

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

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JAMES W. MATTESON,

Plaintiff-Appellee/Cross-Appellant,

V

STONEHENGE CONDOMINIUM  
ASSOCIATION,

Defendant-Appellee,

and

LESLIE LONDON, individually and d/b/a C & H  
HOLDING COMPANY,

Defendant-Appellant/Cross-Appellee.

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UNPUBLISHED

September 10, 2002

No. 231713

Oakland Circuit Court

LC No. 00-021289-CH

Before: Fitzgerald, P.J., and Bandstra and Gage, JJ.

PER CURIAM.

Defendant, Leslie London, d/b/a C & H Holding Company (London), appeals as of right the order for redemption encompassing a prior order granting summary disposition pursuant to MCR 2.116(G)(4) in favor of plaintiff, James W. Matteson. Matteson appeals as of right an order granting summary disposition pursuant to MCR 2.116(C)(8) and (10) in favor of Stonehenge Condominium Association ("Stonehenge"). We affirm in part and reverse in part.

Matteson purchased a condominium unit at Stonehenge Condominiums in 1994. In the months of May, October, and November 1998, Matteson did not pay his common maintenance assessments to Stonehenge. Stonehenge placed a statutory lien on Matteson's property and subsequently foreclosed on the property for the unpaid fees and costs. London attended the foreclosure sale and obtained a sheriff's deed on Matteson's property on December 15, 1998 under the name of C & H Holding Company. The Sheriff's Deed on lien foreclosure stated, "During the six months immediately following the sale, the property may be redeemed." Matteson allegedly attempted to tender the full redemption amount at the Oakland County Register of Deeds on June 16, 1999, but was informed that the redemption period expired one day earlier.

Matteson filed suit against both Stonehenge and London in March 2000. The trial court granted Matteson's motion for summary disposition of his claim against London on the ground that London failed to respond to Matteson's allegation that London was illegally conducting business under an assumed name because she did not file a certificate of assumed name as required by MCL 445.1. The court granted summary disposition in favor of Stonehenge on the grounds that Matteson either failed to state a claim or failed to present genuine issues of fact with regard to his claims that the sale did not comply with various statutory and bylaw conditions and that he was denied due process. The court also awarded Matteson six months from the date of the order to redeem the condominium.

## I

London argues that she did respond to the motion for summary disposition and, therefore, the court erred in granting summary disposition in favor of Matteson on the procedural ground that she failed to respond. We agree. A review of the record reveals that London responded to the motion exactly seven days before the hearing, and, therefore, the response was timely. MCR 2.114(G)(4). Although London stated in her response that she thought she filed an assumed name certificate and did not attach a copy to the response, her response cited relevant authority for the proposition that an entity that conducts business under an assumed name without filing a certificate of assumed name cannot be stripped of its property rights because of a failure to file the certificate.

MCL 445.1 provides that a person cannot engage in business in the state of Michigan under an assumed name if the person does not file an assumed name certificate with the county where business is conducted. The penalty for violating MCL 445.1 is set forth in MCL 445.5, which states that noncompliance with MCL 445.1 does not "avoid contracts" entered into under an assumed name. Indeed, the Supreme Court has stated that the language in MCL 445.5 saves business contracts entered into under an assumed name that has not been registered. *Wilson v Boyer*, 275 Mich 667, 672; 267 NW 760 (1936). Thus, even though London was acting contrary to MCL 445.1 when she entered into the contract for the purchase of the property in question, London's deed is not unenforceable and she may defend her rights to the property in question.<sup>1</sup> Accordingly, we conclude that the trial court erred by granting summary disposition of plaintiff's claim against London in favor of plaintiff and granting Matteson six months to redeem the property. Because London was a bona fide purchaser, and because plaintiff failed to timely redeem the property after a proper foreclosure by advertisement (see Issue II), summary disposition in favor of London is appropriate.

## II

On cross-appeal, Matteson argues that the trial court erred as a matter of law in granting Stonehenge's motion for summary disposition with regard to each of Matteson's claims.

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<sup>1</sup> However, London could not bring suit in relation to any contract made or done under an assumed name until after full compliance with the provisions of assumed or fictitious name act. See MCL 445.5.

First, Matteson argues that Stonehenge violated MCL 559.184a(1) by failing to provide him with a copy of the condominium bylaws. However, MCL 559.184a(1)(a) provides that the “developer” shall provide copies of various documents including the recorded master deed. A review of the record reveals that Matteson never alleged Stonehenge was the developer of the condominium complex, and therefore the trial court did not err in finding that Matteson failed to state a claim.

