period provided by statute. In May 2008, defendant began proceedings to evict plaintiff, and received a judgment for possession on May 30, 2008. Plaintiff then filed suit against defendant to stay the eviction proceedings. On October 15, 2008, the trial court granted defendant's motion for summary disposition thereby dismissing plaintiff's complaint. The trial court entered an order of eviction on November 24, 2008.

We review de novo a trial court's decision to grant or deny summary disposition. *Mack v Detroit*, 467 Mich 186, 193; 649 NW2d 47 (2002). A motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of the claim solely on the basis of the pleadings. *Id.* A motion brought under MCR 2.116 (C)(10) is properly granted if there are no genuine issues of material fact upon which reasonable minds may differ. *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

Plaintiff claims that the particular publication in this case was fraudulent, and that foreclosure by advertisement is unlawful. Fraud must be pled with particularity. MCR 2.112(B)(1). Plaintiff represented herself in these proceedings, and although some leniency is afforded such litigants, they are not excused from application of the court rules. *Bachor v Detroit*, 49 Mich App 507, 512; 212 NW2d 302 (1973). After a review of the record, we find that plaintiff did not make anything other than broad and muddled allegations in any pleading she filed regarding any party committing a fraudulent act.

Plaintiff alleged that the advertisement was fraudulent because ABN AMRO was listed in the foreclosure publication instead of CitiMortgage, from whom plaintiff received notice of foreclosure. The central element of fraud is that a material misrepresentation has occurred. *Novi v Robert Adell Children's Funded Trust*, 473 Mich 242, 254 n 8; 701 NW2d 144 (2005). No such misrepresentation was made in this case. Plaintiff's allegation of fraud seems rooted in a misunderstanding of the foreclosure statute. MCL 600.3212(a) requires that the advertisement contain "[t]he names of the mortgagor, original mortgagee, and the foreclosing assignee, if any." The 2003 mortgage contract was between Plaintiff and ABN AMRO, thus making ABN AMRO the original mortgagee. Since no facts suggest that CitiMortgage was anything other than the mortgage servicer, the listing of ABN AMRO in the advertisement was not a material misrepresentation constituting fraud.

Michigan's foreclosure by advertisement statute states that, subject to certain requirements, "[e]very mortgage of real estate, which contains a power of sale, upon default being made in any condition of such mortgage, may be foreclosed by advertisement[]" MCL 600.3201. The constitutionality of this statute has been repeatedly upheld. See *Cheff v Edwards*, 203 Mich App 557, 560; 513 NW2d 439 (1994) (and cases cited therein). Defendant complied with the procedural requirements of the statute; therefore, we find that the foreclosure by advertisement in this case was valid.

We review de novo plaintiff's claim that she was denied due process. *Reed v Reed*, 265 Mich App 131, 157; 693 NW2d 825 (2005).

The Michigan Constitution provides that "[n]o person shall . . . be deprived of life, liberty or property, without due process of law." Const 1963, art 1, § 17. The due process clause applies to state actions but not to private conduct. *Dearborn v Freeman-Darling, Inc*, 119 Mich App 439, 442; 326 NW2d 831 (1982). Moreover, "foreclosure by advertisement is not a judicial action and does not involve state action for purposes of the Due Process Clause[.]" *Cheff, supra* at 560. Plaintiff entered into a contract for a mortgage with ABN AMRO in 2003. Plaintiff does not contend that ABN AMRO was a government actor. Therefore, government action is lacking from the foreclosure proceedings, and without such action there can be no due process violation.

In civil cases, due process requires that the party being deprived of a protected interest be given an opportunity to be heard in a meaningful time and manner. *VanSlooten v Larsen*, 410 Mich 21, 53; 299 NW2d 704 (1980). Plaintiff was given numerous opportunities to appear before the court for a full and fair hearing. At subsequent hearings, she continued to argue issues she already raised and that had been decided by the court. When the court declined to review plaintiff's evidentiary materials at the final hearing on November 24, 2008, the court had already been sufficiently informed of the circumstances of plaintiff's claims. Because further review by the court would simply have been merely cumulative, the court's failure to review the

evidentiary documents offered by plaintiff cannot be said to have resulted in a violation of plaintiff's due process rights.

Affirmed. Defendant, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Jane M. Beckering

/s/ Jane E. Markey

/s/ Stephen L. Borrello