STATE OF MICHIGAN

COURT OF APPEALS

WEXFORD PARKHOMES CONDOMINIUM ASSOCIATION,

Plaintiff-Appellant,

v

MURRAY KATZMAN and ELIZABETH GOODMAN KATZMAN,

Defendants/Cross-Defendants,

and

BANKERS TRUST COMPANY,

Defendant/Cross-Plaintiff-Appellee.

UNPUBLISHED
May 22, 2008

No. 277746
Oakland Circuit Court
LC No. 2006-076532-CH

Before: Owens, P.J., and Meter and Schuette, JJ.

PER CURIAM.

Plaintiff Wexford Parkhomes Condominium Association (Wexford), appeals as of right from the trial court's January 10, 2007 opinion and order granting summary disposition to defendant Bankers Trust Company (Bankers Trust). We affirm.

I FACTS

Defendants Murray and Elizabeth Katzman owned a condominium unit in Wexford's condominium complex. On November 27, 2001, two mortgages were executed on the Katzman condominium in favor of Decision One Mortgage Company, LLC (Decision One). On December 6, 2001, Decision One assigned the Katzman mortgages as follows: $25,000 to Mortgage Electronic Registration Systems, Inc. (MERS) and $100,000 to Bankers Trust. Both mortgages were recorded with the Oakland County Register of Deeds on February 27, 2002, in Liber 24947; the MERS mortgage appears at page 634 and the Bankers Trust mortgage appears at page 811.

In early 2005, the Katzmans stopped paying their monthly assessment fees as required by the condominium bylaws. On March 15, 2005, Wexford recorded a condominium assessment lien against the Katzmans' condominium under the condominium assessment lien act, MCL

559.208. On August 8, 2006, Wexford filed suit against the Katzmans and Bankers Trust for non-payment of condominium assessments and for foreclosure of its assessment lien.

Elizabeth Katzman failed to defend the suit, and a default judgment was entered against her on February 14, 2007.[1] Bankers Trust defended, claiming that Wexford's assessment lien was subordinate to its mortgage interest. On December 4, 2006, Wexford moved for summary disposition under MCR 2.116(C)(10), arguing that there was no genuine issue of material fact that its assessment lien was superior to Bankers Trust's mortgage interest under the MCL 559.208 because the MERS mortgage was recorded before the Bankers Trust mortgage. Bankers Trust responded on December 27, 2006, asserting that is was entitled to summary disposition under MCR 2.116(I)(2) because there was no genuine issue of material fact that its mortgage was the "first mortgage of record" under MCL 559.208(1); therefore, its mortgage had priority over Wexford's lien.

On January 10, 2007, the trial court dispensed with oral arguments and issued its written opinion and order denying Wexford's motion and granting summary disposition in favor of Bankers Trust under MCR 2.116(I)(2). The trial court concluded that the phrase "first mortgage of record" in MCL 559.208(1) meant the first mortgage of record that has priority status under the race-notice statute, MCL 565.25. Accordingly, the trial court found that the MERS mortgage, although filed first in time, was not the "first mortgage of record" under MCL 559.208(1) because it was a second mortgage and therefore did not have priority over the Bankers Trust mortgage.

Wexford filed a motion for reconsideration on January 24, 2007, which was also denied by the trial court without oral argument on April 6, 2007. Wexford now appeals.

II. STANDARD OF REVIEW

We review a trial court's decision on a motion for summary disposition de novo. *Feyz v Mercy Mem Hosp*, 475 Mich 663, 672; 719 NW2d 1 (2006). Likewise, statutory interpretation is an issue of law that is reviewed de novo on appeal. *Toll Northville Ltd v Northville Twp*, 480 Mich 6, 10-11; 743 NW2d 902 (2008).

III. ANALYSIS

Wexford argues that the trial court erred in granting summary disposition in favor of Bankers Trust. Specifically, Wexford contends that the trial court erred in its interpretation of the phrase "first mortgage of record" in MCL 559.208(1). Wexford argues that the trial court violated the rules of statutory interpretation by disregarding the plain language of the statute and improperly reading language into an unambiguous statute. We disagree.

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[1] After filing suit, Wexford learned that Murray Katzman was deceased; he was voluntarily dismissed from this action on September 12, 2006.

