

STATE OF MICHIGAN
COURT OF APPEALS

BONNIE M. HARTSTOCK and
BILL HARTSTOCK, JR.,

UNPUBLISHED
January 27, 2009

Plaintiffs-Appellants,

v

FEDERAL HOME LOAN
MORTGAGE CORP. and
ORLANS ASSOCIATES P.C.,

No. 280394
Wayne Circuit Court
LC No. 07-713775-CK

Defendants-Appellees.

Before: Owens, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Plaintiffs appeal by right the circuit court's order granting defendants' motion for summary disposition. This appeal involves property sold pursuant to foreclosure. At the heart of this appeal is the application of MCL 600.3241a. We reverse and remand.

When a mortgagor defaults on a mortgage obligation, the mortgagee may foreclose on the mortgagor's interest. See *Herman Hughes Lumber Co v Wood*, 288 Mich 684; 286 NW 126 (1939). But the mortgagor has a statutory right to redeem foreclosed property. *Id.* at 687. For the property at issue here, the redemption period is generally six months. MCL 600.3240(8). If the property is deemed abandoned pursuant to MCL 600.3241a, this period of redemption is shortened to "30 days or until the time to provide the notice required by section 3241a(c) expires, whichever is later." MCL 600.3240(11).

MCL 600.3241a provides criteria to create a presumption of abandonment as follows:

For purposes of this chapter, if foreclosure proceedings have been commenced under this chapter against residential property not exceeding 4 units, abandonment of premises shall be conclusively presumed upon satisfaction of all of the following requirements before the end of the redemption period.

(a) The mortgagee has made a personal inspection of the mortgaged premises and the inspection does not reveal that the mortgagor or persons claiming under the mortgagor are presently occupying or will occupy the premises.

(b) The mortgagee has posted a notice at the time of making the personal inspection and has mailed by certified mail, return receipt requested, a notice to the mortgagor at the mortgagor's last known address, which notices state that the mortgagee considers the premises abandoned and that the mortgagor will lose all rights of ownership 30 days after the foreclosure sale or when the time to provide the notice required by subdivision (c) expires, whichever is later, unless the mortgagor; the mortgagor's heirs, executor, or administrator; or a person lawfully claiming from or under 1 of them provides the notice required by subdivision (c).

(c) Within 15 days after the notice required by subdivision (b) was posted and mailed, the mortgagor; the mortgagor's heirs, executor, or administrator; or a person lawfully claiming from or under 1 of them has not given written notice by first-class mail to the mortgagee at an address provided by the mortgagee in the notices required by subdivision (b) stating that the premises are not abandoned.

Plaintiffs argue that before this statutory presumption of abandonment arises, defendants must prove that plaintiffs did not intend to return to the vacant property. We disagree.

The main goal of interpreting statutes is to give effect to the intent of the Legislature. *Title Office, Inc v Van Buren Co Treasurer*, 469 Mich 516, 518; 676 NW2d 207 (2004). The language of the statute must first be examined to discern the intent of the Legislature. *Id.* Here, it is clear from the statute's language that the Legislature never intended to require a mortgagee to ascertain whether a mortgagor intended to abandon vacant property. The statute plainly states requirements, which if met, give rise to a conclusive presumption of abandonment without having to prove the mortgagor's actual state of mind. The statute unmistakably allows the mortgagee to presume property is abandoned after personally inspecting it and finding that "the mortgagor or persons claiming under the mortgagor are [not] presently occupying or will occupy the premises." MCL 600.3241a(a). The mortgagor can clearly rebut this presumption by notifying the mortgagee that the property has not been abandoned. MCL 600.3241a(c). Thus, when the mortgagee follows the statutory procedure, a conclusive presumption of abandonment arises unless the mortgagor or successor in interest has timely provided written notice to the mortgagee that the premises has not been abandoned.

We agree with plaintiffs, however, that a genuine issue of material fact exists whether defendants met the statutory requirements of the statute. Pursuant to MCL 600.3241a(b), the mortgagee must post a notice of abandonment on the foreclosed property at the time it personally inspects the premises and then send a copy of the notice by certified mail return receipt requested to the last known address of the mortgagor.¹

¹ MCL 600.3241a is silent regarding placement of the notice but other statutes require posting a foreclosure notice in a "conspicuous place." See MCL 600.3208; *Cox v Townsend*, 90 Mich App 12, 14-15; 282 NW2d 223 (1979).

Plaintiffs assert that defendants did not properly post notice of abandonment on the property. Here, it is undisputed that the home that was on the property was demolished in April 2004. Yet, defendants claim that on February 17, 2007, it posted the notice of abandonment “in a secure manner to the front door” of the foreclosed property. It is unclear to us how defendants could have posted notice securely to a front door that did not exist for nearly three years prior to the asserting February 17, 2007 posting. Because defendants’ claimed it was impossible that the notice was placed, and defendants failed to provide any other testimony or evidence that notice was placed elsewhere on the property, a genuine issue of material fact exists that precludes the grant of summary disposition.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction. Plaintiff being the prevailing party, may tax costs pursuant to MCR 7.219

/s/ Donald S. Owens

/s/ David H. Sawyer

/s/ Jane E. Markey