S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

JAMES H. DILUIGI and KRISTA J. DILUIGI, Plaintiffs-Appellants,	UNPUBLISHED September 9, 2014
v RBS CITIZENS N.A. f/k/a CHARTER ONE BANK, N.A. and FREDDIE MAC, Defendants-Appellees, and CCO MORTGAGE, Defendant.	No. 310886 St. Clair Circuit Court LC No. 11-000815-CH

Before: STEPHENS, P.J., and M. J. KELLY and RIORDAN, JJ

Riordan, J. (*dissenting*).

I respectfully dissent. The trial court correctly granted defendants' motion for summary disposition because defendants complied with the service of notice requirements of MCL 600.3204 and MCL 600.3205a.

The "primary goal" of statutory interpretation "is to discern the intent of the Legislature by first examining the plain language of the statute." *Driver v Naini*, 490 Mich 239, 246-247; 802 NW2d 311 (2011). When the language is clear and unambiguous, "no further judicial construction is required or permitted, and the statute must be enforced as written." *Pohutski v City of Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002) (quotation marks and citation omitted). A statutory provision must be read in the context of the entire act, and "every word or phrase of a statute should be accorded its plain and ordinary meaning." *Krohn v Home-Owners Ins Co*, 490 Mich 145, 156; 802 NW2d 281 (2011). "It is a well-established rule of statutory construction that this Court will not read words into a statute." *Byker v Mannes*, 465 Mich 637, 646-647; 641 NW2d 210 (2002).

In this case the majority wishes to abolish the foreclosure statute's service rule by misinterpreting and misapplying the provisions of MCL 600.3204(4)(a), 3205(a)(1) and 3205(a)(3). Along with ignoring the foreclosure statute's service rule, the majority also ignores

Supreme Court precedent, by announcing a new rule that service by mail is insufficient to provide notice in foreclosure proceedings. It does so by turning the statute on its head by requiring that personal service be executed, rather than by mail. While for many this may be a desirable change, it goes beyond the service requirements of the foreclosure statute as enacted by the Legislature.

"Notice [must be] mailed to the mortgagor as required by section 3205a." MCL 600.3204(4)(a). Pursuant to MCL 600.3205a(1), "before commencing a proceeding under this chapter to which section 3204(4) applies, the foreclosing party shall serve a written notice on the borrower[.]" This notice must be served by first-class mail and by certified mail, return receipt requested, with delivery restricted to the borrower. MCL 600.3205(a)(3). Further, notice by mail is adequate when "it is directed to an address reasonably calculated to reach the person entitled to notice." *Dow v Michigan*, 396 Mich 192, 211; 240 NW2d 450 (1976). In Michigan, it is presumed that "a letter mailed in the due course of business is received." *Good v Detroit Auto Inter-Ins Exch*, 67 Mich App 270, 274; 241 NW2d 71 (1976).

When reading a statute, there is no justification for needlessly rendering provisions in conflict if they can be interpreted harmoniously. Here, by taking the word "notice" out of context from the statute, the majority needlessly, and without justification, has ruled that the statutory requirements relating to service by mail are insufficient. But, twice, the applicable statutes state that service by mail is adequate and this is exactly what the mortgagors did. Actually, they did it at least three times in this case.

The trial court in this matter took judicial notice that three different times certified letters were mailed by defendants and delivered to the plaintiffs' address: February 11, 2010; February 16, 2010; and February 26, 2010. Further, the court took notice that on each of the three occasions, the U.S. Postal Service left receipts at the plaintiffs' address advising them that there were certified letters from the defendants awaiting pick-up at the local post office. Each of the three times, the served receipts were disregarded and the notices were not claimed.

MCL 600.3204(4) and MCL 600.3205a(1) require only that the defendants serve notice by mail to the plaintiffs, which the defendants did by certified mail. Despite defendants' multiple efforts, the waiting certified letters were ignored.

The defendants complied with the applicable statutory provisions.

I would affirm the trial court.

/s/ Michael J. Riordan