

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

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CITIFINANCIAL MORTGAGE CO., LLC,

Plaintiff-Appellant,

v

COMERICA BANK,

Defendant-Appellee,

and

NORMA J. HETTICH,

Defendant.

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UNPUBLISHED  
December 21, 2006

No. 270453  
Genesee Circuit Court  
LC No. 05-081083-CH

Before: Zahra, P.J., Cavanagh, and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant-appellee summary disposition. We affirm.

I. Basic Facts and Procedure

Defendant Norma J. Hettich owned a home in Byron, Michigan. The balance owed on the home was secured by two mortgages: a first (senior) mortgage and defendant-appellee's future advance (junior) mortgage, i.e., a line of credit, the limit of which was \$15,000. The junior mortgage was recorded on April 25, 2001. In November, 2002, Hettich, following the death of her husband a year earlier, sought to refinance the loans. Plaintiff agreed to refinance the loans.

Tri County Title Agency handled the refinance closing for plaintiff. The original, first mortgagee was paid off and the first mortgage subsequently discharged.<sup>1</sup> To complete the

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<sup>1</sup> Mortgages are discharged pursuant to MCL 565.41.

closing, defendant-appellee sent a mortgage payoff statement via fax to the agency, stating the loan payoff amount. Besides providing the Hettiches' names and the home address at the top of the form, the payoff statement also included a conspicuous notation, warning that any amount it received would be credited toward the line of credit and that it would not terminate Hettich's line of credit without her authorizing signature.<sup>2</sup> The statement provided a signature line where a debtor could sign to have the loan terminated and the mortgage discharged. Several days later, Tri County disbursed a check to defendant-appellee for the amount owed as well as a copy of the mortgage payoff statement, but, according to defendant-appellee, the statement it received did not contain any signature. Following its internal procedure<sup>3</sup> and consistent with the notation on the payoff statement, defendant-appellee posted the payment to Hettich's line of credit account but did not close the account or discharge the mortgage – leaving her with \$15,000 of credit, which she later exhausted. Consequently, because defendant-appellee never discharged the mortgage, it assumed senior status over plaintiff's later-recorded mortgage. Hettich subsequently defaulted on both loans, the creditor parties foreclosed on the property and plaintiff sought determination of its priority, asserting that Hettich had indeed signed the payoff statement at her refinance closing and that defendant-appellee received the signed document. Plaintiff also sought an action to quiet title.

Following cross motions for summary disposition, defendant-appellee deposed Hettich. During the deposition, defendant-appellee showed Hettich a loan payoff statement that included her husband's name and her name above the address of the mortgaged home – but had no signature. Hettich said she was not familiar with the document. Defendant-appellant then showed her an identical document, except it was signed "Norma Hettich" in the space indicating the signer wanted the line of credit ended and the mortgage discharged. She questioned the authenticity of the signature.

*Q.* And do you recognize that signature?

*A.* Well, it's my name, but I don't write my signature like that.

However, under questioning by plaintiff, Hettich was uncertain as to whether the signature were hers.

*Q.* And you said it doesn't look like how you signed your name. You didn't say you didn't sign it.

*A.* No.

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<sup>2</sup> The notation reads: IMPORTANT: Comerica Bank is prohibited by law to close a home equity account without written instructions from the account owner. Any Payment Received for the amount stated above will be applied to the account balance WITHOUT closing or releasing the mortgage, unless the account owner instructs us to do so below, or on a separate signed request.

<sup>3</sup> Upon receipt, a Comerica employee would inspect the payoff statement for a signature indicating the line of credit should be closed. A "cease" code would then be entered to prevent any additional loan advances from occurring.

Q. So that's why I wanted to ask.

A. I can't say that. I mean I know I don't sign my name like this now. And if I was in a hurry, like say I was signing so many papers without even reading them, because I know I don't make my Rs that way. But yet other things look like mine, so I couldn't swear. I would never say no, I didn't sign it.

Q. Okay.

A. I'm just saying it don't look like the way I sign my signature now.

Defendant-appellee retained the services of a forensic document analyst, Michael J. Sinke. Sinke analyzed several signatures known to be Hettich's and compared them to the signature on the payoff statement. He concluded that it was highly probable the signature on the payoff statement was not Hettich's and was "an attempt by someone to simulate it as her signature."

The court below granted defendant-appellee's motion and denied plaintiff's motion for summary disposition. It also denied plaintiff's request for equitable relief in the form of quieting title because the court determined it did not have the power to grant equitable relief in this case.

