

STATE OF MICHIGAN
COURT OF APPEALS

JANNIFER MARTIN,

Plaintiff-Appellant,

v

HOUSEHOLD FINANCE CORPORATION, d/b/a
HOUSEHOLD MORTGAGE SERVICES,

Defendant-Appellee.

UNPUBLISHED
December 13, 2005

No. 262711
Wayne Circuit Court
LC No. 04-423972-CK

Before: Cavanagh, P.J., and Cooper and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right the grant of summary disposition in favor of defendant on plaintiff's complaint to quiet title in this dispute concerning real property. Because the trial court did not err when it held that the foreclosure procedure and redemption amount were proper, summary disposition was appropriate, and we affirm.

This case arises from a dispute surrounding title to residential property located in Detroit, Michigan. Darion Dantzler executed a mortgage with defendant on the property in April 2002. Dantzler remained current with his mortgage obligations until his untimely death in October 2003. Following Dantzler's death, his mother who had power of attorney authorization, quit claimed the subject property to plaintiff, Dantzler's girlfriend and the mother of his minor child. Approximately four months later, plaintiff submitted two consecutive payments to defendant on Dantzler's mortgage. Defendant returned the payments to plaintiff and initiated foreclosure proceedings on the property. Defendant was the successful bidder at the foreclosure sale on the property. Plaintiff neither bid on the property at the foreclosure sale, nor attempted to redeem the property, and instead elected to initiate a petition to quiet title to the property in circuit court. Ultimately, the trial court granted defendant's motion for summary disposition in the matter, and it is that ruling plaintiff now appeals.

Plaintiff contends that the trial court erred in granting summary disposition in favor of defendant because defendant was precluded from initiation of foreclosure proceedings due to noncompliance with the requirements of MCL 600.3204. Plaintiff also argues, in equity, that the foreclosure should be set aside based on defendant's alleged fraud. Because plaintiff did not raise either assertion below and the trial court did not rule on them, *Hilgendorf v St John Hosp and Medical Center Corp*, 245 Mich App 670, 700; 630 NW2d 356 (2001), we review the issues

only for plain error affecting plaintiff's substantial rights. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000). We review plaintiff's contention regarding the trial court's error in determining the redemption price for the property de novo, consistent with the standard for the grant of summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003).

Although plaintiff failed to specifically allege defendant's noncompliance with the requirements of MCL 600.3204 below, either in conjunction with her petition to quiet title or in response to the motion for summary disposition, and has thereby waived the issue, we address the issue to the extent it relates to plaintiff's asserted redemption rights. *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 532-533; 672 NW2d 181 (2003).

The only statutory requirement plaintiff alleges is MCL 600.3204(1)(a) pertaining to the existence of a default in a condition of the mortgage. Specifically, MCL 600.3204 provides, in relevant part:

(1) A party may foreclose a mortgage by advertisement if all of the following circumstances exist:

(a) A default in a condition of the mortgage has occurred, by which the power to sell became operative.

Plaintiff asserts an interest in the subject property based on a series of quit claim deeds, resulting in transfer of the property to plaintiff. However, paragraph eighteen of defendant's mortgage document provides, in relevant part:

If all or any part of the Property or any Interest in the Property is sold or transferred (or if Borrower is not a natural person and a beneficial interest in Borrower is sold or transferred), without Lender's prior written consent, Lender may require immediate payment in full of all sums secured by this Security Instrument.

* * *

If Lender exercised this option, Lender shall give Borrower notice of acceleration.
. . . If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

Our review of the record reveals that plaintiff provides no evidence that defendant authorized any transfer of the property in accordance with the requirements plainly set out in paragraph eighteen of the mortgage document. Without having secured defendant's prior approval, any transfer of the property was improper and constituted a default condition for the purpose of initiating foreclosure. MCL 600.3204(1).

Plaintiff contends default on defendant's part, and such default occurred when defendant rejected the mortgage payments she submitted in accordance with Danztler's mortgage. However, plaintiff has not demonstrated compliance with the mortgage payment requirements by

evidencing consistency of payment, at the very least, from October 2003 until plaintiff reinitiated mortgage payments approximately four months later. Plaintiff's failure to submit payments in accordance with the mortgage requirements constituted a default. The mortgage terms include the following, in relevant part:

Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note.

Further, the mortgage specifically provides that, "[l]ender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current." Because plaintiff's payments did not address any missed payments or late charges incurred, defendant was not required to accept the payments according to the plain language of the mortgage. As such, defendant was justified, based on the default conditions, in pursuing a foreclosure action. MCL 600.3204(1).

While the trial court acknowledged plaintiff's interest in the property, the trial court did not imply that she had rights superior to defendant. And contrary to plaintiff's assertions, any property interest she had did not preclude defendant's right to foreclose on the property. Michigan is a recording priority jurisdiction. Recordation of a mortgage serves as notice to any subsequent purchaser or party in interest and such interest takes subject to any lien or mortgage on the land. MCL 565.25(4); *Piech v Beaty*, 298 Mich 535, 538; 299 NW 705 (1941).

Plaintiff next contends that representations allegedly made to her by defendant's agents, that she could qualify to assume the mortgage based on her credit history and continuation of mortgage payments, constituted fraud and should preclude foreclosure on the property. Plaintiff has not properly pled fraud. Plaintiff failed to allege fraud in her petition to quiet title or response to the motion for summary disposition. "In allegations of fraud or mistake, the circumstances constituting fraud or mistake must be stated with particularity." MCR 2.112(B)(1). Her failure to allege fraud or provide specific allegations of fraud is insufficient to sustain her claim. A plaintiff cannot leave it to this Court to "discover and rationalize the basis" for her fraud claim. *In re Toler*, 193 Mich App 474, 477; 484 NW2d 672 (1992).

Finally, based on her alleged interest in the property, plaintiff argues that she should have been permitted to redeem the property for the outstanding mortgage balance rather than the sale price at foreclosure. Contrary to plaintiff's position, the redemption price for the property is not the outstanding balance of the mortgage. Rather, the redemption price is dictated by statute. MCL 600.3240(2) defines that:

The amount required to be paid under subsection (1) is the sum that was bid for the entire premises sold, with interest from the time of the sale at the rate percent borne by the mortgage, together with the amount of the sheriff's fee paid by the purchaser under section 2558(2)(q), and an additional \$3.00 as a fee for the care and custody of the redemption money if the payment is made to the register of deeds.

Plaintiff does not argue that defendant did not pay the amount alleged to purchase the property at the sale or that the calculation of the redemption amount did not accurately reflect the dictates of MCL 600.3240(2). Rather, plaintiff merely contends that she should not be required, in order to

redeem the property, to assume any of the additional costs incurred for the foreclosure. Plaintiff's position is contrary to the clear and unambiguous language of MCL 600.3240(2) and cannot be supported. In any event, defendant was the successful bidder on the property at the foreclosure sale. Plaintiff was aware of the sale, but did not participate in the bidding. Following the sale, the property was subject to a six-month statutory redemption period, in accordance with MCL 600.3240(8). The parties even stipulated to a thirty day extension of the redemption period. Plaintiff simply did not redeem the property within the required time period. MCL 600.3240(1).

Affirmed.

/s/ Mark J. Cavanagh

/s/ Jessica R. Cooper

/s/ Pat M. Donofrio