STATE OF MICHIGAN

COURT OF APPEALS

BENJAMIN WHITFIELD, JR.,

Plaintiff-Appellant,

v

OCWEN BERKELEY FEDERAL BANK & TRUST, f/k/a BERKELEY FEDERAL BANK & TRUST, and RAYMOND RECH,

Defendants-Appellees.

UNPUBLISHED
December 28, 2001

No. 221248
Wayne Circuit Court
LC No. 97-728285-CH

Before: Saad, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals as of right, challenging the trial court's order granting defendants summary disposition in this action to set aside a foreclosure sale. We affirm.

Plaintiff argues that the foreclosure by advertisement method used in this case violated his right to due process. We disagree. Although the procedures for a foreclosure by advertisement are established by statute, MCL 600.3201 *et seq.*, the foreclosure by advertisement option is a contractual remedy between the parties, not a right created by the statute. *Cramer v Metropolitan Savings & Loan Ass'n*, 401 Mich 252, 259; 258 NW2d 20 (1977). Thus, there is no state action involved and a due process question is not presented. *Id.* at 259-260; *Cheff v Edwards*, 203 Mich App 557, 560; 513 NW2d 439 (1994); *Manufacturers Hanover Mortgage Corp v Snell*, 142 Mich App 548, 552-553; 370 NW2d 401 (1985); *National Airport Corp v Wayne Bank*, 73 Mich App 572, 576-578; 252 NW2d 519 (1977). Plaintiff here has failed to show that there is any state action involved and, accordingly, cannot show that his right to due process was violated.

Relying on federal law and the United States Bankruptcy Code, 11 USC 101 *et seq.*, plaintiff also argues that he was entitled to additional notice of the foreclosure proceedings and that the posting of weekly adjournments of the foreclosure sale violated the automatic stay entered by the bankruptcy court. However, only plaintiff's tenant had filed for bankruptcy protection. Because plaintiff was not the petitioner in the bankruptcy proceeding, we conclude that he lacks standing to challenge the foreclosure sale based on the protections of the Bankruptcy Code. *Lopez v Lopez*, 191 Mich App 427, 428-429; 478 NW2d 706 (1991).

Plaintiff also argues that the notice of foreclosure was defective because his name was not included on the notice. MCL 600.3212(a) requires that a mortgagor, mortgagee, and the foreclosing assignee of a recorded assignment of a mortgage be named in the notice. Here, although plaintiff obtained the subject property by quit claim deed from the mortgagor, he never assumed the mortgage and, therefore, did not obtain the status of a mortgagor. Under the plain language of MCL 600.3212, plaintiff's name was not required to be included on the notice of foreclosure. Procedurally, notice of foreclosure by advertisement requires publication in a local newspaper and posting on the premises. MCL 600.3208. These requirements were satisfied in this case and were sufficient to provide the necessary legal notice of the pending foreclosure proceedings. *Cheff, supra* at 559-561.

Plaintiff argues that the foreclosure sale should be set aside on the basis of fraud committed by defendant OCWEN when one of its employees promised to notify plaintiff of any default or foreclosure on the mortgage. Plaintiff claims that defendant OCWEN failed to notify him of the default or foreclosure action as he was promised. However, there is no dispute that defendant OCWEN followed the statutory procedures for notice in a foreclosure by advertisement.

Plaintiff appears to rely on the trial court's equitable powers to be relieved from the foreclosure sale because he did not have actual notice of the foreclosure proceeding. However, where a specific statute exists and specifies the procedures to be followed, there is generally no basis for applying equitable principles absent fraud, accident or mistake. *Senters v Ottawa Savings Bank, FSB*, 443 Mich 45, 55-57; 503 NW2d 639 (1993); *Freeman v Wozniak*, 241 Mich App 633, 637; 617 NW2d 46 (2000).

Common-law fraud requires (1) a material representation, (2) a false representation, (3) that when the defendant made the representation, the defendant knew that it was false, or made it recklessly and without knowledge of its truth, (4) that the defendant made the representation with the intention that the plaintiff would act upon it, (5) that the plaintiff did act upon it, and (6) the plaintiff suffered damages. *M & D, Inc v McConkey*, 231 Mich App 22, 27; 585 NW2d 33 (1998). Fraud must be specifically pled; general allegations are not sufficient to state a claim for fraud. *LaMothe v Auto Club Ins Ass'n*, 214 Mich App 577, 586; 543 NW2d 42 (1995).

Plaintiff claims that defendant OCWEN did not inform him of the foreclosure sale. Simply because plaintiff did not receive actual notice from defendant OCWEN, however, does not establish fraudulent conduct or that there was a misrepresentation by defendant OCWEN. Furthermore, the type of fraud sufficient to set aside a foreclosure sale must generally relate to the foreclosure procedure or sale itself. *Freeman, supra* at 637-638. In this case, defendants followed the statutory procedures for foreclosure by advertisement, which did not require notice to plaintiff. Plaintiff has failed to sufficiently establish fraudulent conduct by defendant OCWEN.

Finally, we reject plaintiff's argument that the trial court was prohibited from granting defendants summary disposition where it had previously denied defendants' motions for summary disposition. First, plaintiff has not cited any legal authority in support of his argument that the trial court lacked the authority to correct its previous ruling. It is not for this Court to search for authority to sustain a party's position. *Wilson v Taylor*, 457 Mich 232, 243; 577

NW2d 100 (1998). To the extent plaintiff relies on the law-of-the-case doctrine, his reliance is misplaced. The doctrine does not apply to limit a trial court's authority to reconsider or change its own rulings. See *Freeman v DEC Internat'l, Inc*, 212 Mich App 34, 37-38; 536 NW2d 815 (1995).

Affirmed.

/s/ Henry William Saad
/s/ David H. Sawyer
/s/ Peter D. O'Connell