STATE OF MICHIGAN

COURT OF APPEALS

ALBERTA L. FENN-VANDIVER,

Plaintiff-Appellant,

v

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (MERS), THE BANK OF NEW YORK MELLON f/k/a THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFIED HOLDERS OF CWABS 2004-BC4, and TROTT & TROTT, P.C.,

Defendants-Appellees.

UNPUBLISHED
January 24, 2012

No. 299900
Wayne Circuit Court
LC No. 10-003769-CZ

Before: GLEICHER, P.J., and CAVANAGH and O'CONNELL, JJ.

MEMORANDUM.

Plaintiff appeals by right an order granting defendants' motion for summary disposition in this foreclosure action. We affirm.

Plaintiff obtained a mortgage from Intervale Mortgage Corporation, but Mortgage Electronic Registration Systems, Inc. (MERS) was the designated mortgagee and nominee of the lender. When plaintiff defaulted on the mortgage, MERS foreclosed by advertisement under MCL 600.3204, purchased the property at the subsequent sheriff's sale, and then quitclaimed the property to defendant The Bank of New York Mellon. Plaintiff sued, alleging in relevant part that MERS was not authorized by MCL 600.3204(1)(d) to foreclose by advertisement because it had no interest in the indebtedness. The trial court disagreed and granted defendants' motion for summary disposition. This appeal followed.

Plaintiff argues that MERS was not "the owner of the indebtedness or of an interest in the indebtedness secured by the mortgage;" therefore, MCL 600.3204(1)(d) did not authorize it to foreclose by advertisement and the trial court's decision to the contrary was erroneous. After de novo review of the court's decision to grant defendants' motion for summary disposition, we disagree. See *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

Our Supreme Court recently considered this precise issue whether MERS, a mortgagee and not the note holder, was authorized by MCL 600.3204(1)(d) to foreclose by advertisement and concluded in the affirmative. *Residential Funding Co, LLC v Saurman*, 490 Mich 909; 805

NW2d 183 (2011). Specifically, the Court held that MERS, the mortgagee of record, was the owner of "an interest in the indebtedness secured by the mortgage" as required by MCL 600.3204(1)(d) because its "contractual obligations as mortgagee were dependent upon whether the mortgagor met the obligation to pay the indebtedness which the mortgage secured." *Saurman*, 490 Mich at 909. The Court further held:

> We clarify, however, that MERS' status as an "owner of an interest in the indebtedness" does not equate to an ownership interest in the note. Rather, as recordholder of the mortgage, MERS owned a security lien on the properties, the continued existence of which was contingent upon the satisfaction of the indebtedness. This interest in the indebtedness — i.e., the ownership of legal title to a security lien whose existence is wholly contingent on the satisfaction of the indebtedness—authorized MERS to foreclose by advertisement under MCL 600.3204(1)(d). [*Saurman*, 490 Mich at 909.]

Because the facts of this case are not distinguishable from those of *Saurman*, we conclude that MERS was the owner of "an interest in the indebtedness secured by the mortgage" as required by MCL 600.3204(1)(d) and, thus, was authorized to foreclose by advertisement.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Mark J. Cavanagh
/s/ Peter D. O'Connell