

STATE OF MICHIGAN
COURT OF APPEALS

MUJAHED ELHADY,

Plaintiff-Appellant,

v

CITIMORTGAGE, INC.,

Defendant-Appellee.

UNPUBLISHED

July 19, 2012

No. 304745

Wayne Circuit Court

LC No. 10-014234-CH

Before: O'CONNELL, P.J., and JANSEN and RIORDAN, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition and dismissing plaintiff's complaint. We affirm.

I. BASIC FACTS

This action arises from defendant's foreclosure of a mortgage on plaintiff's property. Plaintiff and his wife obtained a loan from Flagstar Bank in 2004. The loan was secured by a mortgage that was assigned to defendant in April 2010. After plaintiff defaulted on the loan, defendant initiated foreclosure proceedings and, on May 26, 2010, the property was sold at a sheriff's sale to the Federal National Mortgage Association (Fannie Mae). Plaintiff had until November 26, 2010, to redeem the property. He did not do so. In December 2010, plaintiff filed this action, asserting a claim for promissory estoppel. Plaintiff alleged that after the property was sold, but before the redemption period expired, defendant agreed to a "short sale," but reneged on that agreement after plaintiff had secured a buyer. Plaintiff sought to set aside the foreclosure and compel the short sale. The trial court granted defendant's motion for summary disposition on the ground that plaintiff lacked standing to sue because he no longer had any interest in the property.

II. STANDING

The trial court's ruling on a motion for summary disposition is reviewed de novo on appeal.¹ Whether a party has standing to bring an action is a question of law that is also reviewed de novo.²

The concept of standing in the context of a legal proceeding means that a party must have suffered an actual, particularized impairment of a *legally protected* interest, that the opposing party can be in some way shown to be responsible for that impairment, and that a favorable decision by a court could likely redress that impairment.³

The purpose of the standing doctrine is to require that litigation be brought “only by a party having an interest that will assure sincere and vigorous advocacy.”⁴ “[A] litigant has standing whenever there is a legal cause of action.”⁵

Promissory estoppel is a recognized cause of action. “Promissory estoppel is a judicially created doctrine that was developed as an equitable remedy applicable in common-law contract actions.”⁶ “The elements of promissory estoppel are: (1) a promise, (2) that the promisor should reasonably expect to induce action or forbearance on the part of the promisee, (3) that in fact induces such action or forbearance, and (4) injustice can be avoided only by performance of the promise.”⁷

Plaintiff sought relief from the mortgage foreclosure and sale. Once a mortgage is foreclosed by advertisement, the rights of the parties are governed by statute.⁸ When property foreclosed by advertisement is sold at a sheriff's sale, the officer making the sale must “forthwith execute, acknowledge, and deliver to each purchaser a deed of the premises bid off by him”⁹ Once the premises are sold, the mortgagor can redeem the property by paying the amount bid

¹ *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

² *American Family Ass'n of Mich v Mich State Univ Bd of Trustees*, 276 Mich App 42, 44-45; 739 NW2d 908 (2007).

³ *Walgreen Co v Macomb Twp*, 280 Mich App 58, 62; 760 NW2d 594 (2008) (emphasis in original).

⁴ *City of Kalamazoo v Richland Twp*, 221 Mich App 531, 534; 562 NW2d 237 (1997).

⁵ *Lansing Schools Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010).

⁶ *Crown Technology Park v D&N Bank, FSB*, 242 Mich App 538, 548 n 4; 619 NW2d 66 (2000).

⁷ *Gore v Flagstar Bank, FSB*, 474 Mich 1075, 1079; 711 NW2d 330 (2006) (KELLY, J., dissenting), citing Restatement Contracts 2d § 90, p 242.

⁸ *Senters v Ottawa Savings Bank, FSB*, 443 Mich 45, 52-53; 503 NW2d 639 (1993).

⁹ MCL 600.3232.

for the property plus interest and fees within the time allowed.¹⁰ The parties do not dispute that the redemption period was six months,¹¹ or until November 26, 2010, and that the property was not redeemed during that period. Unless the premises are redeemed within the time allowed,

such deed shall thereupon become operative, and shall vest in the grantee therein named, his heirs or assigns, all the right, title, and interest which the mortgagor had at the time of the execution of the mortgage, or at any time thereafter, except as to any parcel or parcels which may have been redeemed and canceled¹²

In other words, the mortgagor's rights in and to the property are extinguished.¹³ Therefore, at the time plaintiff filed suit on December 8, 2010, he no longer had any interest in the property to sell, by short sale or otherwise.¹⁴ Further, because the property had been sold to Fannie Mae, defendant had no interest that it could grant to plaintiff for purposes of a short sale or to plaintiff's proposed buyer directly. Because plaintiff had no interest in the property on which to base his cause of action, the trial court properly granted defendant's motion.

II. STATUTE OF FRAUDS

The trial court did not reach defendant's additional argument that plaintiff's promissory estoppel claim was also barred by the statute of frauds.

MCL 566.132(2) provides:

An action shall not be brought against a financial institution to enforce any of the following promises or commitments of the financial institution unless the promise or commitment is in writing and signed with an authorized signature by the financial institution:

(a) A promise or commitment to lend money, grant or extend credit, or make any other financial accommodation.

¹⁰ MCL 600.3240(1) and (2).

¹¹ MCL 600.3240(8).

¹² MCL 600.3236.

¹³ *Piotrowski v State Land Office Bd*, 302 Mich 179, 187; 4 NW2d 514 (1942).

¹⁴ To the extent plaintiff claims that, pursuant to this Court's holding in *Residential Funding Co, LLC v Saurman*, 292 Mich App 321; 807 NW2d 412 (2011), the foreclosure was void *ab initio* because defendant held the mortgage but may not have held the note it secured, we disagree. Our Supreme Court reversed this Court's decision in *Residential Funding* and held that a mortgage holder is in fact authorized to foreclose by advertisement. *Residential Funding Co, LLC v Saurman*, 490 Mich 909; 805 NW2d 183 (2011).

(b) A promise or commitment to renew, extend, modify, or permit a delay in repayment or performance of a loan, extension of credit, or other financial accommodation.

(c) A promise or commitment to waive a provision of a loan, extension of credit, or other financial accommodation.

Plaintiff does not dispute that his claim involves a promise or commitment relating to a financial accommodation that comes within the parameters of MCL 566.132(2)(a)-(c). He claims instead that the statute of frauds cannot defeat a claim based on promissory estoppel. However, because the statute “addresses the area of conduct promissory estoppel ordinarily governs-oral promises,”¹⁵ it precludes a cause of action against a financial institution for promissory estoppel predicated on breach of an oral promise that comes within the parameters of MCL 566.132(2)(a)-(c).¹⁶ Thus, the statute of frauds bars plaintiff’s claim.

Affirmed.

/s/ Peter D. O’Connell

/s/ Kathleen Jansen

/s/ Michael J. Riordan

¹⁵ *Crown Technology Park*, 242 Mich App at 549.

¹⁶ *Id.* at 550-553