## II. Analysis

On appeal, plaintiff claims that the conflicting accounts about the signature's authenticity creates a genuine issue of material fact. Additionally, plaintiff claims the court below could grant equitable relief in this case. We disagree.

### 1. Plaintiff Did Not Offer Evidence To Support Its Claim About The Signature

We review de novo a trial court's grant or denial of summary disposition. *Spiek v. DOT*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion under MCR 2.116(C)(10) must be supported by affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(3)(b). The adverse party may not rest upon mere allegations or denials of a pleading, but must, by affidavits or other appropriate means, set forth specific facts to show that there is a genuine issue for trial. MCR 2.116(G)(4). All this supporting and opposing material must be considered by the court. MCR 2.116(G)(5). *Patterson v. Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). Summary disposition cannot be avoided by conclusory assertions that are at odds with prior sworn testimony of a party . . . . *Aetna Casualty & Sur. Co. v. Ralph Wilson Plastics Co.*, 202 Mich App 540, 548; 509 NW2d 520 (1993), citing *Gamet v Jenks*, 38 Mich App 719, 726; 197 NW2d 160 (1972).

In this case, plaintiff offers only conclusory evidence that Hettich signed the payoff statement but offers nothing to support the conclusion; on the other hand, defendant-appellee produced an identical payoff statement without any signature and a report from a handwriting expert to show the alleged signature relied on by plaintiff was not Hettich's. Moreover, Hettich cast substantial doubt on the authenticity of the signature on the payoff statement produced by plaintiff. To avoid summary disposition, plaintiff needed to come forward with more than what

is conclusory – plaintiff had to produce evidence that the signature on the document it relied on was authentic. Plaintiff failed to present such evidence.

## 2. The Court Correctly Determined That Its Equitable Powers Did Not Apply Here

Actions to quiet title under Michigan’s Revised Judicature Act are “equitable in nature.” MCL 600.2932(5). [A]n equitable remedy is neither necessary nor appropriate where a resolution under the law is available. *Everett v Nickola*, 234 Mich App 632, 637; 599 NW2d 732 (1999). MCL 565.44 provides:

(1) If a mortgagee or the personal representative or assignee of the mortgagee, after full performance of the condition of the mortgage, whether before or after a breach of the mortgage, or, if the mortgage is entirely due, after a tender of the whole amount due, within the applicable time period in subsection (2) after being requested and after tender of the mortgagee's reasonable charges, refuses or neglects to discharge the mortgage as provided in this chapter or to execute and acknowledge a certificate of discharge or release of the mortgage, the mortgagee is liable to the mortgagor or the mortgagor's heirs or assigns for \$1,000.00 damages. The mortgagee is also liable for all actual damages caused by the neglect or refusal to the person who performs the condition of the mortgage or makes the tender to the mortgagee or the mortgagee's heirs or assigns, or to anyone who has an interest in the mortgaged premises. Damages under this section may be recovered in an action for money damages or to procure a discharge or release of the mortgage. The court may, in its discretion, award double costs in an action under this section.

Thus, an adequate legal remedy was available to plaintiff under MCL 565.44. Plaintiff could have sought money damages or could have sought discharge of the mortgage. An action to quiet title is neither. Additionally, plaintiff argues that it should be allowed to recover through subrogation. But plaintiff’s position is not one where subrogation would lie, as this Court determined in *Deutsche Bank Trust Co Americas v Spot Reality, Inc*, 269 Mich App 607; 714 NW2d 409 (2005). In that case, priority interests similar to the ones here were also at issue. In *Deutsche Bank*, this Court relied on our Supreme Court’s determination in *French v Grand Beach Co.*, 239 Mich 575, 580-581; 215 NW 13 (1927), that subrogation is an equitable remedy. As already noted, plaintiff here cannot seek equity where it has an adequate legal remedy. Moreover, the Court in *French* reiterated its earlier position in *Stroh v O’Hearn*, 176 Mich 164, 177; 142 NW 865 (1913), that subrogation is not available to a mere volunteer, i.e., one who steps in to satisfy the original debt in question without a legal or equitable duty to do so.

In this case, plaintiff stepped in to refinance Hettich’s mortgages but had no duty to do so. Therefore, even if equity were available to plaintiff, it is a mere volunteer and cannot rely on subrogation.

Affirmed.

/s/ Brian K. Zahra  
/s/ Mark J. Cavanagh  
/s/ Bill Schuette