When interpreting a statute, our primary goal is to discern and give effect to the Legislature's intent. *Shinholster v Annapolis Hosp*, 471 Mich 540, 548-549; 685 NW2d 275 (2004). When a statute is unambiguous, the Legislature is deemed to "have intended the meaning clearly expressed, and the statute must be enforced as written." *Id*. at 549; see also *Sturgis Bank & Trust Co v Hillsdale Community Health Center*, 268 Mich App 484, 490; 708 NW2d 453 (2005). In other words, "a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself." *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002). However, a statute that is unambiguous and plain on its face may be rendered ambiguous by its interaction with and relationship to another statute. *Sturgis Bank & Trust Co*, *supra* at 490; *Dep't of Transportation v Initial Transport*, 276 Mich App 318, 325; 740 NW2d 270 (2007), lv pending 480 Mich 1044 (2008). A statutory provision is ambiguous if it irreconcilably conflicts with another provision or if it is equally susceptible to more than a single meaning. *Fluor Enterprises, Inc v Dep't of Treasury*, 477 Mich 170, 177 n 3; 730 NW2d 722 (2007). Further, statutes should be construed in a manner that avoids conflict. *Sturgis Bank & Trust Co*, *supra* at 490.

Under MCL 559.208(1),[2] unpaid assessments against a condominium owner constitute a lien on the condominium, which has priority over other liens, except tax liens and any unpaid sums on a "first mortgage of record". Wexford argues that the trial court erred in interpreting the phrase "first mortgage of record" to mean the first mortgage of record that has priority status under Michigan's race-notice statutes, MCL 565.25; MCL 565.29. Instead, Wexford contends that the statute is unambiguous and must be applied as written, thereby making the MERS

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[2] MCL 559.208(1) provides as follows:

> Sums assessed to a co-owner by the association of co-owners that are unpaid together with interest on such sums, collection and late charges, advances made by the association of co-owners for taxes or other liens to protect its lien, attorney fees, and fines in accordance with the condominium documents, constitute a lien upon the unit or units in the project owned by the co-owner at the time of the assessment before other liens except tax liens on the condominium unit in favor of any state or federal taxing authority and sums unpaid on a *first mortgage of record*, except that past due assessments that are evidenced by a notice of lien recorded as set forth in subsection (3) have priority over a first mortgage recorded subsequent to the recording of the notice of lien. The lien upon each condominium unit owned by the co-owner shall be in the amount assessed against the condominium unit, plus a proportionate share of the total of all other unpaid assessments attributable to condominium units no longer owned by the co-owner but which became due while the co-owner had title to the condominium units. The lien may be foreclosed by an action or by advertisement by the association of co-owners in the name of the condominium project on behalf of the other co-owners [Emphasis added].

mortgage the first mortgage of record, and the only mortgage with priority over Wexford's lien, because the MERS mortgage was recorded first in time. We reject Wexford's argument.

While we agree with Wexford that the phrase "first mortgage of record" appears unambiguous on its face, a statute may be rendered ambiguous by its interaction with and relationship to another statute, *Sturgis Bank & Trust Co*, *supra* at 490. Here, we agree with the trial court that the phrase first mortgage of record in MCL 559.208(1) is rendered ambiguous by its interaction with Michigan's race-notice statutes, MCL 565.25; MCL 565.29, which provide that the first interest holder to record takes priority, unless that individual has notice of a prior unrecorded interest.

MCL 559.208(1) establishes the priority of condominium assessment liens among other liens and mortgages on the same property. The race-notice statutes, MCL 565.25; MCL 565.29, govern the priority of interests in property. Under the race-notice statutes, the timing of recordation alone does not determine the priority of an interest; rather, it is the timing of recordation combined with a lack of notice of another interest. Therefore, interpreting "first mortgage of record" in MCL 559.208(1) as simply meaning the mortgage that was filed first in time conflicts with our race-notice statutes. Accordingly, we conclude that the trial court properly harmonized the two statutes, and the correct interpretation of "first mortgage of record" in MCL 559.208(1) is the one adopted by the trial court—the first mortgage of record without notice of another mortgage.

We also reject Wexford's argument that even if "first mortgage of record" in MCL 559.208(1) means the first mortgage of record that has priority status under the race-notice statutes, Wexford's assessment lien still has priority over Bankers Trust's mortgage interest because the MERS mortgage has priority under the race-notice statutes.

Again, Michigan's race-notice statutes provide that the first interest holder to record takes priority, unless that individual has notice of a prior unrecorded interest. MCL 565.25; MCL 565.29. Wexford contends that the MERS mortgage has priority status under the race-notice statutes because there is no evidence that MERS was on notice of Banker Trust's interest in the condominium. Therefore, the MERS mortgage is the first mortgage of record without notice of another mortgage. However, this Court has held that actual knowledge of another mortgage precludes availment of the race-notice rule. *Michigan Nat'l Bank & Trust v Morren*, 194 Mich App 407, 410; 487 NW2d 784 (1992). Here, we conclude that MERS was on notice of another mortgage on the condominium at the time it recorded because its mortgage was prepared on Michigan's second mortgage form, which made MERS actually aware that a first mortgage existed.

Affirmed.

/s/ Donald S. Owens
/s/ Patrick M. Meter
/s/ Bill Schuette