

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

CAESAREA DEVELLE JAMES,  
  
Plaintiff-Appellant,

UNPUBLISHED  
August 2, 2012

v

DLJ MORTGAGE CAPITAL and WMC  
CAPITAL CORPORATION,

No. 303944  
Oakland Circuit Court  
LC No. 2010-114245-CH

Defendants-Appellees.

---

Before: TALBOT, P.J., and SERVITTO and M. J. KELLY, JJ.

PER CURIAM.

In this case, involving a foreclosure sale, plaintiff, Caesarea Develle James, appeals as of right the order granting summary disposition in favor of defendant DLJ Mortgage Capital<sup>1</sup> and the order denying plaintiff's motion for restraining order/injunction. We affirm.

On December 18, 2006, plaintiff obtained a loan in the original principal amount of \$520,000 from WMC. A mortgage (containing plaintiff's signature) for property located at 6925 Stone Drive, Clarkston, Michigan also dated December 18, 2006 was provided as security for the note. The mortgage provided that upon default, lender could invoke the power of sale. Mortgage Electronic Registration System ("MERS") was the original mortgagee, but it assigned the mortgage to WMC on October 1, 2007, who in turn assigned its interest to defendant DLG on September 18, 2009.

There is no question that plaintiff defaulted on the loan. Plaintiff claims he made the equivalent of two mortgage payments, total, on the loan. Defendant countered that plaintiff made one payment, had not made a mortgage payment in the previous 2-1/2 years, and still continued to live at the property. Defendant therefore initiated foreclosure proceedings. The notice of sheriff's sale was posted on the property on March 17, 2010, with the date of sale stated as April 13, 2010. Notice of the sale was published four times. The sheriff's deed notes that the sale was thereafter adjourned to April 27, 2010, by posting.

---

<sup>1</sup> Although WMC Capital Corporation is named as a defendant, the lower court record indicates WMC was never served with the complaint and never appeared in the matter.

Plaintiff filed an amended complaint on December 9, 2010, and alleged the following counts: (1) unfair trade practices involving non-compliance, 15 USC § 1601, *et seq.*, Ohio Mortgage Act 1301 and State of Michigan mortgage laws; (2) disclosure violation pursuant to 15 USC § 1635, *et seq.*; (3) missing statement violation, pursuant to 15 USC § 1635, *et seq.*; (4) mortgage servicing fraud; (5) violation of notary laws for Michigan and Ohio; (6) violating Ohio Mortgage Act by WMC and DLJ not having an office in Ohio; (7) violation of FTC “Holder Rule” (16 CFR part 433) and unjust enrichment with unclean hands.

On March 10, 2011, plaintiff filed a “Motion for Restraining Order/Injunction to Set Aside and Vacate Sheriff Sale Due to Fraud and Usury Violation Stated in the Complaint to Quiet Title to Real Property [sic].” On March 21, 2011, plaintiff filed “Amended Motion for Permanent Injunction to Set Aside and Vacate Sheriff Sale Due to Fraud and Usury Violation Stated in the Complaint to Quiet Title to Real Property [sic]” and an addendum to this same motion. In these filings, plaintiff argued that his signature was not on the acknowledgment page of the mortgage; the foreclosure sale was defective and notice was improper; the interest rate was changed from 9.295 to 11.727 percent; the mortgage violated Ohio law; and, that WMC failed to document plaintiff’s assets on the mortgage loan documents. The trial court apparently denied plaintiff’s motion. Plaintiff filed an amended motion for a permanent injunction on April 11, 2011, and, after oral argument on April 20, 2011, the trial court again denied the motion.

Plaintiff also moved for “summary judgment” on the basis of MCR 2.116(C)(10), arguing that he did not execute the mortgage; that Ohio law was violated; that defendant did not have standing to foreclose; that the interest rate was changed; that the documents were not authentic; and, that MERS failed to comply with Michigan franchise tax law. Plaintiff filed an addendum on March 21, 2010, and additionally asserted that defendant violated statutory foreclosure rules; the adjournment of the sale was improper; the foreclosure was void; and, that plaintiff was denied due process of law. Defendant responded and moved for summary disposition pursuant to MCR 2.116(C)(8) and (I)(2). Plaintiff filed another addendum on April 27, 2011, and argued that MERS could not foreclose by advertisement.