Second, Matteson argues that Stonehenge failed to post a notice of sale or lien foreclosure on Matteson’s property in violation of MCL 600.3208, which provides, “within 15 days after the first publication of the notice, a true copy shall be posted in a conspicuous place upon any part of the premises described in the notice.” In support of this allegation, Matteson supplied his affidavit stating that he did not see a notice of notice of a lien foreclosure sale on the condominium prior to the sheriff’s sale on December 15, 1998. However, Stonehenge provided a copy of the Sheriff’s Deed on lien foreclosure that states, “pursuant to the statute of the State of Michigan in such case made and provided, a notice was duly published and a copy thereof was duly posted in a conspicuous place upon the premises described in said lien . . .” The affidavit attached to the Sheriff’s Deed reflects posting on 11/21/98 on the left side of the door at 23617 Stonehenge # 54. Such an affidavit is presumptive evidence of the facts contained therein. MCL 600.3264. The fact that Matteson did not see the notice is insufficient to create a genuine issue of material fact in light of documentary evidence that the notice was duly posted in a conspicuous place. Hence, summary disposition was properly granted.

Third, Matteson alleged that the Sheriff’s deed incorrectly stated that the redemption period was six months and that he he one year to redeem the property under MCL 600.3240(12). He alleged that he timely attempted to redeem the property on June 16, 1999, but was told that the redemption period had expired. The trial court did not address in its opinion the proper period of redemption. However, assuming, without deciding, that plaintiff had one year to redeem the property,<sup>2</sup> a review of plaintiff’s response to the motion for summary disposition reveals that plaintiff did not submit any documentary evidence to support the allegation that he attempted to redeem the property within one year of the date of sale. Hence, he failed to show that there was a genuine issue of material fact and summary disposition was appropriate.

Fourth, Matteson argues that the addition of the attorney fees to the lien amount violated MCL 559.206. We disagree. MCL 559.206(b) provides in pertinent part:

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<sup>2</sup> MCL 559.208(2), the statute governing foreclosure of an assessment lien, was amended by 2000 PA 379, effective January 2, 2001, to provide a redemption period of six months from the date of sale. Before the amendment, the statute was silent regarding a specific period of redemption and provided only that « a foreclosure shall be in the same manner as a foreclosure under the laws relating to foreclosure of real estate mortgages by advertisement or judicial action. »

In a proceeding arising because of an alleged default by a co-owner, the association of co-owners, if successful, may recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the court.<sup>3</sup>

The condominium bylaws also state that the expenses incurred "shall be charges to the co-owner in default and shall be secured by the lien on his unit." Thus, under both MCL 559.206(b) and the pertinent section of the condominium association bylaws, Stonehenge is empowered to collect the attorney fees at issue. Thus, we find that the trial court did not err in granting summary disposition to Stonehenge on this claim.

Fifth, Matteson argues that the trial court improperly granted summary disposition of the claim for breach of contract. Matteson has failed to provide any authority in support of his argument and, therefore, we decline to review it.<sup>4</sup> We note, however, that Matteson failed to allege that he provided Stonehenge with the name and address of the mortgagor, a flaw fatal to his claim.

Sixth, Matteson argues that the trial court improperly granted summary disposition of the claim for unjust enrichment that was based on Matteson's alleged payment of condominium association fees before, during, and after the redemption period. However, as the lower court correctly pointed out, unjust enrichment is an equitable claim, and this Court may not intervene in a statutory foreclosure action. *Heimerdinger v Heimerdinger*, 299 Mich 149, 154-155; 299 NW 844 (1941). Therefore, because Matteson has not specifically alleged that Stonehenge committed "fraud in conducting the legal measures" associated with the foreclosure sale, Matteson has not shown that there is a matter of material fact at issue, and summary disposition was proper. MCR 2.116(C)(10).

Last, Matteson argues that summary disposition of the claim for violation of due process was improperly granted because the foreclosure by advertisement was not authorized by the condominium bylaws. We disagree. Under Michigan law, a "lien [for delinquent assessment] may be foreclosed by an action or by advertisement by the association of co-owners in the name of the condominium project . . ." MCL 559.208(1). Foreclosure by advertisement does not implicate state action and, therefore, a due process question is not presented. *Cramer v Metropolitan Savings & Loan Ass'n*, 401 Mich 252, 259-260; 258 NW2d 20 (1977).<sup>5</sup>

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<sup>3</sup> This statute was amended effective January 1, 2001.

<sup>4</sup> Matteson alleged that Stonehenge breached a contract by failing to provide notice to the first mortgage holder of the default in Matteson's performance of his obligation to pay the assessments.

<sup>5</sup> Matteson's claim for injunctive relief was dismissed by stipulation of the parties.

The trial court's grant of summary disposition in favor of Stonehenge is affirmed. The trial court's grant of summary disposition in favor of Matteson on his claims against London is reversed. On remand, the trial court is directed to enter summary disposition in favor of London with no further redemption period for Matteson. Jurisdiction is not retained.

/s/ E. Thomas Fitzgerald

/s/ Richard A. Bandstra

/s/ Hilda R. Gage