STATE OF MICHIGAN

COURT OF APPEALS

PINES INVESTMENT COMPANY,

Plaintiff-Appellant,

v

MARK A. CANVASSER and DAVID L. STEUER,

Defendants-Appellees,

and

MILLER PARK TOWNHOME CONDOMINIUMS, L.L.C.,

Defendant.

UNPUBLISHED
August 19, 2010

No. 291314
Oakland Circuit Court
LC No. 2008-093197-CK

Before: K.F. KELLY, P.J., and WILDER and GLEICHER, JJ.

PER CURIAM.

In this action alleging the breach of a contract of guarantee, plaintiff Pines Investment Company appeals as of right a circuit court order granting defendants Mark A. Canvasser and David L. Steuer summary disposition pursuant to MCR 2.116(C)(10). We affirm, and decide this appeal without oral argument under MCR 7.214(E).

"A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion." *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). A court may grant summary disposition under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law." We review de novo a circuit court's summary disposition ruling. *Maiden*, 461 Mich at 118. We also consider de novo the legal question whether contractual language qualifies as ambiguous. *Hamade v Sunoco, Inc (R&M)*, 271 Mich App 145, 166; 721 NW2d 233 (2006).

The parties do not contest the basic facts underlying their dispute, rather they diverge only with respect to the meaning of the parties' agreement. Plaintiff insists that defendants have liability under the following pertinent language of a contract of guarantee between the parties:

> 5) Miller Park Townhomes, Mark A. Canvasser and David L. Steuer shall guarantee repayment of the mortgage to Pines Investment Co. and it's [sic] assignees according to the following terms:
>
> * * *
>
> C) If the mortgage is foreclosed, upon the expiration of the Mortgage Sale Redemption Period, Miller Park, Canvasser and Steuer will, upon demand, reduce the amount of delinquent indebtedness to an amount no greater than the total of 6 monthly payments, reimburse Pines for all costs expended (approx. $1,200.00) and pay all taxes due. Guarantors will then continue payments at an interest rate of 9% per year until the mortgage is paid in full, according to the terms of the original documents.
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> * * *
>
> 6) If this Guarantee is enforced, then the Guarantors shall have the right to repair, market and sell the property. Any money received in excess of the mortgage pay-off will belong to the Guarantors.
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> * * *
>
> If default of this guarantee is made by Miller Park, Canvasser and Steuer, then Pines shall have the right to sell the property and if there shall be a shortfall from the sale, demand payment from Miller Park, Canvasser and Steuer for the shortfall. . . .

Plaintiff correctly submits that the above-quoted guarantee provisions reflect the parties' contemplation that defendants could have continuing obligations and rights after foreclosure of the guaranteed mortgage occurred. But consistent with the unambiguous language comprising guarantee paragraph 5(C), defendants' postforeclosure obligation existed only to the extent of an outstanding "amount of delinquent indebtedness" related to the mortgage. See *DaimlerChrysler Corp v G-Tech Professional Staffing, Inc*, 260 Mich App 183, 185; 678 NW2d 647 (2003) (observing that an unambiguous contract must be enforced according to the plain and ordinary meaning of the words used in the agreement). The mere fact that the parties envisioned the continuation of defendants' obligations after a foreclosure sale in some circumstances does not demonstrate that the contract is ambiguous, nor does it show that defendants breached the contract.

As we have noted, guarantee paragraph 5(C) governs defendants' liability. That paragraph triggers defendants' obligations when the mortgage foreclosure takes place and the redemption period expires. If plaintiff then made a demand, defendants would have to "reduce the amount of delinquent indebtedness . . . , reimburse [plaintiff] for all costs expended[,] . . . pay

all taxes due," and "continue payments . . . until the mortgage is paid in full . . . ." Here, however, the parties do not dispute that plaintiff made a full credit bid at the foreclosure sale.

> When a lender bids at a foreclosure sale, it is not required to pay cash, but rather is permitted to make a credit bid because any cash tendered would be returned to it. If this credit bid is equal to the unpaid principal and interest on the mortgage plus the costs of foreclosure, this is known as a "full credit bid." When a mortgagee makes a full credit bid, the mortgage debt is satisfied, and the mortgage is extinguished. [*New Freedom Mortgage Corp v Globe Mortgage Corp*, 281 Mich App 63, 68; 761 NW2d 832 (2008).]

As a purchaser at a foreclosure sale, a mortgagee stands in the same position as any other purchaser. *Id*. at 74. And if a third party had bought the foreclosed property for the same amount, specifically the unpaid principal and interest on the mortgage, no "delinquent indebtedness" would have remained for defendants to have to pay under guarantee paragraph 5(C). Consequently, plaintiff's identity as the full credit bidder, rather than a third party, does not expand defendants' obligations under the guarantee. "With [plaintiff's] bid at the foreclosure sale of the entire amount of the indebtedness, no deficiency existed and the absence of a deficiency removed any potential claim of [plaintiff] under the guarantee." *Bank of Three Oaks v Lakefront Properties*, 178 Mich App 551, 561; 444 NW2d 217 (1989). In summary, because plaintiff made a full credit bid, no deficiency, i.e., no "amount of delinquent indebtedness," existed that defendants were obligated to pay under paragraph 5(C).

The plain language of guarantee paragraph 6 establishes that defendants' responsibilities thereunder only become effective "[i]f this Guarantee is enforced . . . ." And defendants' obligations set forth in the unnumbered last guarantee paragraph are triggered only "[i]f default of this guarantee is made by [defendants] . . . ." *DaimlerChrysler Corp*, 260 Mich App at 185. Because the guarantee was not enforced and defendants did not default on the guarantee, these paragraphs have no applicability to the instant circumstances.

Plaintiff presented to the circuit court an affidavit and some email exchanges as evidence of the parties' intent in entering the guarantee agreement and how they interpreted the agreement. "When construing a contract, the goal is to ascertain and enforce the parties' intent on the basis of the plain language of the contract." *New Freedom Mortgage Corp*, 281 Mich App at 76. "When a contract is unambiguous, it must be enforced according to its terms." *Hamade*, 271 Mich App at 166. Parol evidence generally is not admissible to vary the terms of an unambiguous contract. *Id*. Although some exceptions to the parol evidence rule exist, *id*. at 167-168, the parties do not contend that any exceptions apply in this case. Because the guarantee language at issue in this case is not ambiguous, the circuit court correctly refused to consider the parol evidence offered by plaintiff.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Kurtis T. Wilder
/s/ Elizabeth L. Gleicher