At a hearing on plaintiff’s motion for summary disposition on May 4, 2011, plaintiff added to his list of arguments by orally arguing that the applicable statutory redemption period was one year, rather than six months; that assignment was improper; and, that the person who signed the documents as vice president did not exist. In a written order, the trial court denied plaintiff’s motion for summary disposition and granted summary disposition in favor of defendant pursuant to MCR 2.116(C)(8). The trial court noted that Ohio law did not apply, plaintiff’s claims regarding Truth in Lending Act were time barred; plaintiff had not alleged the elements of fraud; and, that the FTC Holder Rule did not apply to the mortgage. The trial court also noted the redemption period had expired, even if it was one year, such that plaintiff lacked standing to pursue his claims. This appeal followed.

We review a trial court’s grant or denial of a motion for summary disposition *de novo*. *Liggett Restaurant Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2d 633 (2003). MCR 2.116(C)(8) allows for summary disposition when “[t]he opposing party has failed to state a claim on which relief can be granted.” Motions for summary disposition under MCR 2.116(C)(8) test the legal sufficiency of the complaint. *Id.* When reviewing a motion brought under MCR 2.116(C)(8), “[a]ll well-pleaded factual allegations are accepted as true and

construed in a light most favorable to the nonmovant.” *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). “A court may only grant a motion pursuant to MCR 2.116(C)(8) where the claims are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery.” *Wade v Dep’t of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992) (citation omitted).

When the statutory requirements for mortgage foreclosure are met, the trial court lacks authority to set aside a foreclosure sale absent the establishment of fraud, accident, or mistake. *Freeman v Wozniak*, 241 Mich App 633, 637-638; 617 NW2d 46 (2000) (citation omitted). On appeal, plaintiff asserts that the statutory foreclosure procedures were not followed, in several ways. We find that none of plaintiff’s arguments have merit.

First, plaintiff argues the sheriff sale was not properly noticed. It is unclear if notice was proper pursuant to MCL 600.3220. However, “[i]n situations where it is evident that no harm was suffered, in that the mortgagor would have been in no better position had notice been fully proper and the mortgagor lost no potential opportunity to preserve some or any portion of his interest in the property,” there is “little merit” in holding the sale void. *Jackson Investment Corp v Pittsfield Prods, Inc*, 162 Mich App 750, 755-756; 413 NW2d 99 (1987).

Notably, we have previously concluded that when there is an alleged failure to comply with the foreclosure notice statute, invalidation of the foreclosure sale is not warranted when the mortgagor was not timely in challenging the validity of the foreclosure sale, made no effort to redeem or take any action until well after the redemption period had run and thus could show any prejudice from the alleged defect in the notice of adjournment. *Sweet Air Investment, Inc v Kenney*, 275 Mich App 492, 503; 739 NW2d 656 (2007). In this case, the sheriff’s deed supports that the sale was adjourned for two weeks by posting. Plaintiff has not shown the foreclosure sale was invalid; that he would have taken different action, but for a defect in the notice of the two week adjournment; and, he made no effort for months thereafter to challenge the validity of the foreclosure sale. Regardless whether notice was proper, then, plaintiff has completely failed to demonstrate prejudice. MCL 600.3220; *Sweet Air Investment, Inc*, 275 Mich App at 503.

Plaintiff next argues that the alleged improper notice denied him due process of law. Plaintiff does not cite any authority to support this proposition. “A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim.” *Nat’l Waterworks, Inc v Int’l Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007) (citation omitted). And, an “appellant’s failure to properly address the merits of his assertion of error constitutes abandonment of the issue.” *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 626-627; 750 NW2d 228 (2008) (quotation omitted). We therefore consider this argument abandoned on appeal and we need not address it.

Plaintiff also argues the redemption period was one year rather than six months. Assuming, without deciding, that plaintiff is correct and the redemption period was one year, filing a law suit does not extend the statutory redemption period. “The law in Michigan does not allow an equitable extension of the period to redeem from a statutory foreclosure sale in connection with a mortgage foreclosed by advertisement and posting of notice in the absence of a clear showing of fraud, or irregularity.” *Schulthies v Barron*, 16 Mich App 246, 247-248; 167

NW2d 784 (1969) (citation omitted). If the redemption period was one year, it expired April 27, 2011 and the trial court did not grant summary disposition until May 5, 2011. Moreover, plaintiff has not shown that even if the redemption period was one year that the trial court improperly granted summary disposition on any of his claims.

Plaintiff also argues there was no power of sale in the mortgage and, on that basis, the foreclosure violated MCL 600.3201. Plaintiff's argument is incorrect because there is, in fact, a power of sale in the mortgage.

Plaintiff further appears to challenge the acknowledgment of the mortgage. However, his argument on this issue is abandoned because he fails to rationalize the basis for his claim or to address the merits of his position. *Nat'l Waterworks, Inc*, 275 Mich App at 265; *Woods*, 277 Mich App 626-627.

Plaintiff also argues the mortgage is not valid because the copy filed does not have original signatures as required by MCL 565.201(1)(a). However, MCL 565.201(4) provides that any instrument recorded "shall be conclusively presumed to comply with this act." The mortgage was recorded and, pursuant to MCL 565.201(4), is presumed to comply with the statute.

Plaintiff additionally argues that the mortgage is invalid because it violated Ohio law. The mortgage provides that it is governed by federal law and the law of the state where the property is located. Thus, Ohio law does not apply to this case where the property subject to this appeal was located in Michigan.

Plaintiff also argues that pursuant to MCL 565.9, the mortgage was not executed according to Ohio notary laws. Plaintiff did not raise MCL 565.9 as grounds for challenging the mortgage in the trial court, and this argument is unpreserved. This Court will not address this unpreserved issue. *Burns v Detroit (On Remand)*, 253 Mich App 608, 615; 660 NW2d 85 (2002), mod 468 Mich 881 (2003).

Plaintiff also raises several other unpreserved issues, specifically regarding the assignment of the mortgage, whether there was a power of attorney to represent the "securitized trust mortgage and note," and whether the mortgage was signed by a fake vice president. Although plaintiff vaguely referenced these issues as facts below, "[g]enerally, an issue is not properly preserved if it is not raised before, and addressed and decided by, the trial court." *Hines v Volkswagon of America, Inc*, 265 Mich App 432, 443-444; 695 NW2d 84 (2005) (citations omitted). These issues were not raised as justiciable issues, addressed and decided by the trial court, are unpreserved, and will not be addressed on appeal. *Burns*, 253 Mich App at 615.

Plaintiff further raises issues concerning the trial court's denial of his motion for an injunction because the trial court did not look up a court rule when plaintiff did not know the citation and the trial court's refusal to consider plaintiff's amended motion. Importantly, plaintiff already requested a permanent injunction in this Court and that motion was denied. *James v DLJ Mortgage Capital*, unpublished order of the Court of Appeals, entered April 28, 2011 (Docket No. 303719). An appeal of the order denying plaintiff's motion for a permanent injunction would thus properly be before our Supreme Court. MCR 7.301(A)(2).

We further note that the rule plaintiff argues that the trial court should have looked up was MCR 2.118(A)(4). Plaintiff argues this rule provides that an amended motion supersedes the previous motion. However, MCR 2.118(A)(4) only applies to pleadings. Motions are not pleadings. MCR 2.110(A). Thus, even if the trial court had found and cited the rule plaintiff was erroneously relying upon, looking it up for plaintiff would not have benefited plaintiff in any way. Regarding plaintiff's assertion that the trial court did not consider his amended motion, the lower court record supports that the trial court actually did consider the amended motion in reaching a decision. Thus, plaintiff's arguments regarding the amended motion and the injunction must fail.

Plaintiff also argues the trial court violated his rights under the Americans with Disabilities Act. This argument is unpreserved and we will not consider it on appeal. *Burns*, 253 Mich App at 615.

Plaintiff further argues the interest rate on the mortgage was changed in a "bait and switch" from 9.295 percent to 11.727 percent. However, the 11.727 percent number was the annual percentage rate on a Federal Truth In Lending Disclosure Statement, not the interest rate on the mortgage. The evidence does not support that the interest rate on the mortgage changed in the manner suggested by plaintiff, and plaintiff's argument must fail.

Plaintiff also argues that the trial court abused its discretion when it did not investigate allegations of ROBO signing on the mortgage and when the trial court did not find the statute of limitations for a TILA violation was tolled due to plaintiff's mental illness. Neither of these arguments were raised below, are not preserved, and will not be addressed. *Id.*

Finally, plaintiff argues that the trial court abused its discretion when it failed to order that the original mortgage be produced, pursuant to MRE 1002. Plaintiff failed to address the merits of this argument and it is abandoned on appeal. *Woods*, 277 Mich App at 626-627; *Newton v West*, 262 Mich App 434, 437 n 2; 686 NW2d 491 (2004).

In sum, the majority of the arguments plaintiff raises on appeal are not preserved or have been abandoned on appeal. Considering those arguments that were properly raised, plaintiff has not established that the trial court improperly granted summary disposition in favor of defendant pursuant to MCR 2.116(C)(8).

Affirmed.

/s/ Michael J. Talbot  
/s/ Deborah A. Servitto  
/s/ Michael J. Kelly